Supreme Court of Canada (2000-2019)

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Baker v. Campbell, [1983] HCA 39, 153 C.L.R. 52	SC	Australia	[274] A selective assortment of criticism is not evidence of generalized criticism or unworkability. This Court frequently tackles contentious, high-profile cases that engender strong and persisting divisions of opinion. The public looks to us to definitively resolve those cases, regardless of the composition of the Court. As Hayne J. noted in Lee: To regard the judgments of this Court as open to reconsideration whenever a new argument is found more attractive than the principle expressed in a standing decision is to overlook the function which a final court of appeal must perform in defining the law. In difficult areas of the law, differences of legal opinion are inevitable; before a final court of appeal, the choice between competing legal solutions oftentimes turns on the emphasis or weight given by each of the judges to one factor against a countervailing factor ... In such cases, the decision itself determines which solution is, for the purposes of the current law, correct. It is not to the point to argue in the next case that, leaving the particular decision out of account, another solution is better supported by legal theory. Such an approach would diminish the authority and finality of the judgments of this Court. As the function of defining the law is vested in the Court rather than in the justices who compose it, a decision of the Court will be followed in subsequent cases by the Court, however composed, subject to the exceptional power which resides in the Court to permit reconsideration. Accordingly, as one commentator has put the point: "the previous decision is to be treated as the primary premise from which other arguments follow, and not just as one potential premise among an aggregate of competing premises". [Emphasis in original; footnote omitted.]
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Auer v. Robbins, 519 U.S. 452 (1997)	SC	US	[272] Each of these rationales for adhering to precedent — consistent affirmation, reliance interests and the possibility of legislative correction — was recently endorsed by the United States Supreme Court in Kisor. There, the Court invoked stare decisis to uphold two administrative law precedents which urged deference to administrative agencies when they interpreted ambiguous provisions in their regulations (Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410 (1945); Auer v. Robbins, 519 U.S. 452 (1997)). Writing for the majority on the issue of stare decisis, Justice Kagan explained at length why the doctrine barred the Court from overturning Auer or Seminole Rock. To begin, Justice Kagan reiterated the importance of stare decisis and the need for special justification to overcome its demands. She then explained that stare decisis carried even greater force than usual when applied to two decisions that had been affirmed by a "long line of precedents" going back 75 years or more and cited by lower courts thousands of times (p. 2422). She noted that overturning the challenged precedents would cast doubt on many settled statutory interpretations and invite relitigation of cases (p. 2422). Finally, Justice Kagan reasoned that Congress remained free to overturn the cases if the Court had misconstrued legislative intent: . . . even if we are wrong about Auer, "Congress remains free to alter what we have done." In a constitutional case, only we can correct our error. But that is not so here. Our deference decisions are "balls tossed into Congress's court, for acceptance or not as that branch elects." And so far, at least, Congress has chosen acceptance. It could amend the APA or any specific statute to require the sort of de novo review of regulatory interpretations that Kisor favors. Instead, for approaching a century, it has let our deference regime work side-by-side with both the APA and the many statutes delegating rulemaking power to agencies. It has done so even after we made clear that our deference decisions reflect a presumption about congressional intent. And it has done so even after Members of this Court began to raise questions about the doctrine. Given that history — and Congress's continuing ability to take up Kisor's arguments — we would need a particularly "special justification" to now reverse Auer. [Citations omitted; pp. 2422-23]
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410 (1945)	SC	US	[272] Each of these rationales for adhering to precedent — consistent affirmation, reliance interests and the possibility of legislative correction — was recently endorsed by the United States Supreme Court in Kisor. There, the Court invoked stare decisis to uphold two administrative law precedents which urged deference to administrative agencies when they interpreted ambiguous provisions in their regulations (Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410 (1945); Auer v. Robbins, 519 U.S. 452 (1997)). Writing for the majority on the issue of stare decisis, Justice Kagan explained at length why the doctrine barred the Court from overturning Auer or Seminole Rock. To begin, Justice Kagan reiterated the importance of stare decisis and the need for special justification to overcome its demands. She then explained that stare decisis carried even greater force than usual when applied to two decisions that had been affirmed by a "long line of precedents" going back 75 years or more and cited by lower courts thousands of times (p. 2422). She noted that overturning the challenged precedents would cast doubt on many settled statutory interpretations and invite relitigation of cases (p. 2422). Finally, Justice Kagan reasoned that Congress remained free to overturn the cases if the Court had misconstrued legislative intent: . . . even if we are wrong about Auer, "Congress remains free to alter what we have done." In a constitutional case, only we can correct our error. But that is not so here. Our deference decisions are "balls tossed into Congress's court, for acceptance or not as that branch elects." And so far, at least, Congress has chosen acceptance. It could amend the APA or any specific statute to require the sort of de novo review of regulatory interpretations that Kisor favors. Instead, for approaching a century, it has let our deference regime work side-by-side with both the APA and the many statutes delegating rulemaking power to agencies. It has done so even after we made clear that our deference decisions reflect a presumption about congressional intent. And it has done so even after Members of this Court began to raise questions about the doctrine. Given that history — and Congress's continuing ability to take up Kisor's arguments — we would need a particularly "special justification" to now reverse Auer. [Citations omitted; pp. 2422-23]
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Bilski v. Kappos, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office, 561 U.S. 593 (2010)	SC	US	[271] Moreover, if this Court had for over 30 years significantly misconstrued the purpose of statutory appeal routes by failing to recognize what this majority has ultimately discerned — that in enacting such routes, legislatures were unequivocally directing courts to review de novo every question of law that an administrative body addresses, regardless of that body's expertise — legislatures across Canada were free to clarify this interpretation and endorse the majority's favoured approach through legislative amendment. Given the possibility — and continued absence — of legislative correction, the case for overturning our past decisions is even less compelling (Binus v. The Queen, [1967] S.C.R. 594, at p. 601; see also Kimble, at p. 2409; Kisor, at pp. 2422-23; Bilski v. Kappos, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office, 561 U.S. 593 (2010), at pp. 601-2).
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162 (2019)	SC	US	[266] Overruling these judgments flouts stare decisis principles, which prohibit courts from overturning past decisions which "simply represen[t] a preferred choice with which the current Bench does not agree" (Couch, at para. 105; see also Knauer, at para. 22; Casey, at p. 864). "[T]he entire idea of stare decisis is that judges do not get to reverse a decision just because they never liked it in the first instance" (Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162 (2019), at p. 2190, per Kagan J., dissenting). As the United States Supreme Court noted in Kimble: . . . an argument that we got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a "special justification"—over and above the belief "that the precedent was wrongly decided." [Citation omitted; p. 2409.]
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association, 450 U.S. 147 (1981)	SC	US	[261] Respect for precedent also safeguards this Court's institutional legitimacy. The precedential value of a judgment of this Court does not "expire with the tenure of the particular panel of judges that decided it" (Plourde v. Wal-Mart Canada Corp., [2009] 3 S.C.R. 465, at para. 13). American cases have stressed similar themes: There is . . . a point beyond which frequent overruling would overtax the country's belief in the Court's good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that a prior decision was wrong. There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation. (Planned Parenthood of Southeastern Pennsylvania v. Casey, Governor of Pennsylvania, 505 U.S. 833 (1992), at p. 866; see also Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association, 450 U.S. 147 (1981), at p. 153, per Stevens J., concurring.)

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2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014)	SC	US	[260] The virtues of horizontal stare decisis are widely recognized. The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (Kimble, at p. 2409, citing Payne v. Tennessee, 501 U.S. 808 (1991), at p. 827). This Court has stressed the importance of stare decisis for "[c]ertainty in the law" (Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101, at para. 38; R. v. Bernard, [1988] 2 S.C.R. 833, at p. 849; Minister of Indian Affairs and Northern Development v. Ranville, [1982] 2 S.C.R. 518, at p. 527). Other courts have described stare decisis as a "foundation stone of the rule of law" (Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014), at p. 798; Kimble, at p. 2409; Kisor, at p. 2422; see also Camps Bay, at pp. 55-56; Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 Mich. L. Rev. 1, at p. 28; Lewis F. Powell, Jr., "Stare Decisis and Judicial Restraint" (1990), 47 Wash. & Lee L. Rev. 281, at p. 288).
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2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Kimble v. Marvel Entertainment, LLC., 135 S. Ct. 2401 (2015)	SC	US	[256] Apex courts in several jurisdictions outside Canada have similarly stressed the need for caution and compelling justification before departing from precedent. The United States Supreme Court refrains from overruling its past decisions absent a "special justification", which must be over and above the belief that a prior case was wrongly decided (Kimble v. Marvel Entertainment, LLC., 135 S. Ct. 2401 (2015), at p. 2409; see also Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014), at p. 266; Kisor v. Wilkie, 139 S. Ct. 2400 (2019), at pp. 2418 and 2422; Bryan A. Garner et al., The Law of Judicial Precedent (2016), at pp. 35-36). [260] The virtues of horizontal stare decisis are widely recognized. The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (Kimble, at p. 2409, citing Payne v. Tennessee, 501 U.S. 808 (1991), at p. 827). This Court has stressed the importance of stare decisis for "[c]ertainty in the law" (Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101, at para. 38; R. v. Bernard, [1988] 2 S.C.R. 833, at p. 849; Minister of Indian Affairs and Northern Development v. Ranville, [1982] 2 S.C.R. 518, at p. 527). Other courts have described stare decisis as a "foundation stone of the rule of law" (Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014), at p. 798; Kimble, at p. 2409; Kisor, at p. 2422; see also Camps Bay, at pp. 55-56; Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 Mich. L. Rev. 1, at p. 28; Lewis F. Powell, Jr., "Stare Decisis and Judicial Restraint" (1990), 47 Wash. & Lee L. Rev. 281, at p. 288). [266] Overruling these judgments flouts stare decisis principles, which prohibit courts from overturning past decisions which "simply represen[t] a preferred choice with which the current Bench does not agree" (Couch, at para. 105; see also Knauer, at para. 22; Casey, at p. 864). "[T]he entire idea of stare decisis is that judges do not get to reverse a decision just because they never liked it in the first instance" (Knick v. Township of Scott, Pennsylvania, 139 S. Ct. 2162 (2019), at p. 2190, per Kagan J., dissenting). As the United States Supreme Court noted in Kimble: . . . an argument that we got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a "special justification"—over and above the belief "that the precedent was wrongly decided." [Citation omitted; p. 2409.] [270] The majority does not address the chaos that such legal uncertainty will generate for those who rely on settled interpretations of administrative statutes to structure their affairs, despite the fact that protecting these reliance interests is a well-recognized and especially powerful reason for respecting precedent (Garner et al., at pp. 404-11; Neil Duxbury, The Nature and Authority of Precedent (2008), at pp. 118-19; Kimble, at pp. 2410-11). By changing the entire status quo, the majority's approach will undermine legal certainty — "the foundational principle upon which the common law relies" (Bedford, at para. 38; see also Cromwell, at p. 315). [271] Moreover, if this Court had for over 30 years significantly misconstrued the purpose of statutory appeal routes by failing to recognize what this majority has ultimately discerned — that in enacting such routes, legislatures were unequivocally directing courts to review de novo every question of law that an administrative body addresses, regardless of that body's expertise — legislatures across Canada were free to clarify this interpretation and endorse the majority's favoured approach through legislative amendment. Given the possibility — and continued absence — of legislative correction, the case for overturning our past decisions is even less compelling (Binus v. The Queen, [1967] S.C.R. 594, at p. 601; see also Kimble, at p. 2409; Kisor, at pp. 2422-23; Bilski v. Kappos, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Kisor v. Wilkie, 139 S. Ct. 2400 (2019)	SC	US	[256] Apex courts in several jurisdictions outside Canada have similarly stressed the need for caution and compelling justification before departing from precedent. The United States Supreme Court refrains from overruling its past decisions absent a "special justification", which must be over and above the belief that a prior case was wrongly decided (Kimble v. Marvel Entertainment, LLC., 135 S. Ct. 2401 (2015), at p. 2409; see also Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014), at p. 266; Kisor v. Wilkie, 139 S. Ct. 2400 (2019), at pp. 2418 and 2422; Bryan A. Garner et al., The Law of Judicial Precedent (2016), at pp. 35-36). [260] The virtues of horizontal stare decisis are widely recognized. The doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process" (Kimble, at p. 2409, citing Payne v. Tennessee, 501 U.S. 808 (1991), at p. 827). This Court has stressed the importance of stare decisis for "[c]ertainty in the law" (Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101, at para. 38; R. v. Bernard, [1988] 2 S.C.R. 833, at p. 849; Minister of Indian Affairs and Northern Development v. Ranville, [1982] 2 S.C.R. 518, at p. 527). Other courts have described stare decisis as a "foundation stone of the rule of law" (Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014), at p. 798; Kimble, at p. 2409; Kisor, at p. 2422; see also Camps Bay, at pp. 55-56; Jeremy Waldron, "Stare Decisis and the Rule of Law: A Layered Approach" (2012), 111 Mich. L. Rev. 1, at p. 28; Lewis F. Powell, Jr., "Stare Decisis and Judicial Restraint" (1990), 47 Wash. & Lee L. Rev. 281, at p. 288). [271] Moreover, if this Court had for over 30 years significantly misconstrued the purpose of statutory appeal routes by failing to recognize what this majority has ultimately discerned — that in enacting such routes, legislatures were unequivocally directing courts to review de novo every question of law that an administrative body addresses, regardless of that body's expertise — legislatures across Canada were free to clarify this interpretation and endorse the majority's favoured approach through legislative amendment. Given the possibility — and continued absence — of legislative correction, the case for overturning our past decisions is even less compelling (Binus v. The Queen, [1967] S.C.R. 594, at p. 601; see also Kimble, at p. 2409; Kisor, at pp. 2422-23; Bilski v. Kappos, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office, 561 U.S. 593 (2010), at pp. 601-2). [272] Each of these rationales for adhering to precedent — consistent affirmation, reliance interests and the possibility of legislative correction — was recently endorsed by the United States Supreme Court in Kisor. There, the Court invoked stare decisis to uphold two administrative law precedents which urged deference to administrative agencies when they interpreted ambiguous provisions in their regulations (Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410 (1945); Auer v. Robbins, 519 U.S. 452 (1997)). Writing for the majority on the issue of stare decisis, Justice Kagan explained at length why the doctrine barred the Court from overturning Auer or Seminole Rock. To begin, Justice Kagan reiterated the importance of stare decisis and the need for special justification to overcome its demands. She then explained that stare decisis carried even greater force than usual when applied to two decisions that had been affirmed by a "long line of precedents" going back 75 years or more and cited by lower courts thousands of times (p. 2422). She noted that overturning the challenged precedents would cast doubt on many settled statutory interpretations and invite relitigation of cases (p. 2422). Finally, Justice Kagan reasoned that Congress remained free to overturn the cases if the Court had misconstrued legislative intent: . . . even if we are wrong about Auer, "Congress remains free to alter what we have done." In a constitutional case, only we can correct our error. But that is not so here. Our deference decisions are "balls tossed into Congress's court, for acceptance or not as that branch elects." And so far, at least, Congress has chosen acceptance. It could amend the APA or any specific statute to require the sort of de novo review of regulatory interpretations that Kisor favors. Instead, for approaching a century, it has let our deference regime work side-by-side with both the APA and the many statutes delegating rulemaking power to agencies. It has done so even after we made clear that our deference decisions reflect a presumption about congressional intent. And it has done so even after Members of this Court began to raise questions about the doctrine. Given that history — and Congress's continuing ability to take up Kisor's arguments — we would need a particularly "special justification" to now reverse Auer. [Citations omitted; pp. 2422-23]

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2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Abella and Karakatsanis JJ.	concurring	Federal Court of Appeal	Administrative law	C	C	Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147	SC	UK (HL)	[207] The canonical example of Dicey's approach at work is the House of Lords' decision in Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147, the judicial progenitor of "jurisdictional error". Anisminic entrenched non-deferential judicial review by endorsing a lengthy checklist of "jurisdictional errors" capable of undermining administrative decisions. Lord Reid noted that there were two scenarios in which an administrative decision-maker would lose jurisdiction. The first was narrow and asked whether the legislature had empowered the administrative decision-maker to "enter on the inquiry in question" (p. 171). The second was wider: [T]here are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. [Emphasis added; p. 171.] [208] The broad "jurisdictional error" approach in Anisminic initially found favour with this Court in cases like Metropolitan Life Insurance Company v. International Union of Operating Engineers, Local 796, [1970] S.C.R. 425, and Bell v. Ontario Human Rights Commission, [1971] S.C.R. 756. These cases "took the position that a definition of jurisdictional error should include any question pertaining to the interpretation of a statute made by an administrative tribunal", and in each case, "th[e] Court substituted what was, in its opinion, the correct interpretation of the enabling provision of the tribunal's statute for that of the tribunal" (Canada (Attorney General) v. Public Service Alliance of Canada, [1991] 1 S.C.R. 614, at p. 650, per Cory J., dissenting, but not on this point). In Metropolitan Life, for example, this Court quashed a labour board's decision to certify a union, concluding that the Board had "ask[ed] itself the wrong question" and "decided a question which was not remitted to it" (p. 435). In Bell, this Court held that a human rights commission had strayed beyond its jurisdiction by deciding to investigate a complaint of racial discrimination filed against a landlord. The Court held that the Commission had incorrectly interpreted the term "self-contained dwelling uni[t]" found in s. 3 of the Ontario Human Rights Code, 1961-62, S.O. 1961-62, c. 93, and by so doing, had lost jurisdiction to inquire into the complaint of discrimination (pp. 767 and 775). [209] As these cases illustrate, the Anisminic approach proved easy to manipulate, allowing courts to characterize any question as "jurisdictional" and thereby give themselves latitude to substitute their own view of the appropriate answer without regard for the original decision-maker's decision or reasoning. The Anisminic era and the "jurisdictional error" approach were and continue to be subject to significant judicial and academic criticism (Public Service Alliance, at p. 650; National Corn Growers Assn. v. Canada (Import Tribunal), [1990] 2 S.C.R. 1324, at p. 1335, per Wilson J., concurring; Beverley McLachlin, P.C., "'Administrative Law is Not for Sissies': Finding a Path Through the Thicket" (2016), 29 C.J.A.L.P. 127, at pp. 129-30; Jocelyn Stacey and Alice Woolley, "Can Pragmatism Function in Administrative Law?" (2016), 74 S.C.L.R. (2d) 211, at pp. 215-16; R.A. MacDonald, "Absence of Jurisdiction: A Perspective" (1983), 43 R. du B. 307). [253] The majority's reasons "roll back the Dunsmuir clock to an era where some courts asserted a level of skill and knowledge in administrative matters which further experience showed they did not possess" (Khosa, at para. 26). The reasons elevate statutory rights of appeal to a determinative factor based on a formalistic approach that ignores the legislature's intention to leave certain legal and policy questions to specialized administrative decision-makers. This unravelling of Canada's carefully developed, deferential approach to administrative law returns us to the "black letter law" approach found in Anisminic and cases like Metropolitan Life whereby specialized decision-makers were subject to the pre-eminent determinations of a judge. Rather than building on Dunsmuir, which recognized that specialization is fundamentally intertwined with the legislative choice to delegate particular subject matters to administrative decision-makers, the
2019	Canada (Minister of Citizenship and Immigration) v. Vavilov	12/19/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18078/index.do	Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	Wagner C.J. and Moldaver, Gascon, Côté, Brown, Rowe and Martin JJ.	majority	Federal Court of Appeal	Administrative law	C	referred to	City of Arlington, Texas v. Federal Communications Commission, 569 U.S. 290 (2013)	SC	US	[66] As Gascon J. noted in CHRC, the concept of "jurisdiction" in the administrative law context is inherently "slippery": para. 38. This is because, in theory, any challenge to an administrative decision can be characterized as "jurisdictional" in the sense that it calls into question whether the decision maker had the authority to act as it did: see CHRC, at para. 38; Alberta Teachers, at para. 34; see similarly City of Arlington, Texas v. Federal Communications Commission, 569 U.S. 290 (2013), at p. 299. Although this Court's jurisprudence contemplates that only a much narrower class of "truly" jurisdictional questions requires correctness review, it has observed that there are no "clear markers" to distinguish such questions from other questions related to the interpretation of an administrative decision maker's enabling statute: see CHRC, at para. 38. Despite differing views on whether it is possible to demarcate a class of "truly" jurisdictional questions, there is general agreement that "it is often difficult to distinguish between exercises of delegated power that raise truly jurisdictional questions from those entailing an unremarkable application of an enabling statute": CHRC, at para. 111, per Brown J., concurring. This tension is perhaps clearest in cases where the legislature has delegated broad authority to an administrative decision maker that allows the latter to make regulations in pursuit of the objects of its enabling statute: see, e.g., Green v. Law Society of Manitoba, 2017 SCC 20, [2017] 1 S.C.R. 360; West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22, [2018] 1 S.C.R. 635.
2019	Resolute FP Canada Inc. v. Ontario (Attorney General)	12/6/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18060/index.do	Resolute FP Canada Inc. v. Ontario (Attorney General), 2019 SCC 60	Côté and Brown JJ. (dissenting in part)	dissenting	Ontario	Contracts	C	D	Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570	SC	UK (HL)	[143] Discerning commercial reasonableness entails, like all contractual interpretation, an objective analysis (see Canadian Contractual Interpretation Law, at p. 57). Courts should therefore read commercial contracts in a "positive and purposive manner", seeking to understand the structure of the agreement reached by the parties, the purpose of the transaction and the business context in which the contract was intended to operate (Humphries, at para. 15). As Lord Wilberforce said in Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570, and as quoted with approval by this Court in Sattva, at para. 47: No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
2019	Resolute FP Canada Inc. v. Ontario (Attorney General)	12/6/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18060/index.do	Resolute FP Canada Inc. v. Ontario (Attorney General), 2019 SCC 60	Côté and Brown JJ. (dissenting in part)	dissenting	Ontario	Contracts	C	D	Antaios Compania Naviera S.A. v. Salen Rederierna A.B., [1985] 1 A.C. 191	SC	UK (HL)	[79] As we will explain below, contractual interpretation also requires courts to consider the principle of commercial reasonableness and efficacy. Contracts ought therefore to be interpreted "in accordance with sound commercial principles and good business sense" (Scanlon v. Castlepoint Development Corp. (1992), 11 O.R. (3d) 744, at p. 770). As Lord Diplock explained in Antaios Compania Naviera S.A. v. Salen Rederierna A.B., [1985] 1 A.C. 191 (H.L.), at p. 201, "if detailed semantic and syntactical analysis of a word in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense". The principle that requires contracts to be read in a commercially reasonable and efficient manner is therefore an important interpretive aid in construing contractual terms.
2019	Resolute FP Canada Inc. v. Ontario (Attorney General)	12/6/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18060/index.do	Resolute FP Canada Inc. v. Ontario (Attorney General), 2019 SCC 60	Côté and Brown JJ. (dissenting in part)	dissenting	Ontario	Contracts	C	D	Royal Devon and Exeter NHS Foundation Trust v. ATOS IT Services UK Ltd., [2017] EWCA Civ 2196, [2018] 2 All E.R. (Comm.) 535	lower-level court	UK	[73] The Ontario Indemnity is a contract. Today's lawyers are fortunate to live in "an age when there is a galaxy of high appellate guidance on how to interpret contracts" (Royal Devon and Exeter NHS Foundation Trust v. ATOS IT Services UK Ltd., [2017] EWCA Civ 2196, [2018] 2 All E.R. (Comm.) 535, at para. 45). While not wishing to add more gas and dark matter to the "galaxy", we do find it helpful here to stress certain first principles which we see as important in interpreting this particular contract.
2019	Desgagnés Transport Inc. v. Wärtsilä Canada Inc.	11/28/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18040/index.do	Desgagnés Transport Inc. v. Wärtsilä Canada Inc., 2019 SCC 58	Gascon, Côté and Rowe JJ.	majority	Quebec	Constitutional law	C	referred to	Argosy Marine Co. v. SS "Jeannot D", [1970] Ex. C.R. 351	lower-level court	UK	[68] The term "necessaries" encompassed any repairs done or items purchased for a ship that a prudent owner would have ordered, including for instance anchors, cables and sails (Q.N.S., at pp. 710 and 719, citing Argosy Marine Co. v. SS "Jeannot D", [1970] Ex. C.R. 351; see also W. Tetley, Maritime Liens and Claims (2nd ed. 1998), at pp. 551-52, 554-55 and 578-80, quoting Webster v. Seekamp (1821), 4 B. & Ald. 352, 106 E.R. 966 (K.B.), at p. 967; E. S. Roscoe, The Admiralty Jurisdiction and Practice of the High Court of Justice (5th ed. 1931), at pp. 202-05). There is little doubt that marine engine parts also fell within that definition (E. C. Mayers, Admiralty Law and Practice in Canada (1916), at p. 75, citing The "Flecha" (1854), 1 Sp. Ecc. & Ad. 438, 164 E.R. 252, at p. 254; see also Tetley (1998), at p. 579, citing Momsen v. The Ship Aurora (1913), 15 Ex. C.R. 27; Roscoe, at p. 204). In this regard, it is worth noting the comments of the Federal Court of Appeal in Hawker Industries Ltd. v. Santa Maria Shipowning & Trading Co., S.A., [1979] 1 F.C. 183, at p. 188, a case dealing with the replacement of a rudder: It remains only to say that, in my view, a contract for the repair of a ship disabled at sea is, and has always been recognized as, a contract for enabling the ship to carry on its navigation operations in the same way as a contract to provide a ship with "necessaries" has always been so recognized; and, in my view, it is not an over-generalization to say that the doing of what is necessary to enable ships to carry on their navigation operations is something that falls within the field of activity regulated by Admiralty law. [Emphasis added.]
2019	R. v. Rafilovich	11/8/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18013/index.do	R. v. Rafilovich, 2019 SCC 51	Moldaver J. (dissenting in part)	dissenting	Ontario	Criminal law	C	D	United States v. Monsanto, 491 U.S. 600 (1989)	SC	US	[102] In creating this provision, Parliament struck a balance between ensuring an effective forfeiture regime and permitting otherwise impecunious accused persons to access funds for certain purposes. More particularly, as the Minister of Justice explained when the bill that would later become Part XII.2 was introduced, "[t]he legislation has balanced an effective forfeiture mechanism with the constitutionally protected right to counsel in a manner that is characteristic of the Government's approach to criminal matters and avoids the criticisms that have been levied at similar American legislation in this area" (House of Commons, Debates, vol. 14, 2nd Sess., 33rd Parl., July 7, 1988, at p. 17258). The "criticisms . . . levied at similar American legislation" refer to the fact that, at the time the bill was introduced, accused persons in the United States could not use seized funds to pay for legal fees under any circumstances (see R. W. Hubbard et al., Money Laundering and Proceeds of Crime (2004), at pp. 118-20; United States v. Monsanto, 491 U.S. 600 (1989)).

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2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Côté and Brown JJ. (dissenting)	dissenting	Quebec	Status of persons	R		German modell	general	Germany	[152] We note that this change to the law of absence effected by the C.C.Q. brought the law of Quebec closer to that of Germany, and of France which had also adopted the German model in 1977: [translation] . . . the model chosen by the legislature, which involves a presumption of life that is replaced by a presumption of death after a certain time, is by no means novel in the law on absence. . . . [T]his idea has long been part of the German absence model . . . . That model provided, in fact, that an absentee was presumed to be alive until his or her death was declared and could therefore acquire rights during that period. . . . The modern absence system in Quebec thus appears to be strongly inspired by the German model given the use of presumptions of life and death to overcome uncertainty, which moves it away from its Napoleonic origins. It should be noted that Quebec is not the only jurisdiction to have made such a shift. France, the birthplace of the Napoleonic model, has also made this change. [Emphasis added; footnotes omitted.] (Cloutier, at p. 278) [153] H. Corral Talciani and M. S. Rodriguez Pinto in "Disparition de personnes et présomption de décès: observations de droit comparé" (2000), 52(3) R.I.D.C. 553, at pp. 561 and 572, also find: [translation] The current French legislation, which dates back to a radical reform of the Civil Code in 1977, completely replaced the title on Absentees in the Napoleonic Code in order to create a regime similar to the German system. The new rules deal with two situations: the presumption of absence, under which the person who has disappeared is deemed to be alive and may acquire property (arts. 112 to 121 of the Civil Code); and the declaration of absence, from the date of which the person who has disappeared is considered to be legally dead (arts. 122 to 132 of the Civil Code). Starting in 1977, France therefore abandoned the concept of doubt as the distinguishing feature of its legal regime and adopted the German doctrine of certainty, even though, contrary to the model, there is no effort to ensure that the date of death resulting from the French amendment is close to the date on which the person died or the time the death might actually have occurred. . . .
2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Côté and Brown JJ. (dissenting)	dissenting	Quebec	Status of persons	R		Code civil	statute	France	[152] We note that this change to the law of absence effected by the C.C.Q. brought the law of Quebec closer to that of Germany, and of France which had also adopted the German model in 1977: [translation] . . . the model chosen by the legislature, which involves a presumption of life that is replaced by a presumption of death after a certain time, is by no means novel in the law on absence. . . . [T]his idea has long been part of the German absence model . . . . That model provided, in fact, that an absentee was presumed to be alive until his or her death was declared and could therefore acquire rights during that period. . . . The modern absence system in Quebec thus appears to be strongly inspired by the German model given the use of presumptions of life and death to overcome uncertainty, which moves it away from its Napoleonic origins. It should be noted that Quebec is not the only jurisdiction to have made such a shift. France, the birthplace of the Napoleonic model, has also made this change. [Emphasis added; footnotes omitted.] (Cloutier, at p. 278) [153] H. Corral Talciani and M. S. Rodriguez Pinto in "Disparition de personnes et présomption de décès: observations de droit comparé" (2000), 52(3) R.I.D.C. 553, at pp. 561 and 572, also find: [translation] The current French legislation, which dates back to a radical reform of the Civil Code in 1977, completely replaced the title on Absentees in the Napoleonic Code in order to create a regime similar to the German system. The new rules deal with two situations: the presumption of absence, under which the person who has disappeared is deemed to be alive and may *acquire property (arts. 112 to 121 of the Civil Code); and the declaration of absence, from the date of which the person who has disappeared is considered to be legally dead (arts. 122 to 132 of the Civil Code).* Starting in 1977, France therefore abandoned the concept of doubt as the distinguishing feature of its legal regime and adopted the German doctrine of certainty, even though, contrary to the model, there is no effort to ensure that the date of death resulting from the French amendment is close to the date on which the person died or the time the death might actually have occurred. . . . The new Civil Code of Québec . . . is therefore very similar to the German system referred to above and to the new French rules. [Emphasis added; italics
2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Côté and Brown JJ. (dissenting)	dissenting	Quebec	Status of persons	C	D	Civ. 1st, May 17, 2017, Bull civ. V, No. 112	SC	France	[206] In Civ. 1er, May 17, 2017, Bull. civ. V, No. 112, the Cour de cassation similarly confirmed that pension payments made during the period of "presumed absence", but after the absentee's true date of death (as later established upon discovery of his remains), could not be considered to be "not due". In that case, the absentee had disappeared on March 17, 2003 and, seven years later, after the discovery of his remains, his true date of death had been determined to be March 20, 2003. The liquidator of the absentee's succession had then spontaneously restituted to the Caisse de mutualité sociale agricole the pension payments made during the period of "presumed absence", but after the absentee's true date of death. The absentee's heirs later introduced a motion asking for the reimbursement of those pension benefits to the absentee's succession. The Cour de cassation agreed, saying restitution was not required. It emphasized that, during the period of "presumed absence", an absentee was presumed alive. While this was a "simple" presumption which necessarily ceased to be in force upon proof of death, the point is that the rebuttal of the presumption of life did not retroactively affect the substantive rights of the absentee. The pension payments made during the period of "presumed absence", but after the absentee's true date of death, were therefore part of the absentee's succession and were rightly transmitted to his heirs upon his death as a consequence of having acquired the right without fraud.
2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Côté and Brown JJ. (dissenting)	dissenting	Quebec	Status of persons	C	D	Civ. 2nd, June 21, 2012, Bull civ. VI, No	SC	France	[205] In Civ. 2e, June 21, 2012, Bull. civ. VI, No. 114, the Cour de cassation quashed and set aside a decision of the court of appeal on the ground that it erred in not asking whether, up until the declaratory judgment of death was issued, a child receiving pension payments on behalf of her father determined to be an absentee could be considered to have acquired the right to such payment in good faith, as set out in art. 119 of the French Civil Code. If they did acquire the right to such payment in good faith, the rights they acquired on their father's behalf during that period were protected by art. 119 of the French Civil Code. This, despite any "windfall" generated for the absentee's children (as their father's heirs).
2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Wagner C.J. and Gascon J.	majority	Quebec	Status of persons	R		German law	general	Germany	[30] Quebec's current absence regime is a relatively modern innovation. It was introduced in 1991 as part of the new C.C.Q. It is modelled after German law, which for centuries has included a scheme whereby an absentee 1) is presumed to be alive until declared dead and 2) retains full juridical rights while presumed alive (É. Cloutier, "Origines et évolution du droit québécois de l'absence: de l'existence incertaine aux présomptions de vie et de mort" (2017), 63 McGill L.J. 247, at p. 278). It is noteworthy that the French absence regime — which has similar Germanic roots — contains an express provision indicating that the rebuttal of the presumption of life operates prospectively (art. 119 of the French Civil Code). This type of specific provision is notably missing from the C.C.Q.

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2019	Threlfall v. Carleton University	10/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17986/index.do	Threlfall v. Carleton University, 2019 SCC 50	Wagner C.J. and Gascon J.	majority	Quebec	Status of persons	R		Code civil (France), art. 119.	statute	France	[31] In order to understand the objectives of the current absence regime, it is important to reflect upon its origins and its predecessor. The idea of an absence regime in the civil law is a longstanding one. An official title on the subject was adopted in France in 1803 as part of the Code Napoléon and was entitled "Des Absens" (Absentees). In Quebec, the Civil Code of Lower Canada contained a regime governing absence commencing in 1866. It was largely modelled on the Code Napoléon (Cloutier, at pp. 255 and 262; Commissioners for the Codification of the Laws of Lower Canada Relating to Civil Matters, Civil Code of Lower Canada: First, Second and Third Reports (1865), at pp. 167 and 169). Under that regime, an absentee's continued existence was considered to be uncertain. An absentee was considered by the law to be neither living nor dead and could not inherit. After five years of absence, the absentee's presumptive heirs were allowed to take provisional possession of the absentee's property. That provisional possession had some inherent limits, given its uncertain character. Only after 30 years of absence were the presumptive heirs given absolute possession of the absentee's property, thus allowing them to alienate or hypothecate it (G. Brière, Traité de droit civil: Les Successions (2nd ed. 1994), at para. 45; Deleury and Goubau, at para. 71; H. Roch, L'absence (1951), at pp. 27-34; F. Langelier, Cours de droit civil de la province de Québec, t. 1 (1905), at pp. 200 et seq.; G. Trudel, Traité de droit civil du Québec, t. 1 (1942), at pp. 310 et seq.; Cloutier, at pp. 257-66). [43] Still, our colleagues posit that the French art. 119 has the same effect as art. 85 C.C.Q., although these separate so-called "absolute presumptions of validity" stem from two different sources: in Quebec, from the presence of a presumption of life; in France, from an express provision that allows some rights acquired in good faith during an absence to stand upon a declaration of death. Our colleagues therefore argue that Quebec's laws should be interpreted so as to align with France's, not because we should follow the same interpretative pathway from our common roots, but rather so that we can follow the "European trend" (paras. 187-89)
2019	R. v. Poulin	10/11/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17964/index.do	R. v. Poulin, 2019 SCC 47	Karakatsanis J. (dissenting)	dissenting	Quebec	Constitutional law Criminal law	C	D	R. v. Docherty, [2016] UKSC 62, [2017] 4 All E.R. 263	SC	UK (SC)	[150] If the legislature had intended to codify the restrictive interpretation proposed by the appellant, a more precise wording would have been necessary. The appellant's submissions clearly show that there was no shortage of examples of such wordings: see, e.g., R. v. Docherty, [2016] UKSC 62, [2017] 4 All E.R. 263, at paras. 29 et seq.
2019	R. v. Poulin	10/11/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17964/index.do	R. v. Poulin, 2019 SCC 47	Martin J.	majority	Quebec	Constitutional law Criminal law	C	referred to	Scoppola v. Italy (No. 2), [2009] ECHR 1297, 51 E.H.R.R. 12	international	ECHR	[82] Likewise, the ECHR could not have inspired a global s. 11(i) right. From 1978 until 2009, the second sentence of art. 7(1) of the ECHR was understood as merely codifying the principle that an offender cannot be subjected to a heavier penalty than the one applicable when the offence was committed (X. v. Federal Republic of Germany, Application No. 7900/77, March 6, 1978, D.R. 13 (E.C.H.R.) p. 70; Scoppola v. Italy (No. 2), [2009] ECHR 1297, 51 E.H.R.R. 12, at paras. 103-9). Indeed, there is no language whatsoever in art. 7(1) reflecting the principle that an offender should benefit from a decrease in punishment — let alone a global version of that principle. In fact, as the Supreme Court of the United Kingdom observed in Docherty, at para. 32, "An additional sentence containing [the] lex mitior principle (benefit of a more lenient penalty) was considered and rejected when art. 7 ECHR was adopted in 1950" (see para. 55, and the partly dissenting reasons of Judge Nicolaou in Scoppola, at pp. 364-65). I acknowledge that in 2009, in Scoppola, a majority of a divided Grand Chamber of the European Court of Human Rights departed from its own precedent and superimposed a global right onto art. 7(1). (I address the merits of this decision below.) Nonetheless, it remains the case that, at the time of the Charter 's enactment, art. 7(1) was not understood as conferring a global right. [106] Similarly, I find that the European Court of Human Rights' majority decision in Scoppola does not provide a persuasive basis for reading s. 11 (i) in a global manner. As the U.K. Supreme Court noted, the majority reasons in Scoppola do not appear to recognize the crucial distinction between the binary and global versions of the right to a decrease in punishment. In fact, the majority relied on the justification for a binary right in concluding that art. 7(1) of the ECHR should be global; it stated that art. 7(1) should not allow the imposition of a punishment "which the state — and the community it represents — now consider excessive" (para. 108 (emphasis added)). I echo the Supreme Court of the United Kingdom's statement in Docherty that: There is a very clear difference between (1) a principle which prevents a court from imposing a penalty above and outside the range currently provided for by the state as appropriate to the crime and (2) a principle which requires the court to seek out and apply the most favourable rule which has existed at any intervening time since the offence was committed, even if it has since been abandoned. The first would fall within the rationale of confining the court to a range currently considered appropriate for the offence; the latter would not. The difference between the two is not adverted to, still less explored, in the judgment in Scoppola. It is, accordingly, by no means clear that the court intended to expand its incorporation of lex mitior into art. 7 by including the latter proposition. [para. 40] [107] I further agree with the Supreme Court that the majority decision in Scoppola must be read in context. First, it is crucial to note that Scoppola's treatment of art. 7(1) was informed by a provision of Italy's criminal legislation that appeared to confer a global right: Article 2 of the 1930 Criminal Code , entitled Succession of criminal laws, reads as follows: . . . 3. If the law in force at the time when the offence was committed and later [laws] differ, the law to be applied is the one whose provisions are most favourable to the defendant, except where a final sentence has already been imposed. [Emphasis added] (Scoppola, at para. 32; see also paras. 106 and 108)
2019	R. v. Poulin	10/11/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17964/index.do	R. v. Poulin, 2019 SCC 47	Martin J.	majority	Quebec	Constitutional law Criminal law	C	referred to	X v. Federal Republic of Germany, Application No. 7900/77, March 6, 1978, D.R. 13, p. 70	international	ECHR	[82] Likewise, the ECHR could not have inspired a global s. 11(i) right. From 1978 until 2009, the second sentence of art. 7(1) of the ECHR was understood as merely codifying the principle that an offender cannot be subjected to a heavier penalty than the one applicable when the offence was committed (X. v. Federal Republic of Germany, Application No. 7900/77, March 6, 1978, D.R. 13 (E.C.H.R.) p. 70; Scoppola v. Italy (No. 2), [2009] ECHR 1297, 51 E.H.R.R. 12, at paras. 103-9). Indeed, there is no language whatsoever in art. 7(1) reflecting the principle that an offender should benefit from a decrease in punishment — let alone a global version of that principle. In fact, as the Supreme Court of the United Kingdom observed in Docherty, at para. 32, "An additional sentence containing [the] lex mitior principle (benefit of a more lenient penalty) was considered and rejected when art. 7 ECHR was adopted in 1950" (see para. 55, and the partly dissenting reasons of Judge Nicolaou in Scoppola, at pp. 364-65). I acknowledge that in 2009, in Scoppola, a majority of a divided Grand Chamber of the European Court of Human Rights departed from its own precedent and superimposed a global right onto art. 7(1). (I address the merits of this decision below.) Nonetheless, it remains the case that, at the time of the Charter 's enactment, art. 7(1) was not understood as conferring a global right

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2019	R. v. Poulin	10/11/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17964/index.do	R. v. Poulin, 2019 SCC 47	Martin J.	majority	Quebec	Constitutional law Criminal law	C	referred to	R. v. Docherty, [2016] UKSC 62, [2017] 4 All E.R. 263	SC	UK (SC)	[76] In 1976, Canada acceded to the International Covenant on Civil and Political Rights, Can. T.S. 1976 No. 47 ("ICCPR"). Article 15(1) of the ICCPR said (and continues to say): 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Notably, the first two sentences of art. 15(1) practically duplicate the entirety of art. 7(1) of the ECHR. It is only the last sentence of art. 15(1) — which codifies the equivalent of "the benefit of the lesser punishment" — which is distinct. The ICCPR appears to have been among the first international instruments to codify the "relatively modern" principle that an offender should benefit from a post-offence decrease in punishment — which is sometimes called the "lex mitior" principle (P. Westen, "Lex Mitior: Converse of Ex Post Facto and Window into Criminal Desert" (2015), 18 New Crim. L. Rev. 167, at pp. 169-70; R. v. Docherty, [2016] UKSC 62, [2017] 4 All E.R. 263, at para. 32). [82] Likewise, the ECHR could not have inspired a global s. 11(i) right. From 1978 until 2009, the second sentence of art. 7(1) of the ECHR was understood as merely codifying the principle that an offender cannot be subjected to a heavier penalty than the one applicable when the offence was committed (X. v. Federal Republic of Germany, Application No. 7900/77, March 6, 1978, D.R. 13 (E.C.H.R.) p. 70; Scoppola v. Italy (No. 2), [2009] ECHR 1297, 51 E.H.R.R. 12, at paras. 103-9). Indeed, there is no language whatsoever in art. 7(1) reflecting the principle that an offender should benefit from a decrease in punishment — let alone a global version of that principle. In fact, as the Supreme Court of the United Kingdom observed in Docherty, at para. 32, "An additional sentence containing [the] lex mitior principle (benefit of a more lenient penalty) was considered and rejected when art. 7 ECHR was adopted in 1950" (see para. 55, and the partly dissenting reasons of Judge Nicolaou in Scoppola, at pp. 364-65). I acknowledge that in 2009, in Scoppola, a majority of a divided Grand Chamber of the European Court of Human Rights departed from its own precedent and superimposed a global right onto art. 7(1). (I address the merits of this decision below.) Nonetheless, it remains the case that, at the time of the Charter 's enactment, art. 7(1) was not understood as conferring a global right. [100] First, a global s. 11(i) right would have the effect of resurrecting punishments which Parliament has, by repealing or amending them, expressly rejected — even where such a result is not justified by the principle of legality. As set out above, s. 11(i) does not merely provide the sentencing court with additional options; it entitles the offender to the lesser punishment. I see no reason why the Charter would enshrine the constitutional right to access, in all cases, an array of punishments which Parliament has since deemed unsuitable. It is one thing for s. 11 (i) to resurrect for the offender the lesser punishment under the laws in force when the offender committed the offence. It is quite another thing for s. 11 (i) to resurrect any temporary reductions in punishment which came after the offence and bear no connection whatsoever to the offender's conduct or to contemporary sentencing norms (see Docherty, at para. 45). An interpretation of s. 11 (i) that entitles an offender to the most favourable punishment in the array of past punishments would not only overshoot the purposes of this constitutional right, it would unduly undermine Parliament's general and exclusive authority to enact and amend the criminal law. [101] Moreover, as the Supreme Court of the United Kingdom observed in Docherty, there remains the possibility of legislative oversight or error. A global s. 11(i) right would entitle offenders to the benefit of any intervening oversights or errors in past sentencing provisions, even those not in force during the commission of the offence or at sentencing. But in my view, there is no principled basis to grant an offender the right to that benefit. As that Supreme Court held:
2019	Fleming v. Ontario	10/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do	Fleming v. Ontario, 2019 SCC 45	Côté J.	unanimous	Ontario	Police	C	referred to	Austin v. Metropolitan Police Comr, [2007] EWCA Civ. 989, [2008] 1 All E.R. 564	lower-level court	UK	[86] This restrictive approach to justification is consistent with how courts have treated similar or related common law powers whose purpose is to prevent breaches of the peace both in this country (see Brown; Figueiras; R. v. C.E., 2009 NSCA 79, 279 N.S.R. (2d) 391, at paras. 36-39) and in other common law jurisdictions (see Bibby v. Chief Constable of Essex Police, [2000] EWCA Civ. 113; Austin v. Metropolitan Police Comr, [2007] EWCA Civ 989, [2008] 1 All E.R. 564; Laporte). [107] Over the years, some courts have recognized that a common law police power short of arrest may exist "in truly extreme and exceptional circumstances" for the purpose of preventing an imminent breach of the peace (Austin, at para. 119). Stringent standards have been developed to ensure that any such substantial police interference with a person's liberty was demonstrably and reasonably necessary. The limited number of cases on this subject show that the exercise of such powers, if they exist, will generally not be found to be reasonably necessary unless, at a minimum, the apprehended breach of the peace is imminent, the risk of violence is sufficiently serious, the risk of it occurring is substantial, and no less intrusive measures are reasonably available (see the Irish case of O'Kelly v. Harvey (1883), 14 L.R.I. 105 (C.A.), at p. 109, and the decision of the House of Lords in Laporte, at paras. 62, 66, 68-69, 101-02, 114 and 141). Additionally, it must be demonstrated that the exercise of the power can in fact be effective in preventing the breach of the peace (see Figueiras, at para. 93).
2019	Fleming v. Ontario	10/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do	Fleming v. Ontario, 2019 SCC 45	Côté J.	unanimous	Ontario	Police	C	referred to	Bibby v. Chief Constable of Essex Police, [2000] EWCA Civ. 113	lower-level court	UK	[86] This restrictive approach to justification is consistent with how courts have treated similar or related common law powers whose purpose is to prevent breaches of the peace both in this country (see Brown; Figueiras; R. v. C.E., 2009 NSCA 79, 279 N.S.R. (2d) 391, at paras. 36-39) and in other common law jurisdictions (see Bibby v. Chief Constable of Essex Police, [2000] EWCA Civ. 113; Austin v. Metropolitan Police Comr, [2007] EWCA Civ 989, [2008] 1 All E.R. 564; Laporte).
2019	Fleming v. Ontario	10/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do	Fleming v. Ontario, 2019 SCC 45	Côté J.	unanimous	Ontario	Police	C	referred to	R. (on the application of Laporte) v. Chief Constable of Gloucestershire Constabulary, [2006] UKHL 55, [2007] 2 All E.R. 529	SC	UK (SC)	[58] The term "breach of the peace" requires elaboration. Violence lies at the core of this concept. At common law, a breach of the peace has always involved "danger to the person" (G. L. Williams, "Arrest for Breach of the Peace", [1954] Crim. L. R. 578, at p. 579). The United Kingdom Supreme Court recently stated in R. (on the application of Hicks) v. Metropolitan Police Comr, [2017] UKSC 9, [2018] 1 All E.R. 374, that "[t]he essence of a breach of the peace is violence" (para. 4) (see also R. (on the application of Laporte) v. Chief Constable of Gloucestershire Constabulary, [2006] UKHL 55, [2007] 2 All E.R. 529, at para. 27). In Brown, Doherty J.A., writing for the Ontario Court of Appeal, defined the concept as follows: "A breach of the peace contemplates an act or actions which result in actual or threatened harm to someone" (p. 248 (footnote omitted.)). In Frey v. Fedoruk, [1950] S.C.R. 517, Kerwin J. (as he then was), in concurring reasons, proposed the following definition of a breach of the peace: It may be difficult to define exhaustively what is a breach of the peace but, for present purposes, the statement in Clerk and Lindsell on Torts, (10th edition), page 298, may be accepted: — A breach of the peace takes place when either an actual assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult to an individual stopping short of actual personal violence is not a breach of the peace. Thus a householder — apart from special police legislation — cannot give a man into custody for violently and persistently ringing his door-bell. [Emphasis added; p. 519.]
2019	Fleming v. Ontario	10/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do	Fleming v. Ontario, 2019 SCC 45	Côté J.	unanimous	Ontario	Police	C	referred to	R. (on the application of Hicks) v. Metropolitan Police Comr, [2017] UKSC 9, [2018] 1 All E.R. 374	SC	UK (SC)	[58] The term "breach of the peace" requires elaboration. Violence lies at the core of this concept. At common law, a breach of the peace has always involved "danger to the person" (G. L. Williams, "Arrest for Breach of the Peace", [1954] Crim. L. R. 578, at p. 579). The United Kingdom Supreme Court recently stated in R. (on the application of Hicks) v. Metropolitan Police Comr, [2017] UKSC 9, [2018] 1 All E.R. 374, that "[t]he essence of a breach of the peace is violence" (para. 4) (see also R. (on the application of Laporte) v. Chief Constable of Gloucestershire Constabulary, [2006] UKHL 55, [2007] 2 All E.R. 529, at para. 27). In Brown, Doherty J.A., writing for the Ontario Court of Appeal, defined the concept as follows: "A breach of the peace contemplates an act or actions which result in actual or threatened harm to someone" (p. 248 (footnote omitted.)). In Frey v. Fedoruk, [1950] S.C.R. 517, Kerwin J. (as he then was), in concurring reasons, proposed the following definition of a breach of the peace: It may be difficult to define exhaustively what is a breach of the peace but, for present purposes, the statement in Clerk and Lindsell on Torts, (10th edition), page 298, may be accepted: — A breach of the peace takes place when either an actual assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult to an individual stopping short of actual personal violence is not a breach of the peace. Thus a householder — apart from special police legislation — cannot give a man into custody for violently and persistently ringing his door-bell. [Emphasis added; p. 519.] [59] As these authorities make clear, an act can be considered a breach of the peace only if it involves some level of violence and a risk of harm. It is only in the face of such a serious danger that the state's ability to lawfully interfere with individual liberty comes into play. Behaviour that is merely disruptive, annoying or unruly is not a breach of the peace. [60] It is also essential at this point to be clear about what police powers are not at issue. Specifically, as I indicated above, the case at bar does not concern a power to arrest a person for the purpose of preventing that person from breaching the peace. It appears that such a power may have existed historically at common law (see Hicks, at para. 4). Indeed, the Ontario Court of Appeal considered this very power in obiter in Brown and suggested that it does exist, stating that "a police officer may also arrest or detain a person who is about to commit a breach of the peace" (p. 248 (emphasis added)). While it is not necessary to decide this in the instant case, I seriously question whether a common law power of this nature would still

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2019	Fleming v. Ontario	10/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do	Fleming v. Ontario, 2019 SCC 45	Côté J.	unanimous	Ontario	Police	C	referred to	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[6] The respondents in this case, the Province of Ontario and seven named O.P.P. officers, do not rely on any statute to justify the lawfulness of their arrest of Mr. Fleming. Instead, they argue that their actions were authorized at common law by application of the ancillary powers doctrine that was originally laid down by the United Kingdom Court of Criminal Appeal in R. v. Waterfield, [1963] 3 All E.R. 659, at pp. 660-62. They claim that, according to that doctrine, there is a common law police power to arrest an individual in Mr. Fleming's circumstances in order to prevent an apprehended breach of the peace. In essence, the respondents propose a common law power to arrest individuals who have not committed any offence, who are not about to commit any offence, who have not already breached the peace and who are not about to breach the peace themselves. For the purposes of these reasons and for the sake of simplicity, I will refer to this power as the power to "arrest someone who is acting lawfully in order to prevent an apprehended breach of the peace". [42] That being said, the courts cannot abdicate their role of incrementally adapting common law rules where legislative gaps exist (see R. v. Mann, 2004 SCC 52, [2004] 3 S.C.R. 59, at para. 17; R. v. Kang-Brown, 2008 SCC 18, [2008] 1 S.C.R. 456, at paras. 6, 10, 50-51, and 61). This Court has in fact relied on the ancillary powers doctrine to recognize the existence of common law powers in many circumstances in the past. As Moldaver J. explained in concurring reasons in R. v. Reeves, 2018 SCC 56, the ancillary powers doctrine has been used to affirm many common law police powers now considered fundamental. For example, the R.I.D.E. program stops (Dedman v. The Queen, [1985] 2 S.C.R. 2), investigative detentions (R. v. Mann, 2004 SCC 52, [2004] 3 S.C.R. 59), searches incident to arrest (Cloutier v. Langlois, [1990] 1 S.C.R. 158), 911 home entries (R. v. Godoy, [1999] 1 S.C.R. 311), sniffer dog searches (R. v. Kang-Brown, 2008 SCC 18, [2008] 1 S.C.R. 456), and safety searches (R. v. MacDonald, 2014 SCC 3, [2014] 1 S.C.R. 37) were all affirmed through the Waterfield framework. [para. 77] Referring to whether this Court should exercise its authority to recognize ancillary police powers, Binnie J. stated: "We have crossed the Rubicon" (Kang-Brown, at para. 22). Of course, the legislature always retains the power to expand, modify, restrict or abolish such common law powers, subject to constitutional limits. [43] To determine whether a particular police action that interferes with individual liberty is authorized at common law, this Court applies the framework that was originally set out in Waterfield. This approach has often been referred to as the "Waterfield test". I prefer to use the terminology of the "ancillary powers doctrine". This is because, as Binnie J. observed in R. v. Clayton, 2007 SCC 32, [2007] 2 S.C.R. 725, "Waterfield is an odd godfather for common law police powers" (para. 75). At issue in Waterfield was whether a certain constable had been acting in the execution of his duties when he was assaulted; the case did not actually concern the recognition of a purported new common law police power. However, regardless of the doctrine's origins, this Court has consistently applied the test set out by the majority in Dedman. [44] Furthermore, the English court in Waterfield was concerned with actions related to investigating crime. But the ancillary powers doctrine has a broader reach than that: it can be applied to purported police powers — with appropriate clarifications that I will discuss below — even where no crime is alleged. [54] Certain concepts which play a significant role in the Charter justification context — such as minimal impairment and proportionality — have clear parallels in the ancillary powers doctrine analysis (see R. Jochelson, "Ancillary Issues with Oakes: The Development of the Waterfield Test and the Problem of Fundamental Constitutional Theory" (2012-13), 43 Ottawa L. Rev. 355; J. Burchill, "A Horse Gallops Down a Street . . . Policing and the Resilience of the Common Law" (2018), 41 Man. L.J. 161, at p. 175). For example, the three factors from MacDonald require a proportionality assessment. Moreover, the concept of reasonable necessity requires that other, less intrusive, measures not be valid options in the circumstances. If the police can fulfill their duty by an action that interferes less with liberty, the purported power is clearly not
2019	Keatley Surveying Ltd. v. Teranet Inc.	9/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17918/index.do#_ftnref3	Keatley Surveying Ltd. v. Teranet Inc., 2019 SCC 43	Côté and Brown JJ.	concurring	Ontario	Intellectual property	C	C	Copyright Agency Limited v. State of New South Wales, [2007] FCAFC 80, 159 F.C.R. 213	lower-level court	Australia	[115] Further, although similarly not binding, our interpretation accords with that given to broadly similar Crown copyright provisions in other Commonwealth statutes. In Copyright Agency Limited v. State of New South Wales, [2007] FCAFC 80, 159 F.C.R. 213, rev'd on other grounds, [2008] HCA 35, 233 C.L.R. 279, the Federal Court of Australia considered a substantially similar issue to the one raised in this appeal: whether copyright belongs to the Crown in land survey plans registered in the local land registry system. Like s. 12, the relevant Australian Crown copyright legislation originated in s. 18 of the Copyright Act, 1911 (U.K.), 1 & 2 Geo. 5, c. 46, and vested copyright in the Crown where works were prepared or published "by or under the direction or control" of the Crown (Copyright Agency Limited, at para. 121). Emmett J., writing for a majority of the court, explained, at para. 122: Since the enactment of the 1911 Act, the phrase "by or under the direction or control of the [Crown]" has governed ownership of copyright by the Crown, both in works made by or under the direction or control of the Crown in its various manifestations, and works first published by or under the direction or control of the Crown. "By" is concerned with those circumstances where a servant or agent of the Crown brings the work into existence for and on behalf of the Crown. "Direction" and "control" are not concerned with the situation where the work is made by the Crown but with situations where the person making the work is subject to either the direction or control of the Crown as to how the work is to be made. [Emphasis omitted.] At no point in his analysis did Emmett J. consider the government's control over the plans of survey themselves to determine whether they were made or published "by or under the direction or control" of the Crown. (Similarly, Finkelstein J., writing separately, explained that "[t]he assumption that underlies each concept (direction and control) is the existence of a relationship between the Crown and the author that authorises the Crown to give the direction or exercise the control as the case may be" (para. 186).)
2019	Keatley Surveying Ltd. v. Teranet Inc.	9/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17918/index.do#_ftnref3	Keatley Surveying Ltd. v. Teranet Inc., 2019 SCC 43	Côté and Brown JJ.	concurring	Ontario	Intellectual property	C	C	Copyright Agency Limited v. State of New South Wales, [2008] HCA 35, 233 C.L.R. 279	SC	Australia	[115] Further, although similarly not binding, our interpretation accords with that given to broadly similar Crown copyright provisions in other Commonwealth statutes. In Copyright Agency Limited v. State of New South Wales, [2007] FCAFC 80, 159 F.C.R. 213, rev'd on other grounds, [2008] HCA 35, 233 C.L.R. 279, the Federal Court of Australia considered a substantially similar issue to the one raised in this appeal: whether copyright belongs to the Crown in land survey plans registered in the local land registry system. Like s. 12, the relevant Australian Crown copyright legislation originated in s. 18 of the Copyright Act, 1911 (U.K.), 1 & 2 Geo. 5, c. 46, and vested copyright in the Crown where works were prepared or published "by or under the direction or control" of the Crown (Copyright Agency Limited, at para. 121). Emmett J., writing for a majority of the court, explained, at para. 122: Since the enactment of the 1911 Act, the phrase "by or under the direction or control of the [Crown]" has governed ownership of copyright by the Crown, both in works made by or under the direction or control of the Crown in its various manifestations, and works first published by or under the direction or control of the Crown. "By" is concerned with those circumstances where a servant or agent of the Crown brings the work into existence for and on behalf of the Crown. "Direction" and "control" are not concerned with the situation where the work is made by the Crown but with situations where the person making the work is subject to either the direction or control of the Crown as to how the work is to be made. [Emphasis omitted.] At no point in his analysis did Emmett J. consider the government's control over the plans of survey themselves to determine whether they were made or published "by or under the direction or control" of the Crown. (Similarly, Finkelstein J., writing separately, explained that "[t]he assumption that underlies each concept (direction and control) is the existence of a relationship between the Crown and the author that authorises the Crown to give the direction or exercise the control as the case may be" (para. 186).)
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2019	Keatley Surveying Ltd. v. Teranet Inc.	9/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17918/index.do#_ftnref3	Keatley Surveying Ltd. v. Teranet Inc., 2019 SCC 43	Abella J.	majority	Ontario	Intellectual property	C	referred to	Land Transport Safety Authority of New Zealand v. Glogau, [1999] 1 N.Z.L.R. 261	lower-level court	New Zealand	[61] This has led some commentators to suggest that, by the operation of s. 12 of the Act, independent contractors may have different intellectual property rights vis-à-vis the Crown than with other "employers". Indeed, the New Zealand Court of Appeal has theorized that s. 12 's statutory progenitor, s. 18 of the Copyright Act, 1911 (U.K.), was enacted partly to "make special provision for works written by Crown servants, as such traditionally were considered to hold office at will rather than under contracts of service" (Land Transport Safety Authority of New Zealand v. Glogau, [1999] 1 N.Z.L.R. 261, at p. 273).

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2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Côté J. (dissenting in part)	dissenting	British Columbia	Civil procedure	R		Clayton Act, 15 U.S.C. § 15, s. 4.	statute	US	[183] Similarly, in Associated General Contractors v. Carpenters, 459 U.S. 519 (1983), the United States Supreme Court held that common law principles — including foreseeability and proximate cause, directness of injury, certainty of damages and privity of contract — can operate to limit the scope of a defendant's liability under the statutory cause of action for anti-competitive conduct in § 4 of the Clayton Act, 15 U.S.C. § 15.[3] In that case, the majority held that a plaintiff could not recover under that provision for harm allegedly suffered by reason of the defendants' coercion of third parties. Although Stevens J. recognized that "[a] literal reading of the statute is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation" (p. 529), he nevertheless held that the question whether the [plaintiff] may recover for the injury it allegedly suffered by reason of the defendants' coercion against certain third parties cannot be answered simply by reference to the broad language of [the applicable statutory provision]. Instead . . . the question requires us to evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them. [p. 535] [187] Although that case concerned indeterminacy in relation to the imposition of a duty of care in negligence, I agree with Nordheimer J. that "the fundamental principle is the same" (para. 32): s. 36(1) should not be interpreted in a manner that makes the Defendants liable to an indeterminate class of people for losses of an indeterminate nature that occurred as a result of business decisions over which they had no control. This accords with the approach taken by the United States Supreme Court in respect of a similar statutory cause of action for anti-competitive conduct: "An antitrust violation may be expected to cause ripples of harm to flow through the Nation's economy; but 'despite the broad wording of § 4 [of the Clayton Act], there is a point beyond which the wrongdoer should not be held liable'" (Associated General Contractors, at pp. 534-35, citing Blue Shield of Virginia v. McCready, 457 U.S. 465 (1982), at pp. 476-77, citing Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), at p. 760, per Brennan J. dissenting). In my view, a preferable reading of the statutory cause of action in s. 36(1) of the Competition Act is one that, consistent with the principles underlying indeterminacy and remoteness which operate at common law, limits the potential scope of liability faced by defendants of price-fixing claims to losses flowing from their own pricing decisions, not those of third parties. This promotes the value of certainty so that commercial enterprises "have some appreciation of what risk is to be borne by whom"
2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Côté J. (dissenting in part)	dissenting	British Columbia	Civil procedure	C	D	Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)	SC	US	[187] Although that case concerned indeterminacy in relation to the imposition of a duty of care in negligence, I agree with Nordheimer J. that "the fundamental principle is the same" (para. 32): s. 36(1) should not be interpreted in a manner that makes the Defendants liable to an indeterminate class of people for losses of an indeterminate nature that occurred as a result of business decisions over which they had no control. This accords with the approach taken by the United States Supreme Court in respect of a similar statutory cause of action for anti-competitive conduct: "An antitrust violation may be expected to cause ripples of harm to flow through the Nation's economy; but 'despite the broad wording of § 4 [of the Clayton Act], there is a point beyond which the wrongdoer should not be held liable'" (Associated General Contractors, at pp. 534-35, citing Blue Shield of Virginia v. McCready, 457 U.S. 465 (1982), at pp. 476-77, citing Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), at p. 760, per Brennan J. dissenting). In my view, a preferable reading of the statutory cause of action in s. 36(1) of the Competition Act is one that, consistent with the principles underlying indeterminacy and remoteness which operate at common law, limits the potential scope of liability faced by defendants of price-fixing claims to losses flowing from their own pricing decisions, not those of third parties. This promotes the value of certainty so that commercial enterprises "have some appreciation of what risk is to be borne by whom" (Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021, at p. 1139).
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2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Côté J. (dissenting in part)	dissenting	British Columbia	Civil procedure	C	D	Associated General Contractors v. Carpenters, 459 U.S. 519 (1983);	SC	US	[183] Similarly, in Associated General Contractors v. Carpenters, 459 U.S. 519 (1983), the United States Supreme Court held that common law principles — including foreseeability and proximate cause, directness of injury, certainty of damages and privity of contract — can operate to limit the scope of a defendant's liability under the statutory cause of action for anti-competitive conduct in § 4 of the Clayton Act, 15 U.S.C. § 15.[3] In that case, the majority held that a plaintiff could not recover under that provision for harm allegedly suffered by reason of the defendants' coercion of third parties. Although Stevens J. recognized that "[a] literal reading of the statute is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation" (p. 529), he nevertheless held that the question whether the [plaintiff] may recover for the injury it allegedly suffered by reason of the defendants' coercion against certain third parties cannot be answered simply by reference to the broad language of [the applicable statutory provision]. Instead . . . the question requires us to evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them. [p. 535] [187] Although that case concerned indeterminacy in relation to the imposition of a duty of care in negligence, I agree with Nordheimer J. that "the fundamental principle is the same" (para. 32): s. 36(1) should not be interpreted in a manner that makes the Defendants liable to an indeterminate class of people for losses of an indeterminate nature that occurred as a result of business decisions over which they had no control. This accords with the approach taken by the United States Supreme Court in respect of a similar statutory cause of action for anti-competitive conduct: "An antitrust violation may be expected to cause ripples of harm to flow through the Nation's economy; but 'despite the broad wording of § 4 [of the Clayton Act], there is a point beyond which the wrongdoer should not be held liable'" (Associated General Contractors, at pp. 534-35, citing Blue Shield of Virginia v. McCready, 457 U.S. 465 (1982), at pp. 476-77, citing Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), at p. 760, per Brennan J. dissenting). In my view, a preferable reading of the statutory cause of action in s. 36(1) of the Competition Act is one that, consistent with the principles underlying indeterminacy and remoteness which operate at common law, limits the potential scope of liability faced by defendants of price-fixing claims to losses flowing from their own pricing decisions, not those of third parties. This promotes the value of certainty so that commercial enterprises "have some appreciation of what risk is to be borne by whom"
2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Côté J. (dissenting in part)	dissenting	British Columbia	Civil procedure	C	D	Ultramares Corp. v. Touche, 174 N.E. 441 (1931)	lower-level court	US	[181] Indeterminacy is a policy consideration that negates the imposition of a duty of care in negligence where it would expose the defendant to "liability in an indeterminate amount for an indeterminate time to an indeterminate class" (Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y.C.A. 1931), at p. 444, per Cardozo C.J.). This concern arises where finding a duty of care between a plaintiff and a defendant would open the floodgates, resulting in "massive, uncontrolled liability" (A. M. Linden et al., Canadian Tort Law (11th ed., 2018), at p. 278). Remoteness is a related principle that limits the scope of liability in negligence where "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (Mustapha v. Culligan of Canada Ltd., 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 12, citing A. M. Linden and B. Feldthusen, Canadian Tort Law (8th ed. 2006), at p. 360). According to the authors of the 11th edition of that text: The losses or injuries incurred by plaintiffs must not be "too remote" a consequence of the defendants' negligent act, in order for compensation to ensue. In other words, to use the older language, negligent defendants who owe a general duty of care are not liable unless their conduct is the "proximate cause" of the plaintiff's losses. Causation alone is not enough; it must be demonstrated that the conduct was the proximate cause of the damage. This

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Côté J. (dissenting in part)	dissenting	British Columbia	Civil procedure	C	D	Kitchen v. Royal Air Forces Association, [1958] 2 All E.R. 241	SC	UK (HL)	[166] The fraudulent concealment doctrine is a doctrine that operates to prevent a limitation clause from being used as an instrument of injustice in circumstances where a defendant conceals the facts giving rise to a potential cause of action from a plaintiff. Because it would be unconscionable for that defendant to then rely on the limitation clause as a defence to the claim, equity "suspend[s] the running of the limitation clock until such time as the injured party can reasonably discover the cause of action" (Giroux Estate v. Trillium Health Centre (2005), 74 O.R. (3d) 341 (C.A.), at para. 28). The Canadian approach to this doctrine has its origin in the England and Wales Court of Appeal's decision in Kitchen v. Royal Air Forces Association, [1958] 2 All E.R. 241 (C.A.), in which Lord Evershed, M.R., wrote as follows: It is now clear . . . that the word "fraud" in s. 26(b) of the Limitation Act, 1939, is by no means limited to common law fraud or deceit. Equally, it is clear . . . that no degree of moral turpitude is necessary to establish fraud within the section. What is covered by equitable fraud is a matter which Lord Hardwicke did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now, but it is, I think, clear that the phrase covers conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other. [Emphasis added; p. 249.]
2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Brown J.	majority	British Columbia	Civil procedure	C	referred to	Kone AG and Others v. ÖBB-Infrastruktur AG, [2014] EUECJ C-557/12	international	ECJ	[58] The theory behind holding price-fixers liable to umbrella purchasers — who, it will be recalled are in this case persons who purchased ODDs or ODD products neither manufactured nor supplied by the defendants — is that the defendants' anti-competitive cartel activity creates an "umbrella" of supra-competitive prices, causing non-cartel manufacturers to raise their prices (Shah v. LG Chem Ltd., 2015 ONSC 6148, 390 D.L.R. (4th) 87 ("Shah (Ont. S.C.J.)"), at para. 159). Additionally, the European Court of Justice in Kone AG and Others v. ÖBB-Infrastruktur AG, C-557/12, ECLI:EU:C:2014:1317, explained umbrella pricing as: Where a cartel manages to maintain artificially high prices for particular goods and certain conditions are met, relating, in particular, to the nature of the goods or the size of the market covered by that cartel, it cannot be ruled out that a competing undertaking, outside the cartel in question, might choose to set the price of its offer at an amount higher than it would have chosen under normal conditions of competition, that is, in the absence of that cartel. In such a situation, even if the determination of an offer price is regarded as a purely autonomous decision, taken by the undertaking not party to a cartel, it must none the less be stated that such a decision has been able to be taken by reference to a market price distorted by that cartel and, as a result, contrary to the competition rules. [Emphasis added; para. 29.]
2019	Pioneer Corp. v. Godfrey	9/20/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17917/index.do	Pioneer Corp. v. Godfrey, 2019 SCC 42	Brown J.	majority	British Columbia	Civil procedure	C	referred to	Kitchen v. Royal Air Forces Association, [1958] 2 All E.R. 241	SC	UK (HL)	[52] Fraudulent concealment is an equitable doctrine that prevents limitation periods from being used "as an instrument of injustice" (M. (K.), at pp. 58-59). Where the defendant fraudulently conceals the existence of a cause of action, the limitation period is suspended until the plaintiff discovers the fraud or ought reasonably to have discovered the fraud (Guerin v. The Queen, [1984] 2 S.C.R. 335, at p. 390). It is a form of "equitable fraud" (Guerin, at p. 390; M. (K.), at pp. 56-57), which is not confined to the parameters of the common law action for fraud (M. (K.), at p. 57). As Lord Evershed, M.R. explained in Kitchen v. Royal Air Forces Association, [1958] 2 All E.R. 241 (C.A.), at p. 249, cited in M. (K.), at pp. 56-57: It is now clear . . . that the word "fraud" in s. 26(b) of the Limitation Act, 1939, is by no means limited to common law fraud or deceit. Equally, it is clear, having regard to the decision in Beaman v. A.R.T.S., Ltd., [1949] 1 All E.R. 465, that no degree of moral turpitude is necessary to establish fraud within the section. What is covered by equitable fraud is a matter which Lord Hardwicke did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now, but it is, I think, clear that the phrase covers conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other. [Emphasis added.]
2019	R. v. R.V.	7/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17892/index.do	R. v. R.V., 2019 SCC 41	Brown and Rowe JJ. (dissenting)	dissenting	Ontario	Criminal law	C	D	Michelson v. United States, 335 U.S. 469 (1948)	SC	US	[124] But we wish to make clear that a cross-examination that is not unduly restricted does not mean a cross-examination that is boundless, and nothing in Lyttle or in our s. 276 jurisprudence suggests otherwise. Lyttle makes clear that the examiner must have a good faith basis for putting questions to a Crown witness and, as the majority notes, Parliament has specifically legislated limits on questioning related to a complainant's sexual history into the Criminal Code . While, therefore, trial judges always ensure that counsel "[are] not merely taking a random shot at reputation imprudently exposed or asking a groundless question to waft an unwarranted innuendo into the jury box" (Lyttle, at para. 51, citing from Michelson v. United States, 335 U.S. 469 (1948), at p. 481), cross-examination is even more narrowly constrained by the evidentiary corral built by the admissibility criteria in s. 276(2) ; inferences that, by operation of s. 276(1) , will never be relevant; and by the common law principles enunciated in R. v. Seaboyer, [1991] 2 S.C.R. 577. When an examiner exceeds those bounds created by s. 276 or the common law, the examiner is no longer asking questions in good faith, and therefore any evidence elicited as a result of those inquiries is inadmissible and should be immediately disregarded.
2019	R. v. R.V.	7/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17892/index.do	R. v. R.V., 2019 SCC 41	Brown and Rowe JJ. (dissenting)	dissenting	Ontario	Criminal law	C	D	Adams v. United States ex rel. McCann, 317 U.S. 269 (1942)	SC	US	[123] It is for this reason that cross-examination cannot be unduly restricted. It is not sufficient for the examiner to get 90 percent of the way through a line of questioning. That 90 percent may have no purpose or relevance at all if the examiner cannot get to the final 10 percent. Relatedly, only being able to ask a single question, or a final 10 percent, without being able to first lay out the foundation, cannot be said to fulfill an accused's constitutionally protected right of cross-examination either. Safeguarding sufficient control over the rhythm of cross-examination ensures we do not imprison a person in his or her privileges and call it the Charter (we borrow from the language of Frankfurter J., in Adams v. United States ex rel. McCann, 317 U.S. 269 (1942), at p. 280).
2019	R. v. R.V.	7/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17892/index.do	R. v. R.V., 2019 SCC 41	Brown and Rowe JJ. (dissenting)	dissenting	Ontario	Criminal law	C	D	Fox v. General Medical Council, [1960] 1 W.L.R. 1017	SC	UK (PC)	[117] Before this Court, the legal issue was whether an accused person must have a good faith basis or, a stricter, evidentiary foundation, to cross-examine a Crown witness on a particular matter at issue. In other words, is an accused person limited to questioning witnesses on matters that can be confirmed through other means? This Court answered in the negative. It was found that a question can be put to a witness in cross-examination regarding matters that need not be proved independently, provided that the examiner has a good faith basis for putting the question to the witness. It was observed that it is not uncommon for an examiner to believe what is in fact true, without being able to prove it other than by cross-examination. The risk is that if the examiner gets a denial or some answer that does not suit them, the answer stands against them in evidence (Fox v. General Medical Council, [1960] 1 W.L.R. 1017, at p. 1023, per Lord Radcliffe, cited in Lyttle, at para. 49).
2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Karakatsanis and Rowe JJ. (dissenting)	dissenting	Court Martial Appeal Court of Canada	Constitutional law	C	D	Re Colonel Aird, [2004] HCA 44, 209 A.L.R. 311	SC	Australia	[186] The historical account shows that concern for military efficiency and the related matter of discipline was a thread in the development of military court jurisdiction. However, trying civilian offences in military courts that are unrelated to the military may have the opposite effect on discipline and on morale when the right to a jury trial is removed. Common sense dictates that denying rights can undermine, not enhance morale. In Re Colonel Aird, [2004] HCA 44, 209 A.L.R. 311, Justices Callinan and Heydon, in dissent, noted that discipline is not advanced by the removal of fundamental procedural rights without good reason: But it may be assumed that the importance of morale in a defence force is no doubt very great. It is likely to be put at serious risk however if charges against soldiers in respect of criminal misconduct committed on leave in a foreign country in circumstances totally unrelated to their military activities and duties, are to be heard and determined by court martial in Australia without a jury. Indeed, the knowledge that the military authorities have the right to intrude into the private life of soldiers, and to discipline them in military proceedings for conduct far removed from their military service, and that in such proceedings there is no right to a committal and a jury, is likely to prove a disincentive to enlistment itself, let alone to morale. [Emphasis added; para. 167.]
2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Karakatsanis and Rowe JJ. (dissenting)	dissenting	Court Martial Appeal Court of Canada	Constitutional law	C	D	Relford v. Commandant (1971), 401 U.S. 355	SC	US	[168] McIntyre J. observed that a similar approach had been taken in the American context, developed in O'Callahan v. Parker (1969), 395 U.S. 258, and refined in Relford v. Commandant (1971), 401 U.S. 355, at p. 356, fn. 1. Relford directed courts to consider twelve factors in determining whether a particular offence by a service member was "service-connected", including whether the place of commission was under military control, whether there was a connection between the accused's military duties and the crime, and whether the victim was engaged in the performance of duties related to the military.
2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Karakatsanis and Rowe JJ. (dissenting)	dissenting	Court Martial Appeal Court of Canada	Constitutional law	C	D	Solorio v. United States (1987), 483 U.S. 435	SC	US	[172] Determining whether there is a military connection may involve careful consideration and difficult judgment calls, but we agree with the dissenting judges of the U.S. Supreme Court in Solorio v. United States (1987), 483 U.S. 435, at p. 466, who reinforced the need for this exercise: It should not be surprising that such determinations may at times be difficult or time consuming or require the drawing of narrow distinctions. The trial of any person before a court-martial encompasses a deliberate decision to withhold proedural protections guaranteed by the Constitution. Denial of these protections is a very serious matter . . . This requirement must not be discarded simply because it may be less expeditious than the majority deems appropriate
2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Karakatsanis and Rowe JJ. (dissenting)	dissenting	Court Martial Appeal Court of Canada	Constitutional law	C	D	O'Callahan v. Parker (1969), 395 U.S. 258	SC	US	[168] McIntyre J. observed that a similar approach had been taken in the American context, developed in O'Callahan v. Parker (1969), 395 U.S. 258, and refined in Relford v. Commandant (1971), 401 U.S. 355, at p. 356, fn. 1. Relford directed courts to consider twelve factors in determining whether a particular offence by a service member was "service-connected", including whether the place of commission was under military control, whether there was a connection between the accused's military duties and the crime, and whether the victim was engaged in the performance of duties related to the military.

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2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Moldaver and Brown JJ.	majority	Court Martial Appeal Court of Canada	Constitutional law	C	referred to	Solorio v. United States (1987), 483 U.S. 435	SC	US	[90] As Bell C.J. also noted, however, the U.S. Supreme Court later overruled O'Callahan and jettisoned the "service-connection" test in Solorio v. United States (1987), 483 U.S. 435. From that point (by which time the Vietnam War had ended, conscription had ended and judicial review of court martial decisions had been supplemented by the availability of appeals), the jurisdiction of courts martial depended solely on the accused's status as a member of the Armed Forces, and not on the existence of a "service connection". [91] Before Solorio dealt a death blow to the "service-connection" test in the United States, however, the doctrine had found its way into Canadian jurisprudence. In his concurring reasons in MacKay, McIntyre J. endorsed a form of "military nexus", stating that a civil offence would "[fall] within the jurisdiction of the courts martial and within the purview of military law when committed by a serviceman if such offence is so connected with the service in its nature, and in the circumstances of its commission, that it would tend to affect the general standard of discipline and efficiency of the service" (p. 410). Subsequently, the doctrine found expression in the CMAC's jurisprudence (see, e.g., R. v. MacDonald (1983), 4 C.M.A.R. 277; Ionson v. The Queen (1987), 4 C.M.A.R. 433; Ryan v. The Queen (1987), 4 C.M.A.R. 563; Brown; R. v. Moriarity, 2014 CMAC 1, 455 N.R. 59; R. v. Larouche, 2014 CMAC 6, 460 N.R. 248). [99] Thirdly, the imposition of a heightened "military nexus" requirement would risk causing military courts to engage in an unwieldy and unhelpful threshold inquiry that distracts from the merits. As Professor Hogg writes, the rejection of the "military nexus" requirement in Moriarity spares service tribunals from the distraction of having to determine whether there is a "direct link" between the circumstances of the offence and the military in each and every case (pp. 51-30 — 51-32). As we have seen, the "military nexus" doctrine has been tried, tested, and ultimately rejected in the United States, with Rehnquist C.J. declaring in Solorio that "the service connection approach . . . has proved confusing and difficult for military courts to apply" (p. 448) and that it "should be abandoned" (p. 441). The Canadian experience has also been an unhappy one. In Canada, the "elusive" military nexus test proved unsatisfactory due to its uncertainty (see J. Walker, "Military Justice: From Oxymoron to Aspiration" (1994), 32(1) Osgoode Hall L.J. 1, at pp. 13-14; T. E.K. Fitzgerald, "The Nexus Disconnected: The Demise of the Military Nexus Doctrine" (2018), 65 Crim. L.Q. 155). This uncertainty "ultimately cast doubt on the validity of this approach to court martial jurisdiction" (Walker (1994), at p. 14). Furthermore, and as we have recounted, the "military nexus" doctrine in the U.S. was pronounced in a very different context. In this regard, we would endorse the statement of Bell C.J. in Stillman that "[p]erhaps the service connection is outdated; perhaps it was never necessary in the Canadian environment. Regardless, the factors which motivated the adoption of the test in the United States . . . are far removed from the realities of the modern Canadian
2019	R. v. Stillman	7/26/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17891/index.do	R. v. Stillman, 2019 SCC 40	Moldaver and Brown JJ.	majority	Court Martial Appeal Court of Canada	Constitutional law	C	referred to	O'Callahan v. Parker (1969), 395 U.S. 258	SC	US	[89] By way of background, as Bell C.J. summarized in his concurring reasons in Stillman (see paras. 11-13), the "military nexus" doctrine (also known as the "service-connection" test) was first articulated by the Supreme Court of the United States in O'Callahan v. Parker (1969), 395 U.S. 258, at a time when the United States was in the midst of the Vietnam War, conscription (i.e., forced enlistment) was a feature of the military, and U.S. courts were hearing only judicial review applications from courts martial (there was no appeal mechanism in place). The Supreme Court ruled that in order for a court martial to have jurisdiction over a particular offence, it had to have a connection to service (see p. 272). The decision was based in part on the observation that courts martial were "not yet an independent instrument of justice" (p. 265).
2019	R. v. Penunsi	7/5/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17862/index.do	2019 SCC 39	Rowe J. (All)	unanimous	Newfoundland and Labrador	Criminal Law	C	referred to	R. v. Woking Justices, Ex p. Gossage, [1973] 2 All ER 621	lower-level court	UK (England)	[18] Regarding the procedural requirements of common law peace bonds, Chief Justice Lamer, writing in dissent in Parks, cited a decision of the English Court of Appeal which noted: That is not to say that it would not be wise, and indeed courteous in these cases for justices to give such a warning; there certainly would be absolutely no harm in a case like the present if the justices, returning to court, had announced they were going to acquit, but had immediately said "We are however contemplating a binding-over; what have you got to say?" I think it would be at least courteous and perhaps wise that that should be done, but I am unable to elevate the principle to the height at which it can be said that a failure to give such a warning is a breach of the rules of natural justice. [Emphasis in original; pp. 893-94, quoting R. v. Woking Justices, Ex p. Gossage, [1973] 2 All ER 621, at p. 623 (Eng. C.A.).]
2019	R. v. Le	5/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17804/index.do	2019 SCC 34	Moldaver J.	dissenting	Ontario	Constitutional law	C	D	Anderson v. Bessemer City, 470 U.S. 564 (1985)	SC	US	[205] Similarly, it has been said that "[t]he appellate court must not retry a case and must not substitute its views for the views of the trial judge according to what the appellate court thinks the evidence establishes on its view of the balance of probabilities" (Underwood v. Ocean City Realty Ltd. (1987), 12 B.C.L.R. (2d) 199 (C.A.), at p. 204, quoted in Housen, at para. 3). In brief, when it comes to the facts, the trial is the "main event", not a mere "tryout on the road" (Housen, at para. 13, citing Anderson v. Bessemer City, 470 U.S. 564 (1985), at pp. 574-75).
2019	R. v. Le	5/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17804/index.do	2019 SCC 34	Moldaver J.	dissenting	Ontario	Constitutional law	C	D	Robson v. Hallett, [1967] 2 All E.R. 407	lower-level court	UK (England)	[210] The implied licence to knock doctrine allows police officers and other members of the public, on lawful business, to enter onto private property and approach the door of the residence in order to speak with the owner or occupier (see R. v. Evans, [1996] 1 S.C.R. 8, at paras. 13 and 15, per Sopinka J. writing for a plurality; R. v. MacDonald, 2014 SCC 3, [2014] 1 S.C.R. 37, at paras. 26-27; Robson v. Hallett, [1967] 2 All E.R. 407 (Q.B.)). It aims to facilitate convenient communication by "enabl[ing] the police officer to reach a point in relation to the house where he [or she] can conveniently and in a normal manner communicate with the occupant" (Evans, at para. 15, quoting R. v. Bushman, [1968] 4 C.C.C. 17 (B.C.C.A.), at p. 24). It "extends no further than is required to permit convenient communication with the occupant" and "only those activities that are reasonably associated with the purpose of communicating with the occupant are authorized" (Evans, at para. 15).
2019	R. v. Le	5/31/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17804/index.do	2019 SCC 34	Brown and Martin JJ.	majority	Ontario	Constitutional law	C	referred to	Dorset Yacht Co. Ltd. v. Home Office, [1970] 2 All E.R. 294.	SC	UK (HL)	[165] Requiring the police to comply with the Charter in all neighbourhoods and to respect the rights of all people upholds the rule of law, promotes public confidence in the police, and provides safer communities. The police will not be demoralized by this decision: they, better than anyone, understand that with extensive powers come great responsibilities. We share the view of the House of Lords, when rejecting the idea that imposing liability on the police would have similar consequences, that "Her Majesty's servants are made of sterner stuff" (Dorset Yacht Co. Ltd. v. Home Office, [1970] 2 All E.R. 294, at p. 1033, per Lord Reid).
2019	Canada (Public Safety and Emergency Preparedness) v. Chhina	5/10/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17759/index.do	Canada (Public Safety and Emergency Preparedness) v. Chhina, 2019 SCC 29	Abella J.	dissenting	Alberta	Courts	C	D	R. v. Governor of Pentonville Prison, ex parte Azam, [1974] A.C. 18, aff'd [1974] A.C. 49	SC	UK (HL)	[101] Catzman J.A. concluded that the review and appeal mechanisms contemplated in the Act were "as broad as or broader than the traditional scope of review by way of habeas corpus". As a result, the statutory scheme did not run afoul of the principle that individuals "should not be refused the ancient remedy of habeas corpus on account of the availability of some less expeditious and advantageous alternative remedy" (p. 258, citing R. v. Governor of Pentonville Prison, ex parte Azam, [1974] A.C. 18 (C.A.), at p. 758, aff'd [1974] A.C. 49 (H.L.)). He explained: Parliament has established in the [Immigration Act], particularly in the recent amendments which specifically address the disposition of claims of persons in the position of the appellant, a comprehensive scheme to regulate the determination of such claims and to provide for review and appeal in the Federal Court of Canada of decisions and orders made under the Act, the ambit of which review and appeal is as broad as or broader than the traditional scope of review by way of habeas corpus with certiorari in aid. In the absence of any showing that the available review and appeal process established by Parliament is inappropriate or less advantageous than the habeas corpus jurisdiction of the [provincial superior court], it is my view that this court should, in the exercise of its discretion, decline to grant relief upon the application for habeas corpus in the present case, which clearly falls within the purview of that statutory review and appeal process. I am fortified in this conclusion by the observation that similar considerations appear to have moved the Supreme Court of Canada to hold that where there is a legislative initiative purporting to provide a whole scheme or code for the administration and review of proceedings in a field like immigration (Pringle v. Fraser . . . [1972] S.C.R. 821), or human rights (Board of Governors of Seneca College of Applied Arts & Technology v. Bhadauria . . . [1981] 2 S.C.R. 181 . . .), such a scheme should not be bypassed, either by evolving a new cause of action (as in Bhadauria) or by the use of a prerogative writ (as in Pringle). Both jurisprudence and logic would suggest that this Court should leave the review of immigration matters with the Federal Court of Canada, which has review and appeal jurisdiction with respect to many aspects of immigration law and which has geographical jurisdiction throughout Canada, and thus can deal with claims of refugee claimants wherever their point of entry. [pp. 261-62] [102] This became known as "the Peiroo exception", namely, where Parliament has put in place a complete, comprehensive and expert statutory scheme providing for review of detention that is at least as broad as, and no less advantageous than habeas corpus review, superior courts
2019	Canada (Public Safety and Emergency Preparedness) v. Chhina	5/10/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17759/index.do	Canada (Public Safety and Emergency Preparedness) v. Chhina, 2019 SCC 29	Karakatsanis J.	majority	Alberta	Courts	C	referred to	Jones v. Cunningham, 371 U.S. (1962)	SC	US	[19] Habeas corpus — which roughly translates to "produce the body" — was a familiar phrase in 13th century English civil procedure; it required the defendant of an action to be brought physically before the court (Farbey, Sharpe and Atrill, at p. 2). During the 15th and 16th centuries, habeas corpus took on its modern form, permitting an applicant to demand justification for their detention (at p. 4) and becoming the "great and efficacious writ in all manner of illegal confinement" (W. Blackstone, Commentaries on the Laws of England, Book III, by T. P. Gallanis, ed. (2016), at 131). Habeas corpus has never been "a static, narrow, formalistic remedy"; rather, over the centuries, it "has grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty" (May, at para. 21, citing Jones v. Cunningham, 371 U.S. 236 (1962), at p. 243).
2019	R. v. Mills	4/18/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17683/index.do	2019 SCC 22	Martin J.	concurring	Newfoundland and Labrador	Constitutional law	C	referred to	Holmes v. Burr, 486 F.2d 55 (1973)	lower-level court	US	[96] In drawing a distinction between oral communication and recording, La Forest J. cited Holmes v. Burr, 486 F.2d 55 (1973), at p. 72: "'Few of us would ever speak freely if we knew that all our words were being captured by machines for later release before an unknown and potentially hostile audience. No one talks to a recorder as he talks to a person'": Duarte, at p. 50. Adapting Duarte to our digital age, it remains the case that no one speaks to a recorder as they would speak to a person. Yet people now "speak to recorders" each time they send an electronic message. Does this mean that it is no longer objectively reasonable to expect that our conversations will remain private, simply because they are now (much of the time) recorded? This Court has held in the negative. Creating written, electronic records of one's private communications is a virtual prerequisite to participation in society, and yet "Canadians are not required to become digital recluses in order to maintain some semblance of privacy in their lives": Jones, at para. 45. Despite the capacity of modern technology to record electronic communications, individuals still retain both subjective and objective expectations of privacy in those communications: TELUS, at para. 32; transcript, at p. 59.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2019	TELUS Communications Inc. v. Wellman	4/4/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17654/index.do	2019 SCC 19	Moldaver J.	majority	Ontario	Civil procedure	C	referred to	Astoria Medical Group v. Health Insurance Plan of Greater New York, 182 N.E.2d 85 (1962);	lower-level court	US	[52] The policy that parties to a valid arbitration agreement should abide by their agreement gives effect to the concept of party autonomy — which, in the arbitration context, stands for the principle that parties should generally be allowed to craft their own dispute resolution mechanism through consensual agreement (see J. B. Casey, Arbitration Law of Canada: Practice and Procedure (3rd ed. 2017), at pp. 49, 51 and 195; Alberta Law Reform Institute, Final Report No. 103, Arbitration Act: Stay and Appeal Issues (2013), at para. 10). Consensual arbitration and party autonomy are inseparable — an arbitration agreement is "a product of party autonomy. . . [and] crystallizes the parties' consent" to private dispute resolution (M. Pavlović and A. Daimsis, "Arbitration", in J. C. Kleefeld et al. eds., Dispute Resolution: Readings and Case Studies, (4th ed. 2015), at p. 485). It "is essentially a creature of contract, a contract in which the parties themselves charter a private tribunal for the resolution of their disputes" (Astoria Medical Group v. Health Insurance Plan of Greater New York, 182 N.E.2d 85 (N.Y. 1962), at p. 87, as quoted in Re Arbitration Act (1964), 47 W.W.R. 544 (Alta. S.C.), at p. 555).
2019	Barer v. Knight Brothers LLC	2/22/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17563/index.do	Barer v. Knight Brothers LLC, 2019 SCC 13, [2019] 1 S.C.R. 573	Brown J.	concurring	Quebec	Private international law	G			general reference to French law (scholarship)	France	[156] This kind of "derivative jurisdiction", I also observe, is hardly uncommon in civil law systems. In French law, see, e.g., P. Mayer and V. Heuzé, Droit international privé (11th ed. 2014), at p. 205 : [translation] Also transposed to international jurisdiction are the rules on derivative jurisdiction, which extend the jurisdiction of the court seized of a certain demand to other demands related to it. The court therefore has jurisdiction to hear related actions brought against a number of defendants as long as one of them — in respect of whom the demand must be real and serious — is domiciled in France. . . . [Emphasis in original; footnote omitted.] See also art. 8A of Switzerland's Loi fédérale sur le droit international privé; art. 6(1) of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (2007) (Lugano Convention); art. 9 of Belgium's Loi portant le Code de droit international privé. ---
2019	Barer v. Knight Brothers LLC	2/22/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17563/index.do	Barer v. Knight Brothers LLC, 2019 SCC 13, [2019] 1 S.C.R. 573	Brown J.	concurring	Quebec	Private international law	R		Loi fédérale sur le droit international privé (Switzerland), art. 8a.	statute	Switzerland	[156] This kind of "derivative jurisdiction", I also observe, is hardly uncommon in civil law systems. In French law, see, e.g., P. Mayer and V. Heuzé, Droit international privé (11th ed. 2014), at p. 205 : [translation] Also transposed to international jurisdiction are the rules on derivative jurisdiction, which extend the jurisdiction of the court seized of a certain demand to other demands related to it. The court therefore has jurisdiction to hear related actions brought against a number of defendants as long as one of them — in respect of whom the demand must be real and serious — is domiciled in France. . . . [Emphasis in original; footnote omitted.] See also art. 8A of Switzerland's Loi fédérale sur le droit international privé; art. 6(1) of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (2007) (Lugano Convention); art. 9 of Belgium's Loi portant le Code de droit international privé. ---
2019	Barer v. Knight Brothers LLC	2/22/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17563/index.do	Barer v. Knight Brothers LLC, 2019 SCC 13, [2019] 1 S.C.R. 573	Brown J.	concurring	Quebec	Private international law	R		Loi portant le Code de droit international privé (Belgium), art. 9.	statute	Belgium	[156] This kind of "derivative jurisdiction", I also observe, is hardly uncommon in civil law systems. In French law, see, e.g., P. Mayer and V. Heuzé, Droit international privé (11th ed. 2014), at p. 205 : [translation] Also transposed to international jurisdiction are the rules on derivative jurisdiction, which extend the jurisdiction of the court seized of a certain demand to other demands related to it. The court therefore has jurisdiction to hear related actions brought against a number of defendants as long as one of them — in respect of whom the demand must be real and serious — is domiciled in France. . . . [Emphasis in original; footnote omitted.] See also art. 8A of Switzerland's Loi fédérale sur le droit international privé; art. 6(1) of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (2007) (Lugano Convention); art. 9 of Belgium's Loi portant le Code de droit international privé. ---
2019	Barer v. Knight Brothers LLC	2/22/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17563/index.do	Barer v. Knight Brothers LLC, 2019 SCC 13, [2019] 1 S.C.R. 573	Côté J.	dissenting	Quebec	Private international law	R		art. 8a of Switzerland's Loi fédérale sur le droit international privé	statute	Switzerland	[281] In this respect, I would point out that the Quebec legislature has chosen not to include a provision stating that an "action against several defendants . . . may be instituted in the court before which any of them may be summoned" (to borrow, by analogy, the language of art. 75 of the former Code of Civil Procedure, CQLR, c. C-25). Other civil law jurisdictions have enacted broad provisions of this type which apply insofar as the claims have a certain degree of connexity (see e.g. art. 8a of Switzerland's Loi fédérale sur le droit international privé; see also art. 9 of Belgium's Loi portant le Code de droit international privé). But this is not the case of Quebec, and it seems to me that this legislative choice must be respected. The scope of art. 3139 C.C.Q. should not be distorted so as to read in such a provision.
2019	Barer v. Knight Brothers LLC	2/22/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17563/index.do	Barer v. Knight Brothers LLC, 2019 SCC 13, [2019] 1 S.C.R. 573	Côté J.	dissenting	Quebec	Private international law	R		Belgium's Loi portant le Code de droit international privé	statute	Belgium	[281] In this respect, I would point out that the Quebec legislature has chosen not to include a provision stating that an "action against several defendants . . . may be instituted in the court before which any of them may be summoned" (to borrow, by analogy, the language of art. 75 of the former Code of Civil Procedure, CQLR, c. C-25). Other civil law jurisdictions have enacted broad provisions of this type which apply insofar as the claims have a certain degree of connexity (see e.g. art. 8a of Switzerland's Loi fédérale sur le droit international privé; see also art. 9 of Belgium's Loi portant le Code de droit international privé). But this is not the case of Quebec, and it seems to me that this legislative choice must be respected. The scope of art. 3139 C.C.Q. should not be distorted so as to read in such a provision.
2019	R. v. Bird	2/8/2019	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17514/index.do	R. v. Bird, 2019 SCC 7, [2019] 1 S.C.R. 409	Martin J.	concurring	Saskatchewan	Criminal law	C	referred to	McKart v. United States, 395 U.S. 185 (1969)	SC	US	[140] The general rule against collateral attacks flows from rule of law and administration of justice considerations — namely, that it is improper to bypass adjudicative processes established by the legislature. However, when criminal defences are barred in the face of severe sanctions, separate aspects of the rule of law and the administration of justice are clearly invoked. In particular, the rule of law instructs us to avoid outcomes predicated on legal errors and dictated purely by process, and to turn our minds to the repute of the administration of justice (R. v. Litchfield, [1993] 4 S.C.R. 333, at pp. 349-50). This must be especially so where any potential error — for example convicting someone for breaching an invalid order — results in imprisonment. In my view, the trial judge's task in a case such as this is to ask whether full answer and defence considerations and fair trial rights, which here arise in the face of serious criminal sanctions, outweigh rigid adherence to administrative structures, particularly where those structures are limited. In this vein, the words of the U.S. Supreme Court in McKart v. United States, 395 U.S. 185 (1969), at p. 197, are apt: First of all, it is well to remember that use of the [rule barring challenges to administrative orders] in criminal cases can be exceedingly harsh. The defendant is often stripped of his only defense; he must go to jail without having any judicial review of an assertedly invalid order. This deprivation of judicial review occurs not when the affected person is affirmatively asking for assistance from the courts but when the Government is attempting to impose criminal sanctions on him. Such a result should not be tolerated unless the interests underlying the . . . rule clearly outweigh the severe burden imposed upon the registrant if he is denied judicial review.
2018	R. v. Reeves	12/13/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17405/index.do	2018 SCC 56	Moldaver J.	concurring	Ontario	Constitutional law	C	applied	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK (England)	[77] Whether police have the authority at common law to take an action that interferes with an individual's liberty or property is assessed using the framework set out by the U.K. Court of Criminal Appeals in R. v. Waterfield, [1963] 3 All E.R. 659, at pp. 660-62, per Ashworth J. Canadian courts have used the Waterfield framework — sometimes referred to as the ancillary powers doctrine — to affirm many common law police powers now considered fundamental. For example, the R.I.D.E. program stops (Dedman v. The Queen, [1985] 2 S.C.R. 2), investigative detentions (R. v. Mann, 2004 SCC 52, [2004] 3 S.C.R. 59), searches incident to arrest (Cloutier v. Langlois, [1990] 1 S.C.R. 158), 911 home entries (R. v. Godoy, [1999] 1 S.C.R. 311), sniffer dog searches (R. v. Kang-Brown, 2008 SCC 18, [2008] 1 S.C.R. 456), and safety searches (R. v. MacDonald, 2014 SCC 3, [2014] 1 S.C.R. 37) were all affirmed through the Waterfield framework.
2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Abella J.	concurring	Ontario	Constitutional law	C	referred to	Branzburg v. Hayes, 408 U.S. 665 (1972)	SC	US	[125] The purpose underlying protection for the press is related to, but distinct from, the broader guarantee of freedom of expression. The dichotomy in s. 2(b) between freedom of expression generally and freedom of the press specifically is a logical one, since the press plays a distinct expressive role, with both institutional and historic differences from how and why others are entitled to "freedom of expression". Section 2(b) sets out generous protections designed to facilitate the healthy functioning of our democracy. But they are incomplete if s. 2(b) is viewed only as an individual right to freedom of expression, reading out protection of "freedom of the press". A vigorous, rigorous, and independent press holds people and institutions to account, uncovers the truth, and informs the public. It provides the public with the information it needs to engage in informed debate. In other words, it is the public's "right to know" that explains and animates the distinct constitutional protection for freedom of the press (Branzburg v. Hayes, 408 U.S. 665 (1972), at p. 721, per Douglas J. (dissenting); see also Houchins v. KQED, Inc., 438 U.S. 1 (1978), at p. 17, per Stewart J. (concurring)).
2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Abella J.	concurring	Ontario	Constitutional law	C	referred to	Houchins v. KQED, Inc., 438 U.S. 1 (1978)	SC	US	[125] The purpose underlying protection for the press is related to, but distinct from, the broader guarantee of freedom of expression. The dichotomy in s. 2(*b*) between freedom of expression generally and freedom of the press specifically is a logical one, since the press plays a distinct expressive role, with both institutional and historic differences from how and why others are entitled to "freedom of expression". Section 2(*b*) sets out generous protections designed to facilitate the healthy functioning of our democracy. But they are incomplete if s. 2(*b*) is viewed only as an individual right to freedom of expression, reading out protection of "freedom of the press". A vigorous, rigorous, and independent press holds people and institutions to account, uncovers the truth, and informs the public. It provides the public with the information it needs to engage in informed debate. In other words, it is the public's "right to know" that explains and animates the distinct constitutional protection for freedom of the press (*Branzburg v. Hayes* , 408 U.S. 665 (1972), at p. 721, per Douglas J. (dissenting); see also *Houchins v. KQED, Inc.* , 438 U.S. 1 (1978), at p. 17, per Stewart J. (concurring)).
2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Abella J.	concurring	Ontario	Constitutional law	C	referred to	Goodwin v. United Kingdom (1996), 22 E.H.R.R. 123	international	ECHR	[126] The singular purpose of press protection has, in fact, resulted in the European Court of Human Rights concluding that the freedom of expression guarantee in Article 10 of the European Convention on Human Rights, 213 U.N.T.S. 221,[6] which does not expressly mention any right for the press, nonetheless includes a distinct press right. A separate right was held to be necessary to protect the "vital public watchdog role of the press . . . and the ability of the press to provide accurate and reliable information" (Goodwin v. United Kingdom (1996), 22 E.H.R.R. 123, at para. 39).
2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Abella J.	concurring	Ontario	Constitutional law	C	referred to	Nagla v. Latvia, No. 73469/10, July 16, 2013	international	ECHR	[131] Does s. 2(b)'s press and media guarantee include protection for journalistic "work product", such as a reporter's personal notes, recordings of interviews, or source contact lists? It seems inescapable that it usually does. The European Court of Human Rights has held that protecting the press includes protection for material in the journalist's possession that might identify a confidential source (Goodwin, at para. 39; see also Nagla v. Latvia, No. 73469/10, July 16, 2013 (HUDOC)). And in R. (Miranda) v. Secretary of State for the Home Department, [2016] EWCA Civ 6, Dyson M.R. held that the protection of sources is "no more than one aspect" of the Article 10 press protection, which protects "journalistic material" even where "the source is known" (paras. 102 and 107). Similarly, in his concurring opinion in Lessard, La Forest J. stated that "work product" must be protected because "[t]he fear that the police can easily gain access" to this material "could well hamper the ability of the press to gather information" (pp. 431-32).

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2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Abella J.	concurring	Ontario	Constitutional law	C	referred to	R. (Miranda) v. Secretary of State for the Home Department, [2016] EWCA Civ 6, [2016] 1 W.L.R. 1505	lower-level court	UK (England and Wales)	[131] Does s. 2(b)'s press and media guarantee include protection for journalistic "work product", such as a reporter's personal notes, recordings of interviews, or source contact lists? It seems inescapable that it usually does. The European Court of Human Rights has held that protecting the press includes protection for material in the journalist's possession that might identify a confidential source (Goodwin, at para. 39; see also Nagla v. Latvia, No. 73469/10, July 16, 2013 (HUDOC)). And in R. (Miranda) v. Secretary of State for the Home Department, [2016] EWCA Civ 6, Dyson M.R. held that the protection of sources is "no more than one aspect" of the Article 10 press protection, which protects "journalistic material" even where "the source is known" (paras. 102 and 107). Similarly, in his concurring opinion in Lessard, La Forest J. stated that "work product" must be protected because "[t]he fear that the police can easily gain access" to this material "could well hamper the ability of the press to gather information" (pp. 431-32).
2018	R. v. Vice Media Canada Inc.	11/30/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17398/index.do	2018 SCC 53	Moldaver J.	majority	Ontario	Constitutional law	C	referred to	British Steel Corp. v. Granada Television Ltd., [1981] A.C. 1096	SC	UK (HL)	[26] In this context, I would define the term "chilling effect" fairly broadly: it refers to the stifling or discouragement of the media's legitimate activities in gathering and disseminating the news for fear of legal repercussions such as compelled disclosure. These effects may manifest themselves in a number of ways — for example: • Confidential sources may "dry up". As Lord Denning wrote in British Steel Corp. v. Granada Television Ltd., [1981] A.C. 1096, "if they [newspapers] were compelled to disclose their sources, they would soon be bereft of information which they ought to have. Their sources would dry up. Wrongdoing would not be disclosed" (p. 1129). If sources who are willing to speak out only on a confidential basis come to fear that their identity may be disclosed at the whim of the state, then they will remain in the shadows. Consequently, the media will lose opportunities to receive and disseminate important information to the public
2018	Reference re Pan-Canadian Securities Regulation	11/9/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17355/index.do	2018 SCC 48	The Court	unanimous	Quebec	Constitutional law	C	referred to	Jackson v. Her Majesty's Attorney General, [2005] UKHL 56, [2006] 1 AC 262	SC	UK (HL)	[55] The sovereignty of the legislature is central to the United Kingdom's uncodified constitutional structure (*Jackson v. Her Majesty's Attorney General* , [2005] UKHL 56, [2006] 1 A.C. 262, at para. 9 (per Lord Bingham)). Because there are no constituent instruments that either restrict the U.K. Parliament's jurisdiction over certain subject matters or enshrine certain civil rights and liberties, "[a]ny law, upon any subject matter, is within Parliament's competence" (P.W. Hogg, *Constitutional Law of Canada* (5th ed. (loose-leaf)), vol. 7, at p. 12-1). Parliamentary sovereignty therefore means that the legislative branch of government has supremacy over the executive and the judiciary: both must act in accordance with statutory enactments, and neither can usurp or interfere with the legislature's law-making function.
2018	Reference re Pan-Canadian Securities Regulation	11/9/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17355/index.do	2018 SCC 48	The Court	unanimous	Quebec	Constitutional law	C	referred to	West Lakes Ltd. v. South Australia (1980), 25 S.A.S.R. 389	lower-level court	Australia	[60] The rule that the executive cannot bind the legislature is perhaps more clearly exemplified by the decision of Supreme Court of South Australia in West Lakes Ltd. v. South Australia (1980), 25 S.A.S.R. 389 — a decision that was cited by the Majority of the Quebec Court of Appeal in its reasons. At issue in West Lakes was a provision in an agreement between the State of South Australia and a land developer, which could be interpreted as giving the developer a veto over any amendment to the statute that enacted the agreement into law. When a bill to amend that statute was later introduced into the Parliament of South Australia, the developer sought a declaration that the covenants contained in the agreement were binding upon the State and an injunction restraining the State from taking any step or being party to any step to further the bill. The Supreme Court of South Australia unanimously held that the developer was not entitled to such relief, relying in part on the principle of parliamentary sovereignty. Of particular note for the purpose of these appeals, King C.J. stated that ministers of the State, as members of parliament, were "free to propose, to consider, to discuss, and to vote for any bill unconstrained by a contract entered into on behalf of the State" (pp. 390-91)
2018	Churchill Falls (Labrador) Corp. v. Hydro-Québec	11/2/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17338/index.do	Churchill Falls (Labrador) Corp. v. Hydro-Québec, 2018 SCC 46	Gascon J.	majority	Quebec	Contracts	R		Code civil (France), art. 1195.	statute	France	(a) Doctrine of Unforeseeability [86] The doctrine of unforeseeability is a private law rule that is recognized in some civil law jurisdictions and the effect of which is that parties can be required to renegotiate a contract if, as a result of unforeseen events, performance of the obligations stipulated in the contract would be excessively onerous for one of them. This rule has been adopted in the domestic law of several European civilian countries, recently including France. On the face of it, the rule corresponds to a key aspect of CFLCo's concerns, as it applies specifically in situations in which changes that are beyond the control of and unforeseen by the contracting partners result in a significant disequilibrium in their respective prestations. This rule thus tempers the principle of the binding force of contracts where changes in market conditions alter the nature of a contract. [87] The French legislature's choice in 2016 to include the doctrine of unforeseeability in French civil law provides one example of this. In the new art. 1195 of the French Code civil, it has adopted the rule that flows from that doctrine in the following words: [translation] If a change of circumstances that was unforeseeable at the time of the conclusion of the contract renders performance excessively onerous for a party who had not accepted the risk of such a change, that party may ask the other contracting party to renegotiate the contract. The first party must continue to perform his obligations during renegotiation. In the case of refusal or the failure of renegotiations, the parties may agree to terminate the contract from the date and on the conditions which they determine, or by a common agreement ask the court to set about its adaptation. In the absence of an agreement within a reasonable time, the court may, on the request of a party, revise the contract or put an end to it, from a date and subject to such conditions as it shall determine. [88] The doctrine of unforeseeability is also included in the Unidroit Principles of International Commercial Contracts (4th ed. 2016), a set of contract law rules published by the International Institute for the Unification of Private Law: É. Charpentier, "L'émergence d'un ordre public. . . privé: une présentation des Principes d'Unidroit", in Les Journées Maximilien-Caron 2001, Les principes d'Unidroit et les contrats internationaux: aspects pratiques (2003), 19, at pp. 21 and 24. The Unidroit Principles, which were developed by jurists from a number of countries for the purpose of creating a truly international body of law, are not binding. However, their drafters invite parties to a contract to designate these principles as the rules that will govern their agreement, and hope that they will influence national lawmakers in their legislative choices: P.-A. Crépeau, with É. M. Charpentier, The Unidroit Principles and the Civil Code of Québec: Shared Values? (1998), at p. xxix; Charpentier, at pp. 21-22. Article 6.2.1 of the Unidroit Principles states the principle that contracts are binding absent an unforeseeable event. In it, the concept of unforeseeability is referred to using the word "hardship", which is defined as follows in art. 6.2.2: Article 6.2.2 There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and (a) the events occur or become known to the disadvantaged party after the conclusion of the contract; (b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;
2018	Chagnon v. Syndicat de la fonction publique et parapublique du Québec	10/5/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17287/index.do#_ftnref2	Chagnon v. Syndicat de la fonction publique et parapublique du Québec, 2018 SCC 39, [2018] 2 S.C.R. 687	Côté and Brown JJ.	dissenting	Quebec	Constitutional law	C	D	President of the Legislative Council v. Kosmas, [2008] SAIRC 41, 175 I.R. 269	lower-level court	Australia	134] Only by carving up this sphere of activity have the majority of the Court of Appeal and our colleague Karakatsanis J. been able to find that the guards' employment is not covered by parliamentary privileges. In particular, Karakatsanis J. states that it might be easier to satisfy the necessity test if the management privilege could protect a limited part of the functions performed by a category of employees: para. 37. This proposition is unworkable and unrealistic: see President of the Legislative Council v. Kosmas, [2008] SAIRC 41, 175 I.R. 269, at para. 31. Vaid, a recent decision of this Court, indicates that the analysis must focus on the "sphere of activity" and "categories of employees", not on each employee's specific tasks (para. 29(5) and (6) and para. 62). In any event, all of the guards' tasks relate to the sphere of security. Since security is a "necessary sphere of matters without which the dignity and efficiency of the House cannot be upheld" (New Brunswick Broadcasting, at p. 383), courts and tribunals have no jurisdiction over it.
2018	Chagnon v. Syndicat de la fonction publique et parapublique du Québec	10/5/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17287/index.do#_ftnref2	Chagnon v. Syndicat de la fonction publique et parapublique du Québec, 2018 SCC 39, [2018] 2 S.C.R. 687	Karakatsanis J.	majority	Quebec		C	referred to	*Jerusalem v. Austria* , No. 26958/95 , ECHR 2001-II		ECHR	[20] Many countries afford special protections to the legislative branch of government. For instance, numerous civil law and common law jurisdictions guarantee the immunity of elected representatives from liability for speech that relates to their legislative work.[1] Legislative immunities ensure the proper functioning of a representative democracy. They cultivate a space in which the voices of the people, including those who hold potentially unpopular opinions, can be heard and considered.[2] lábjegyzet: [1] See e.g. the United Kingdom Bill of Rights (Eng.), 1 Will. & Mar. Sess. 2, c. 2, art. 9; the United States Constitution, art. I, § 6(1); the Constitution of France, art. 26; the Constitution of India, arts. 105 and 194; the Constitution of Italy, art. 68; and New Zealand (see e.g. D. McGee, Parliamentary Practice in New Zealand (4th ed. 2017), by M. Harris et al., at pp. 722-24). [2] See e.g. Jerusalem v. Austria, No. 26958/95, ECHR 2001-II, at para. 36; R. S. Mehta, "Sir Thomas' Blushes: Protecting Parliamentary Immunity in Modern Parliamentary Democracies" (2012), 17 E.H.R.L.R. 309, at pp. 309 and 318; République française, Sénat, Direction de l'initiative parlementaire et des délégations, L'immunité parlementaire, Étude de législation comparée no 250 (June 2014) (online), at p. 8; Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report on the Scope and Lifting of Parliamentary Immunities, Study No. 714/2013 (May 14, 2014) (online), at paras. 36-37

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2018	Rogers Communications Inc. v. Voltage Pictures, LLC	9/14/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17254/index.do	Rogers Communications Inc. v. Voltage Pictures, LLC, 2018 SCC 38, [2018] 2 S.C.R. 643	Côté J.	concurring	Federal Court of Appeal	Intellectual property	C	referred to	Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133	SC	UK (HL)	[61] I would, however, go further than my colleague, Brown J. In my view, none of the eight steps that Rogers Communications Inc. undertakes in response to a Norwich order is supplanted by the statutory notice and notice regime (Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.)). I also disagree with the proposition that any implied obligations in s. 41.26(1) of the Copyright Act, R.S.C. 1985, c. C-42 , categorically preclude an ISP from verifying aspects of its records at the time that a Norwich order is received and then seeking compensation for that work. Assuming that Rogers' eight-step process is otherwise reasonable, a determination that does not appear to have been made by the motion judge in the first instance (2016 FC 881, 141 C.P.R. (4th) 136), Rogers is entitled to full compensation for the steps it takes to identify an account holder and to disclose that identity to a copyright claimant.
2018	Rogers Communications Inc. v. Voltage Pictures, LLC	9/14/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17254/index.do	Rogers Communications Inc. v. Voltage Pictures, LLC, 2018 SCC 38, [2018] 2 S.C.R. 643	Brown J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133	SC	UK (HL)	[3] Parliament responded to both sets of concerns by enacting the "notice and notice" regime contained within ss. 41.25 and 41.26 of the Copyright Act, R.S.C. 1985, c. C-42 — which regime was brought into force on January 2, 2015. Now, when a copyright owner gives notice to an Internet service provider ("ISP") claiming that a person at a certain IP address has infringed the owner's copyright, the ISP must forward that notice of claimed infringement to the person to whom the IP address (being "the electronic location identified by the location data specified in the notice" (s. 41.26(1) (a)) was assigned. While this regime is intended to deter the continued infringement of copyright online, it only goes so far. In particular, it does not require an ISP to disclose the identity of a person who has received notice to a copyright owner. For a copyright owner to obtain that person's identity, the owner must proceed outside the regime — specifically, by obtaining a Norwich order compelling the ISP to disclose it (see Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.)).
2018	Rogers Communications Inc. v. Voltage Pictures, LLC	9/14/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17254/index.do	Rogers Communications Inc. v. Voltage Pictures, LLC, 2018 SCC 38, [2018] 2 S.C.R. 643	Brown J.	majority	Federal Court of Appeal	Intellectual property	C		Cartier International AG v. British Telecommunications plc, [2018] UKSC 28, [2018] 1 W.L.R. 3259	SC	UK (SC)	[59] As to costs, it is a precondition of a Norwich order that an ISP is entitled to its reasonable legal costs incurred in Norwich order proceedings (BMG Canada Inc. (C.A.), at paras. 15 and 35). I would therefore restore the motion judge's order awarding Rogers its legal costs of $500. Given the unusual circumstances of this appeal which I have already described, however, as well as the divided success throughout these proceedings, I would direct that the parties bear their own costs at this Court and at the Federal Court of Appeal (see Cartier International AG v. British Telecommunications plc, [2018] UKSC 28, [2018] 1 W.L.R. 3259, at para. 38).
2018	Rogers Communications Inc. v. Voltage Pictures, LLC	9/14/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17254/index.do	Rogers Communications Inc. v. Voltage Pictures, LLC, 2018 SCC 38, [2018] 2 S.C.R. 643	Brown J.	majority	Federal Court of Appeal	Intellectual property	R		Digital Millennium Copyright Act (1998), 17 U.S.C. § 512.	statute	US	[26] For example, Parliament sought to strike a balance between the interests of copyright owners and of Internet subscribers, respectively, by preferring a notice and notice regime over a "notice and take down" regime (see House of Commons Debates, at p. 2109, per Hon. James Moore). The notice and take down regime prescribed in the United States by the Digital Millennium Copyright Act (1998), 17 U.S.C. § 512, requires an online "service provider", upon receiving notice of a claimed copyright infringement, to respond expeditiously by removing or blocking access to the material that is the subject of the claimed infringement. While obviously a preferable scheme from the standpoint of copyright owners, its "take down" requirement has been criticized as undermining the presumption of innocence and unnecessarily limiting free expression (see, e.g., Comments of the Electronic Frontier Foundation before the U.S. Copyright Office, Library of Congress, In the Matter of Section 512 Study, submitted by C. McSherry and K. Walsh, April 1, 2016 (online), at pp. 9-13; J. M. Urban, J. Karaganis and B. L. Schofield, Notice and Takedown in Everyday Practice, March 2017 (online), at pp. 116-18; W. Seltzer, "Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment" (2010), 24 Harv. J.L. & Tech. 171). In contrast, the notice and notice regime allows for notices of claimed infringement to be forwarded (thereby advancing the rights of copyright holders), while accounting for the interests of Internet subscribers by maintaining the presumption of innocence and allowing them to monitor their own behaviour [and, more specifically, to avoid continued copyright infringement].
2018	Law Society of British Columbia v. Trinity Western University	6/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do	Law Society of British Columbia v. Trinity Western University, 2018 SCC 32, [2018] 2 S.C.R. 293	Rowe J.	concurring in the result	British Columbia	Administrative law			Christian Education South Africa v. Minister of Education, [2000] ZACC 11, 2000 (4) S.A. 757	SC	South Africa	[217] This focus on the individual choice of believers does not detract from the communal aspect of religion. For many religions, community is critical to manifesting faith. Whether through communal worship, religious education, or good works, the community is often the public face of religion. In other words, it is how the religion engages with the world. To borrow from Justice Sachs then of the South African Constitutional Court: Certain religious sects do turn their back on the world, but many major religions regard it as part of their spiritual vocation to be active in the broader society. Not only do they proselytise through the media and in the public square, religious bodies play a large part in public life, through schools, hospitals and poverty relief. They command ethical behaviour from their members and bear witness to the exercise of power by State and private agencies; they promote music, art and theatre; they provide halls for community activities, and conduct a great variety of social activities for their members and the general public. They are part of the fabric of public life, and constitute active elements of the diverse and pluralistic nation contemplated by the Constitution. Religion is not just a question of belief or doctrine. It is part of a way of life, of a people's temper and culture. [Footnotes omitted.] (Christian Education South Africa v. Minister of Education, [2000] ZACC 11, 2000 (4) S.A. 757, at para. 33)
2018	Law Society of British Columbia v. Trinity Western University	6/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do	Law Society of British Columbia v. Trinity Western University, 2018 SCC 32, [2018] 2 S.C.R. 293	Côté and Brown JJ.	dissenting	British Columbia	Administrative law	C	referred to	Christian Education South Africa v. Minister of Education, [2000] ZACC 11, 2000 (4) S.A. 757	SC	South Africa	[263] At the same time, qualities that go to a person's self-identity are also at stake for the members of the Trinity Western University ("TWU") community (R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713, at p. 759; R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, at pp. 341 and 346; Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567, at para. 32). Religious freedom cases concern much more than mere belief, as Sachs J. recognized in Christian Education South Africa v. Minister of Education, [2000] ZACC 11, 2000 (4) S.A. 757, at para. 33: "Religion is not just a question of belief or doctrine. It is part of a way of life, of a people's temper and culture." In particular, religion is also about religious relationships (Hutterian Brethren, at para. 182, per LeBel J., dissenting in the result but agreeing with the majority on this point). [329] But this generous and historically Canadian posture towards religious accommodation stands in stark contrast to the majority's view of the pursuit of statutory objectives as "unavoidabl[y]" limiting the individual freedoms protected by the Charter (Majority Reasons, at para. 100). This view fundamentally misconceives the role of the state in a multicultural and democratic society. As described by W. A. Galston, "[i]n a liberal pluralist regime, a key end is the creation of social space within which individuals and groups can freely pursue their distinctive visions of what gives meaning and worth to human existence" (The Practice of Liberal Pluralism (2005), at p. 3). Or as Sachs J. said in Christian Education South Africa (at paras. 23-24), "if society is to be open and democratic in the fullest sense it needs to be tolerant and accepting of cultural pluralism" and allow "individuals and communities . . . to enjoy what has been called the 'right to be different'".

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2018	Law Society of British Columbia v. Trinity Western University	6/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17140/index.do	Law Society of British Columbia v. Trinity Western University, 2018 SCC 32, [2018] 2 S.C.R. 293	Côté and Brown JJ.	dissenting	British Columbia	Administrative law	C	D	National Coalition for Gay and Lesbian Equality v. Minister of Justice, [1998] ZACC 15, 1999 (1) S.A. 6	SC	South Africa	310] Take, for example, the majority's preferred value of "equality". In our view, without further definition this is too vague a notion on which to ground a claim to equal treatment in any and all concrete situations, such as admission to a law school. Of course, as a legal claim, equality relates to differential application of a specific rule to a certain group of people in a certain legal context. But the majority does not (and cannot) point to a specific legal rule or right to ground the application of a value of equality here. Rather, it advances "equality" in a purely abstract sense, such that it could mean almost anything. For example, an acceptable legal incarnation of the abstract notion, "equality" is a principle of the rule of law that all are equal before and under the law, such that all have a claim to equal protection and to equal application of the law (T. Bingham, The Rule of Law (2010), at pp. 55-59; F. C. DeCoste, On Coming to Law: An Introduction to Law in Liberal Societies (3rd ed. 2011), at p. 178). But equality in an absolute sense is also perfectly compatible with a totalitarian state, being easier to impose where freedom is limited. "Equality" as an abstraction could also mean tolerance of difference, as Justice Sachs said in National Coalition for Gay and Lesbian Equality v. Minister of Justice, [1998] ZACC 15, 1999 (1) S.A. 6, at para. 132: . . . equality should not be confused with uniformity; in fact, uniformity can be the enemy of equality. Equality means equal concern and respect across difference. It does not presuppose the elimination or suppression of difference. Respect for human rights requires the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenisation of behaviour but an acknowledgment and acceptance of difference. [Emphasis added.]
2018	Canada (Canadian Human Rights Commission) v. Canada (Attorney General)	6/14/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17134/index.do	Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2018 SCC 31, [2018] 2 S.C.R. 230	Gascon J.	majority	Federal Court of Appeal	Administrative law	C	referred to	City of Arlington, Texas v. Federal Communications Commission, 133 S. Ct. 1863 (2013)	SC	US	[35] I pause here to note that it is indeed a challenge to identify a true question of jurisdiction in a coherent manner without returning to the jurisdiction/preliminary question doctrine that this Court clearly rejected in both *CUPE* (p. 233) and *Dunsmuir* (para. 35). In the view of some, most questions that might be identified as "jurisdictional" involve nothing more than an interpretation of a decision maker's home statute or a closely related statute (P. Daly, *The hopeless search for "true" questions of jurisdiction* (August 15, 2013) (online)). In *McLean* , Moldaver J. observed that the U.S. Supreme Court has rejected the distinction between jurisdictional and non-jurisdictional interpretations of a home statute as a "mirage" (fn. 3, citing *City of Arlington, Texas v. Federal Communications Commission* , 133 S. Ct. 1863 (2013), at p. 1868).
2018	Haaretz.com v. Goldhar	6/6/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17115/index.do	Haaretz.com v. Goldhar, 2018 SCC 28, [2018] 2 S.C.R. 3	Abella J.	concurring	Ontario	Private international law	R		Defamation Act 2005 (N.S.W.), s. 11(3).	lower-level law	Australia	[114] In Banro, LeBel J. conceptualized the "most substantial harm" test according to the factors endorsed by the Australian Law Reform Commission in its 1979 Unfair Publication: Defamation and Privacy report (and codified in s. 11(3) of Australia's Defamation Act 2005 (N.S.W.)). These factors include: (a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation, the place where the corporation had its principal place of business at that time; (b) the extent of publication in each relevant jurisdiction; (c) the extent of harm sustained by the plaintiff in each relevant jurisdiction; and (d) any other matter that the court considers relevant.[1]involving multiple domestic jurisdictions, not international defamation cases like this one; and third, Australia adopted a multi-factor test for choice of law in defamation cases, where the place of most substantial harm is merely one of the many factors to consider (Defamation Act 2005 (N.S.W.), s. 11(3)). The Law Commission of Ontario is currently working on a reform project regarding defamation law in the Internet context (Defamation Law in the Internet Age: Consultation Paper (2017) (online)). In light of this, it would not be appropriate for this Court to overhaul the choice of law rules in this area
2018	Haaretz.com v. Goldhar	6/6/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17115/index.do	Haaretz.com v. Goldhar, 2018 SCC 28, [2018] 2 S.C.R. 3	McLachlin C.J. and Moldaver and Gascon JJ.	dissenting	Ontario	Private international law	C	D	Rockware Glass Ltd. v. MacShannon, [1978] 2 W.L.R. 362	SC	UK (HL)	[185] In Rockware Glass Ltd. v. MacShannon, [1978] 2 W.L.R. 362, the House of Lords discarded this test in favour of an approach substantially similar to the one that had originated in Scotland (Spiliada Maritime Corporation v. Cansulex Ltd., [1987] 1 A.C. 460 (H.L.), at p. 474). Scottish courts could "decline to exercise jurisdiction, after giving consideration to the interests of the parties and the requirements of justice, on the ground that the case [could not] be suitably tried in the Scottish court nor full justice be done there, but only in another court" (Dicey, Morris and Collins on the Conflict of Laws (15th ed. 2012), by Lord Collins of Mapesbury, at §12-007). In Spiliada, the House of Lords refined this test and adopted the current language. This test was meant to take into account the fact that the jurisdiction of English courts had already been established at this stage: In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right. [Emphasis added; p. 477.]
2018	Haaretz.com v. Goldhar	6/6/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17115/index.do	Haaretz.com v. Goldhar, 2018 SCC 28, [2018] 2 S.C.R. 3	McLachlin C.J. and Moldaver and Gascon JJ.	dissenting	Ontario	Private international law	C	D	*Spiliada Maritime Corporation v. Cansulex Ltd.* , [1987] 1 A.C. 460	SC	UK (HL)	[185] In Rockware Glass Ltd. v. MacShannon, [1978] 2 W.L.R. 362, the House of Lords discarded this test in favour of an approach substantially similar to the one that had originated in Scotland (Spiliada Maritime Corporation v. Cansulex Ltd., [1987] 1 A.C. 460 (H.L.), at p. 474). Scottish courts could "decline to exercise jurisdiction, after giving consideration to the interests of the parties and the requirements of justice, on the ground that the case [could not] be suitably tried in the Scottish court nor full justice be done there, but only in another court" (Dicey, Morris and Collins on the Conflict of Laws (15th ed. 2012), by Lord Collins of Mapesbury, at §12-007). In Spiliada, the House of Lords refined this test and adopted the current language. This test was meant to take into account the fact that the jurisdiction of English courts had already been established at this stage: In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right. [Emphasis added; p. 477.]
2018	Haaretz.com v. Goldhar	6/6/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17115/index.do	Haaretz.com v. Goldhar, 2018 SCC 28, [2018] 2 S.C.R. 3	McLachlin C.J. and Moldaver and Gascon JJ.	dissenting	Ontario	Private international law	G			general reference to Australian law	Australia	[203] Last, Haaretz refers this Court to only one jurisdiction that has adopted this rule: Australia. In our view, it would be unwise for this Court to rely on the Australian approach as a basis for overhauling the choice of law rules in this area for three reasons: first, in Australia, the modification of the choice of law rule was made in the context of legislative reform of the law of defamation; second, even in Australia, the place of most substantial harm rule is confined to cases
2018	Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall	5/31/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17101/index.do	Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall, 2018 SCC 26, [2018] 1 S.C.R. 750CR 750	Rowe J.	majority	Alberta	Courts	C	distinguished	Shergill v. Khaira, [2014] UKSC 33, [2015] A.C. 359	SC	UK (SC)	[26] In addition, it is clear that the English jurisprudence cited by Mr. Wall similarly requires the presence of an underlying legal right. In Shergill v. Khaira, [2014] UKSC 33, [2015] A.C. 359, at paras. 46-48, and Lee v. Showmen's Guild of Great Britain, [1952] 1 All E.R. 1175 (C.A.), the English courts found that the voluntary associations at issue were governed by contract. I do not view Shergill as standing for the proposition that there is a free-standing right to procedural fairness as regards the decisions of religious or other voluntary organizations in the absence of an underlying legal right. Rather, in Shergill, requiring procedural fairness is simply a way of enforcing a contract (para. 48). Similarly, in Lee, Lord Denning held that "[t]he jurisdiction of a domestic tribunal, such as the committee of the Showmen's Guild, must be founded on a contract, express or implied" (p. 1180).
2018	Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall	5/31/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17101/index.do	Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall, 2018 SCC 26, [2018] 1 S.C.R. 750CR 750	Rowe J.	majority	Alberta	Courts	C	distinguished	Lee v. Showmen's Guild of Great Britain, [1952] 1 All E.R. 1175	lower-level court	UK (England)	[26] In addition, it is clear that the English jurisprudence cited by Mr. Wall similarly requires the presence of an underlying legal right. In Shergill v. Khaira, [2014] UKSC 33, [2015] A.C. 359, at paras. 46-48, and Lee v. Showmen's Guild of Great Britain, [1952] 1 All E.R. 1175 (C.A.), the English courts found that the voluntary associations at issue were governed by contract. I do not view Shergill as standing for the proposition that there is a free-standing right to procedural fairness as regards the decisions of religious or other voluntary organizations in the absence of an underlying legal right. Rather, in Shergill, requiring procedural fairness is simply a way of enforcing a contract (para. 48). Similarly, in Lee, Lord Denning held that "[t]he jurisdiction of a domestic tribunal, such as the committee of the Showmen's Guild, must be founded on a contract, express or implied" (p. 1180).
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Wagner J.	dissenting	British Columbia	Criminal law	C	D	Padilla v. Kentucky, 559 U.S. 356 (2010)	SC	US	[73] The seriousness of these consequences has led Canadian courts to adopt the broader approach and accept that an accused person's awareness of immigration consequences is relevant to the determination of whether his or her plea is sufficiently informed. As a matter of practice, it is also well established in Canada that defence counsel should inquire into a client's immigration status and advise the client of the immigration consequences of a guilty plea, and that counsel should raise the immigration consequences that might result from the client's being convicted or from a particular sentence that might be imposed at a sentencing hearing. This practice is reflected in the following criminal practice form, checklists and guidelines prepared by Legal Aid Ontario and various law societies to ensure that accused persons are entering informed guilty pleas: Legal Aid Ontario, Plea Comprehension Inquiry, October 2017 (online), at pp. 2-3; Law Society of British Columbia, Sentencing Procedure, updated September 1, 2017 (online), at p. C-3-4; Barreau du Québec, Détermination de la peine, updated December 2013 (online), at p. 1; Law Society of Ontario, How to Prepare and Conduct a Sentencing Hearing, updated December 2016 (online), see Step 9: Prepare the client for the sentencing hearing. The provision of aids such as these by institutions of the legal profession illustrates an increasing acceptance that awareness of collateral immigration consequences is highly relevant in the criminal context and forms part of an informed guilty plea. As a point of comparison, the United States Supreme Court has also recognized the profound impact of deportation, describing it as a "particularly severe 'penalty'", and has imposed a requirement on defence counsel to advise non-citizen clients of the risk of deportation a guilty plea might entail: Padilla v. Kentucky, 559 U.S. 356 (2010), at p. 365, quoting Fong Yue Ting v. United States, 149 U.S. 698 (1893), at p. 740

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2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Wagner J.	dissenting	British Columbia	Criminal law	C	D	Fong Yue Ting v. United States, 149 U.S. 698 (1893)	SC	US	[73] The seriousness of these consequences has led Canadian courts to adopt the broader approach and accept that an accused person's awareness of immigration consequences is relevant to the determination of whether his or her plea is sufficiently informed. As a matter of practice, it is also well established in Canada that defence counsel should inquire into a client's immigration status and advise the client of the immigration consequences of a guilty plea, and that counsel should raise the immigration consequences that might result from the client's being convicted or from a particular sentence that might be imposed at a sentencing hearing. This practice is reflected in the following criminal practice form, checklists and guidelines prepared by Legal Aid Ontario and various law societies to ensure that accused persons are entering informed guilty pleas: Legal Aid Ontario, Plea Comprehension Inquiry, October 2017 (online), at pp. 2-3; Law Society of British Columbia, Sentencing Procedure, updated September 1, 2017 (online), at p. C-3-4; Barreau du Québec, Détermination de la peine, updated December 2013 (online), at p. 1; Law Society of Ontario, How to Prepare and Conduct a Sentencing Hearing, updated December 2016 (online), see Step 9: Prepare the client for the sentencing hearing. The provision of aids such as these by institutions of the legal profession illustrates an increasing acceptance that awareness of collateral immigration consequences is highly relevant in the criminal context and forms part of an informed guilty plea. As a point of comparison, the United States Supreme Court has also recognized the profound impact of deportation, describing it as a "particularly severe 'penalty'", and has imposed a requirement on defence counsel to advise non-citizen clients of the risk of deportation a guilty plea might entail: Padilla v. Kentucky, 559 U.S. 356 (2010), at p. 365, quoting Fong Yue Ting v. United States, 149 U.S. 698 (1893), at p. 740.
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Wagner J.	dissenting	British Columbia	Criminal law	C	D	Lee v. United States, 137 S. Ct. 1958 (2017)	SC	US	[100] There will be circumstances, however, where the Crown's case will be irrelevant to the assessment of prejudice. In other words, the amount of work done at the second step of the test as set out above, which assesses the prejudice flowing from the uninformed plea, may differ depending on the legally relevant consequence at issue. For example, as a matter of logic, the strength of the Crown's case and the viability of a defence diminish in relevance when balanced against a collateral consequence as serious as deportation. Where an accused is subject to a consequence with such severe ramifications, the prejudice flowing from not being informed of that consequence will likely be easy to establish. However, where a different and perhaps less obviously serious consequence is at issue, a more exacting inquiry to assess prejudice at the second step of the test may be required. This does not create a "variable standard of scrutiny": majority reasons, at para. 17. With respect, it is simply a matter of common sense; the more serious the consequence, the more easily prejudice is likely to be established. Of course, this always depends on the relevance of the consequence in the particular circumstances of the accused. Similarly, the strength of the Crown's case may also become largely irrelevant in circumstances where the only way for the accused to avoid the collateral consequence in issue is by pleading not guilty and going to trial, no matter how unlikely an acquittal may be: see e.g. Lee v. United States, 137 S. Ct. 1958 (2017).
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Wagner J.	dissenting	British Columbia	Criminal law	C	D	Strickland v. Washington, 466 U.S. 668 (1984)	SC	US	[81] The applicable standard of proof is a reasonable possibility, which falls between a mere possibility and a likelihood: Strickland v. Washington, 466 U.S. 668 (1984), at pp. 693-94, per O'Connor J., cited in R. v. Joanisse (1995), 102 C.C.C. (3d) 35 (Ont. C.A.), at p. 64. Thus, a court need be satisfied only of a reasonable possibility that a reasonable person in the same situation as the accused would have proceeded differently had he or she been aware of the collateral consequence. It need not be satisfied of a likelihood that a similarly situated accused would in fact have chosen to plead not guilty: see e.g. Taillefer, at para. 111. At its heart, the inquiry is concerned with the effect of the unknown collateral consequence on the ability of the accused to make an informed decision. In other words, it is concerned with preventing the prejudice that results where information, if known, would have sufficiently influenced a decision whether to plead guilty, to the extent that there is a reasonable possibility that a similarly situated accused would have proceeded differently; it is not concerned with determining whether such an accused would actually have declined to plead guilty.
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Moldaver, Gascon and Brown JJ.	majority	British Columbia	Criminal law	C	referred to	Lee v. United States, 825 F.3d 311 (2016)	lower-level court	US	[12] Simply put, pleading guilty is the decision of the accused, not a reasonable accused, or someone like the accused. To permit reviewing courts to substitute their own view of what someone in the accused's circumstances would have done is to run a serious risk of doing injustice to that accused. An example from United States caselaw suffices to make the point. In Lee v. United States, 825 F.3d 311 (6th Cir. 2016), the accused sought, as Mr. Wong seeks, to withdraw his plea on the basis that he was unaware of its consequences for his immigration status. The Sixth Circuit Court of Appeals denied the accused's motion. Even taking into account the accused's particular circumstances, the Sixth Circuit wrote: . . . no rational defendant charged with a deportable offense and facing "overwhelming evidence" of guilt would proceed to trial rather than take a plea deal with a shorter prison sentence. [para. 2]
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Moldaver, Gascon and Brown JJ.	majority	British Columbia	Criminal law	C	referred to	Lee v. United States, 137 S. Ct. 1958 (2017)	SC	US	[13] The accused in Lee had deposed that he would have proceeded to trial, with the effect of near certain deportation, rather than taking a plea deal with certain deportation, even if conviction at trial meant a longer prison sentence. Despite what the Sixth Circuit saw as the only rational course of action, the accused's right to remain in the United States was more important to him than any jail sentence, no matter its length. The Sixth Circuit's decision was ultimately overturned by the Supreme Court of the United States in Lee v. United States, 137 S. Ct. 1958 (2017), in which the objective approach for assessing prejudice was rejected.
2018	R. v. Wong	5/25/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17100/index.do	R. v. Wong, 2018 SCC 25, [2018] 1 S.C.R. 696	Moldaver, Gascon and Brown JJ.	majority	British Columbia	Criminal law	C	referred to	Southwark London Borough Council v. Williams, [1971] Ch. 734	lower-level court	UK (England)	[14] Our colleague quite rightly notes that this Court has applied a modified objective test in other contexts, such as when assessing the availability of the defences of necessity (R. v. Latimer, 2001 SCC 1, [2001] 1 S.C.R. 3, at para. 32) and duress (R. v. Ruzic, 2001 SCC 24, [2001] 1 S.C.R. 687, at para. 61) (Wagner J.'s reasons, at para. 88). But it does not follow that a modified objective test is equally suited to assessing the considerations surrounding the decision to plead guilty. It is true that much of the criminal law is itself premised upon objective considerations, in that it "reflect[s] society's values as to what is appropriate and what represents a transgression" (Latimer, at para. 34; see also Perka v. The Queen, [1984] 2 S.C.R. 232, at p. 248). The availability of a valid defence such as necessity or duress cannot therefore be approached purely subjectively, lest it "become simply a mask for anarchy" (Latimer, at para. 27, citing Southwark London Borough Council v. Williams, [1971] Ch. 734 (C.A.), at p. 746). The same cannot, however, be said of the accused's decision to plead guilty. That decision does not purport to reflect society's values as to what is right or wrong. Rather, it reflects the accused's subjective choice. Unlike the considerations applied to the availability of a valid defence, no mischief follows from letting considerations personal to the accused determine whether he or she would have, in the circumstances, made an informed plea of guilty. Ultimately, what matters is the accused's decision to plead guilty or to proceed to trial, and not whether that decision is, to someone else, reckless or irrational.
2018	West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)	5/18/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17095/index.do	West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22, [2018] 1 S.C.R. 635	Brown J.	dissenting	British Columbia	Administrative law	C	D	*Pham v. Secretary of State for the Home Department*, [2015] UKSC 19, [2015] 1 W.L.R. 1591	*SC*	UK (SC)	[124] This is not to say that all is well. I accept that, in many cases, the distinction between matters of statutory interpretation which implicate truly jurisdictional questions and those going solely to a statutory delegate's application of its enabling statute will be, at best, elusive. More generally, while binary standards of review are suitable for appellate review under Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, more flexibility — that is, something focussing more closely on intensity of review, rather than binary categories — might better account for the unavoidably varying contextual considerations that arise in judicial review of administrative decisions. Such contextual considerations could include the breadth of discretion contained in the statutory grant, the nature of the decision maker, and the stakes for the affected parties. (See, e.g., Pham v. Secretary of State for the Home Department, [2015] UKSC 19, [2015] 1 W.L.R. 1591, at para. 107, per Lord Sumption.) Such an approach, which other jurisdictions have applied, has also found favour in some Canadian appellate courts: Canada (Transport, Infrastructure and Communities) v. Farwaha, 2014 FCA 56, [2015] 2 F.C.R. 1006, at paras. 90-92; Mills v. Workplace Safety and Insurance Appeals Tribunal, 2008 ONCA 436, 237 O.A.C. 71, at para. 22. I see nothing in this general principle — that the framework for deciding the standard of review should allow for sufficient flexibility to reflect the varied nature of administrative bodies, the questions before them, their decisions, their expertise and their mandates — that is inconsistent with the dual constitutional functions performed by judicial review: upholding the rule of law, and maintaining legislative supremacy (Dunsmuir, at paras. 27 and 30).
2018	Rankin (Rankin's Garage & Sales) v. J.J.	5/11/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17085/index.do#_ftn1	Rankin (Rankin's Garage & Sales) v. J.J., 2018 SCC 19, [2018] 1 S.C.R. 587	Brown J.	dissenting	Ontario	Torts	C	D	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	[69] First, this case does not require this Court to undertake a full Anns/Cooper analysis[1] to establish a novel duty of care. Instead, it involves the unremarkable application of a category of relationships that has long been recognized as imposing a duty of care — namely, "where the defendant's act foreseeably causes physical harm to the plaintiff".[2] So long as the trial judge did not err in finding that physical injury to J. was a reasonably foreseeable consequence of Rankin's negligence, it follows that proximity is established on the basis of this previously recognized duty of care. [1] Anns v. Merton London Borough Council, [1978] A.C. 728; Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537.
2018	Rankin (Rankin's Garage & Sales) v. J.J.	5/11/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17085/index.do#_ftn1	Rankin (Rankin's Garage & Sales) v. J.J., 2018 SCC 19, [2018] 1 S.C.R. 587	Karakatsanis J.	majority	Ontario	Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728		UK	[9] The Ontario Court of Appeal upheld the trial judge's holding that Rankin's Garage owed a duty of care to the plaintiff. Writing for the court, Huscroft J.A. held that the trial judge erred in concluding that a duty of care had already been recognized. The Court of Appeal therefore conducted a full duty of care analysis, following the test laid out in Anns v. Merton London Borough Council, [1978] A.C. 728, as affirmed and explained in Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537 (Anns/Cooper test).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Punter v. Secretary for Justice, [2007] 1 N.Z.L.R. 40	SC	New Zealand	[133] For example, any assessment of the child's family and social connections in each country undoubtedly requires courts to look to whether a child has settled in to the new country, irrespective of whether the proceedings were initiated within one year of the removal or retention. So too is the case with other factors the majority alludes to and that are typically considered by other courts applying the hybrid approach — conditions of the stay (Mercredi v. Chaffe, C-497/10, [2010] E.C.R. I-14358, at para. 56), the location of friends and social networks (Punter v. Secretary for Justice, [2007] 1 N.Z.L.R. 40 (C.A.), at para. 192), the child's living and schooling arrangements (Punter, at para. 88), and the geographic and family origins of the parents and the child (Punter, at para. 88; Mercredi, at para. 56). These factors may all require evidence of whether and to what extent a child is settled into his or her new environment. This development is not faithful to the text of the Convention.

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2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (2007)	lower-level court	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Mozes v. Mozes, 239 F.3d 1067 (2001)	lower-level court	US	[114] Where shared parental intent is made explicit in an agreement, or is otherwise clear from the evidence before the application judge, it should be determinative of habitual residence, absent exceptional circumstances. One such circumstance was raised by Sharpe J.A. in the court below: ". . . where a consensual time-limited stay is so long that it becomes time-limited in name only and the child's habitual residence has changed" (C.A. reasons, at para. 49). In such cases, where a purportedly time-limited stay in a foreign jurisdiction has stretched on for many years, it may not be realistic to say that the parents still intend for the child to be habitually resident in the first jurisdiction (see Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001), at pp. 1075-76). [115] This accords with the approach of some American courts, which recognize a narrow exception for where the evidence "unequivocally points to the conclusion that the child has acclimatized to the new location" (Gitter v. Gitter, 396 F.3d 124 (2nd Cir. 2005), at p. 134; see also Mozes, at p. 1081). Such cases are rare and require evidence of more than simply "settling in" to a new location in order for shared parental intent to be disregarded (see R. Schuz, The Hague Child Abduction Convention: A Critical Analysis (2013), at p. 189, fn. 104). [135] Second, the hybrid approach undermines the primary purpose of the Convention: deterring abductions by enforcing parental rights of custody and access. It does so by effectively stripping the Convention of its deterrent effect. Given that parental intent can be outweighed or undercut by the connections a child develops to the new jurisdiction, an abducting parent — in the most common case, a parent who refuses to return a child after a period of consent expires — stands to benefit by quickly establishing roots in a new home (Mozes, at p. 1079). In other words, the uncertainty generated by this ad hoc approach benefits would-be abductors. This unhappy consequence is most glaring when one considers that, by marshalling sufficient evidence "of all relevant factors", an abducting parent can now effectively vitiate an express agreement regarding the time-limited nature of the child's stay in the foreign jurisdiction. [140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368). [152] The result of this approach, we fear, is to grant judges unbridled discretion to consider or to disregard whatever they deem to be appropriate, leading to outcomes that may be as inconsistent as they are unpredictable. The effects will be felt most acutely by parents and potential litigants who will lack any discernable guidance as to how they should order their family affairs. This is particularly important in the context of educational exchanges, family visits, or other forms of international travel, where the majority's approach effectively vitiates the purpose of time-limited consents. If one parent can override such an agreement by presenting competing evidence based on "all relevant factors", then the certainty provided for by time-limited consent agreements is only ever illusory. Other courts have discussed this problem at length: Without intelligibility and consistency in [how the Convention is applied], parents are deprived of crucial information they need to make decisions, and
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2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Karkkainen v. Kovalchuk, 445 F.3d 280 (2006)	lower-level court	US	[136] In light of this concern, even courts that apply the hybrid or child-centred approaches have recognized the need to "ensure that neither parent is acting unilaterally to alter a joint understanding reached by the parents" (Karkkainen v. Kovalchuk, 445 F.3d 280 (3rd Cir. 2006), at p. 292; see also Punter, at para. 173; Feder v. Evans-Feder, 63 F.3d 217 (3rd Cir. 1995), at p. 221). Thus, courts applying the hybrid approach often afford considerable weight to parental intent — suggesting, for example, that a child's new residence must exhibit the "necessary quality of stability" before shared intent can be set aside (In re R. (Children), [2015] UKSC 35, [2016] A.C. 76, at para. 21).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	referred to	*Ruiz v. Tenorio*, 392 F.3d 1247 (2004)	*lower-level court*	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Murphy v. Sloan, 764 F.3d 1144 (2014)	*lower-level court*	US	[116] In most cases, evidence of parental intent — such as an explicit agreement between both custodial parents — will be sufficient to establish habitual residence. However, where evidence of shared parental intent is inconclusive, courts may then look to other objective evidence to determine the habitual residence of the child. This aligns with how other courts have applied the parental intention approach (see, e.g., Murphy v. Sloan, 764 F.3d 1144 (9th Cir. 2014), at p. 1152; Rey v. Getta, 2013 BCCA 369, 342 B.C.A.C. 30, at para. 33). In Murphy, for example, the Ninth Circuit Court of Appeals found that where parental intent was not dispositive, "[c]ertain circumstances related to a child's residence and socialization in another country . . . may change the calculus" (p. 1152). The point, however, is that courts may only look to additional evidence pertaining to the child's contacts in each jurisdiction where evidence of parental intent is inconclusive. In other words, if the court can make a finding regarding the last shared intent of both custodial parents — which, as we have stated, will be the case in most situations — that shared intent must be the decisive variable in the habitual residence analysis. [140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005),
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	*Koch v. Koch*, 450 F.3d 703 (2006)	*lower-level court*	US	[113] In looking to objective evidence of shared parental intent, courts should consider the expressed intentions of both parents. If the parents have agreed in writing that the move to the new jurisdiction is meant to be temporary, then that agreement should be given decisive weight. Beyond expressed intentions, however, courts may "look at actions as well as declarations" (Koch v. Koch, 450 F.3d 703 (7th Cir. 2006), at p. 715). For example, if a mother travels with her child to a new country, holding only a temporary visitor's visa and taking few of her belongings with her, such evidence would be probative of a lack of intent for the new jurisdiction to become child's habitual residence (see, e.g., Delvoye v. Lee, 329 F.3d 330 (3rd Cir. 2003), at p. 334). Conversely, if a family takes all of their belongings with them and sells their home in the first jurisdiction, such evidence would tend to support the opposite conclusion. Evidence of this nature can offer insight where the parties' statements or expressed intentions do not point to a clear answer. [140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005),
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Delvoye v. Lee, 329 F.3d 330 (2003)	*lower-level court*	US	[113] In looking to objective evidence of shared parental intent, courts should consider the expressed intentions of both parents. If the parents have agreed in writing that the move to the new jurisdiction is meant to be temporary, then that agreement should be given decisive weight. Beyond expressed intentions, however, courts may "look at actions as well as declarations" (Koch v. Koch, 450 F.3d 703 (7th Cir. 2006), at p. 715). For example, if a mother travels with her child to a new country, holding only a temporary visitor's visa and taking few of her belongings with her, such evidence would be probative of a lack of intent for the new jurisdiction to become child's habitual residence (see, e.g., Delvoye v. Lee, 329 F.3d 330 (3rd Cir. 2003), at p. 334). Conversely, if a family takes all of their belongings with them and sells their home in the first jurisdiction, such evidence would tend to support the opposite conclusion. Evidence of this nature can offer insight where the parties' statements or expressed intentions do not point to a clear answer.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	Mauvais v. Herisse, 772 F.3d 6 (2014)	*lower-level court*	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	*Guzzo v. Cristofano* , 719 F.3d 100 (2013)	*lower-level court*	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	*Larbie v. Larbie* , 690 F.3d 295 (2012)	*lower-level court*	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	Côté and Rowe JJ.	dissenting	Ontario	*Family law*	C	D	*Baxter v. Baxter* , 423 F.3d 363 (2005)	*lower-level court*	US	[140] There is also strong jurisprudential support for the parental intent model. As the majority acknowledges, a number of leading courts — including nearly every appellate court in this country to have considered the issue — have adopted and reaffirmed approaches to habitual residence that emphasize the primacy of parental intent to varying degrees (see, e.g., Murphy, at p. 1150; Mozes, at pp. 1073-80; Gitter, at p. 134; Mauvais v. Herisse, 772 F.3d 6 (1st Cir. 2014), at pp. 11-12; Guzzo v. Cristofano, 719 F.3d 100 (2nd Cir. 2013), at pp. 107-9; Larbie v. Larbie, 690 F.3d 295 (5th Cir. 2012), at p. 310; Koch, at p. 717; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at pp. 1253-54; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at paras. 20 and 23). This is especially true in the United States, where relatively few (if any) jurisdictions have adopted a hybrid model in which no guidance is offered to lower courts as to how the various factors should be weighed or analyzed. Indeed, some of the American cases that the majority cite apply an approach that is entirely different than the one the majority adopts in its own reasons (see, e.g., Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at p. 898 ("The [lower] court should have determined the degree of settled purpose from the children's perspective . . ."); Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at p. 271 ("We have defined habitual residence as '[focusing on the] degree of settled purpose from the child's perspective'"), quoting Baxter v. Baxter, 423 F.3d 363 (3rd Cir. 2005), at p. 368).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	Family law	C	considered	O.L. v. P.Q. (2017), C-111/17	international	ECJ	C. Approaches to Habitual Residence Under Article 3 [36] The father in this case applied under the Hague Convention for the return of the children. To establish a case for return under Article 3, the father had to show that at the time immediately before the alleged wrongful retention (i.e., upon the expiry of the father's consent on August 15, 2014) the children were habitually resident in Germany. Within the overall scheme of the Hague Convention, the purpose of habitual residence in Article 3 is to define the children to whom the Hague Convention applies. If the children were not habitually resident in Germany at the time of the alleged wrongful retention, the Hague Convention does not apply.[44] Considerations include "the duration, regularity, conditions and reasons for the [child's] stay in the territory of [a] Member State" and the child's nationality: Mercredi v. Chaffe, C-497/10, [2010] E.C.R. I-14358, at para. 56. No single factor dominates the analysis; rather, the application judge should consider the entirety of the circumstances: see Droit de la famille — 17622, at para. 30. Relevant considerations may vary according to the age of the child concerned; where the child is an infant, "the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of": O.L. v. P.Q. (2017), C-111/17 (C.J.E.U.), at para. 45.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	considered	A. v. A. (Children: Habitual Residence), [2013] UKSC 60, [2014] A.C. 1	SC	UK (SC)	[39] This brings us to the central question in this case — how should an application judge approach the determination of habitual residence under Article 3? The parties and the interveners offer three different approaches for determining a child's habitual residence: the parental intention approach, the child-centred approach, and the hybrid approach. [45] The circumstances of the parents, including their intentions, may be important, particularly in the case of infants or young children: see Mercredi, at paras. 55-56; A. v. A. (Children: Habitual Residence), [2013] UKSC 60, [2014] A.C. 1, at para. 54; L.K., at paras. 20 and 26-27. However, recent cases caution against over-reliance on parental intention. The Court of Justice of the European Union stated in O.L. that parental intention "can also be taken into account, where that intention is manifested by certain tangible steps such as the purchase or lease of a residence": para. 46. It "cannot as a general rule by itself be crucial to the determination of the habitual residence of a child . . . but constitutes an 'indicator' capable of complementing a body of other consistent evidence": para. 47. The role of parental intention in the determination of habitual residence "depends on the circumstances specific to each individual case": para. 48. [46] It follows that there is no "rule" that the actions of one parent cannot unilaterally change the habitual residence of a child. Imposing such a legal construct onto the determination of habitual residence detracts from the task of the finder of fact, namely to evaluate all of the relevant circumstances in determining where the child was habitually resident at the date of wrongful retention or removal: see In re R. (Children), [2015] UKSC 35, [2016] A.C. 76, at para. 17; see also A. v. A., at paras. 39-40. [47] The hybrid approach is "fact-bound, practical, and unencumbered with rigid rules, formulas, or presumptions": Redmond v. Redmond, 724 F.3d 729 (7th Cir. 2013), at p. 746. It requires the application judge to look to the entirety of the child's situation. While courts allude to factors or considerations that tend to recur, there is no legal test for habitual residence and the list of potentially relevant factors is not closed. The temptation "to overlay the factual concept of habitual residence with legal constructs" must be resisted: A. v. A., at paras. 37-39. [52] The Supreme Court of the United Kingdom followed suit in A. v. A., abandoning the parental intention approach to habitual residence in favour of the hybrid approach. Baroness Hale of Richmond concluded that the European approach was preferable to that earlier adopted by the English courts, which had incorrectly shifted the focus of the habitual residence inquiry "from the actual situation of the child to the intentions of his parents": para. 38. The purposes and intentions of the parents are "merely one of the relevant factors": para. 54. The Supreme Court recently confirmed the hybrid approach in In re R. D. The Hybrid Approach Should Be Adopted in Canada [48] The hybrid approach should be adopted in Canada for the following reasons: (1) the principle of harmonization supports the hybrid
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	considered	Redmond v. Redmond, 724 F.3d 729 (2013)	lower-level court	US	[47] The hybrid approach is "fact-bound, practical, and unencumbered with rigid rules, formulas, or presumptions": Redmond v. Redmond, 724 F.3d 729 (7th Cir. 2013), at p. 746. It requires the application judge to look to the entirety of the child's situation. While courts allude to factors or considerations that tend to recur, there is no legal test for habitual residence and the list of potentially relevant factors is not closed. The temptation "to overlay the factual concept of habitual residence with legal constructs" must be resisted: A. v. A., at paras. 37-39.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	considered	Punter v. Secretary for Justice, [2007] 1 N.Z.L.R. 40	lower-level court	New Zealand	[53] A similar movement away from parental intention and towards the hybrid approach can be seen in New Zealand and Australia. The New Zealand Court of Appeal, in Punter v. Secretary for Justice, [2007] 1 N.Z.L.R. 40, expressly rejected counsel's submission that parental purpose should determine a child's habitual residence: see paras. 91-108. Instead, the court described the considerations relevant to habitual residence in these terms (at para. 88): . . . the inquiry into habitual residence [is] a broad factual inquiry. Such an inquiry should take into account all relevant factors, including settled purpose, the actual and intended length of stay in a state, the purpose of the stay, the strength of ties to the state and to any other state (both in the past and currently), the degree of assimilation into the state, including living and schooling arrangements, and cultural, social and economic integration. In this catalogue, . . . settled purpose (and with young children the settled purpose of the parents) is important but not necessarily decisive. It should not in itself override what McGrath J. called . . . the underlying reality of the connection between the child and the particular state . . . .
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	considered	L.K.	SC	Australia	[54] The High Court of Australia approved Punter in L.K. Notably, that court observed that while Punter's references to "settled purpose" directs attention to the intentions of the parents, the question of habitual residence must still be decided "by reference to all the circumstances of any particular case": para. 44, quoting In re J. (A Minor) (Abduction: Custody Rights), [1990] 2 A.C. 562 (H.L.), at p. 578 (emphasis added in L.K.).

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2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	considered	Silverman v. Silverman, 338 F.3d 886 (2003)	lower-level court	US	[55] Finally, while courts in the United States disagree on the appropriate approach to determining habitual residence, there is strong support for the hybrid approach: see Redmond, at p. 746; Martinez v. Cahue, 826 F.3d 983 (7th Cir. 2016), at p. 990; Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at pp. 898-99; Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at pp. 271-72; Karkkainen v. Kovalchuk, 445 F.3d 280 (3rd Cir. 2006), at p. 297. In Silverman, the Eighth Circuit Court of Appeals for the United States considered a number of factors relevant to that case: the degree of settled purpose from the perspective of the children, the change in geography (with possessions and pets), the abandonment of the prior residence (including sale of the family home), the passage of time, the parent's application for benefits, the children's enrolment in school, and, "to some degree", the intentions of the parents at the time of the move: see pp. 898-99. In Tsai-Yi Yang, the Third Circuit Court of Appeals focused on the circumstances of the child in determining habitual residence, but also considered the intentions of the parents to be relevant: see pp. 271-72. And in Redmond, the Seventh Circuit Court of Appeals considered both the intentions of the parents and the circumstances of the child in determining habitual residence, commenting that "[i]n substance, all circuits — ours included — consider both parental intent and the child's acclimatization, differing only in their emphasis": p. 746 (emphasis in original)
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	Family law	C	referred to	Martinez v. Cahue, 826 F.3d 983 (7th Cir. 2016), at p. 990	lower-level court	US	[55] Finally, while courts in the United States disagree on the appropriate approach to determining habitual residence, there is strong support for the hybrid approach: see Redmond, at p. 746; Martinez v. Cahue, 826 F.3d 983 (7th Cir. 2016), at p. 990; Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at pp. 898-99; Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at pp. 271-72; Karkkainen v. Kovalchuk, 445 F.3d 280 (3rd Cir. 2006), at p. 297. In Silverman, the Eighth Circuit Court of Appeals for the United States considered a number of factors relevant to that case: the degree of settled purpose from the perspective of the children, the change in geography (with possessions and pets), the abandonment of the prior residence (including sale of the family home), the passage of time, the parent's application for benefits, the children's enrolment in school, and, "to some degree", the intentions of the parents at the time of the move: see pp. 898-99. In Tsai-Yi Yang, the Third Circuit Court of Appeals focused on the circumstances of the child in determining habitual residence, but also considered the intentions of the parents to be relevant: see pp. 271-72. And in Redmond, the Seventh Circuit Court of Appeals considered both the intentions of the parents and the circumstances of the child in determining habitual residence, commenting that "[i]n substance, all circuits — ours included — consider both parental intent and the child's acclimatization, differing only in their emphasis": p. 746 (emphasis in original)
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	Family law	C	considered	Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (2007)	lower-level court	US	[55] Finally, while courts in the United States disagree on the appropriate approach to determining habitual residence, there is strong support for the hybrid approach: see Redmond, at p. 746; Martinez v. Cahue, 826 F.3d 983 (7th Cir. 2016), at p. 990; Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at pp. 898-99; Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at pp. 271-72; Karkkainen v. Kovalchuk, 445 F.3d 280 (3rd Cir. 2006), at p. 297. In Silverman, the Eighth Circuit Court of Appeals for the United States considered a number of factors relevant to that case: the degree of settled purpose from the perspective of the children, the change in geography (with possessions and pets), the abandonment of the prior residence (including sale of the family home), the passage of time, the parent's application for benefits, the children's enrolment in school, and, "to some degree", the intentions of the parents at the time of the move: see pp. 898-99. In Tsai-Yi Yang, the Third Circuit Court of Appeals focused on the circumstances of the child in determining habitual residence, but also considered the intentions of the parents to be relevant: see pp. 271-72. And in Redmond, the Seventh Circuit Court of Appeals considered both the intentions of the parents and the circumstances of the child in determining habitual residence, commenting that "[i]n substance, all circuits — ours included — consider both parental intent and the child's acclimatization, differing only in their emphasis": p. 746 (emphasis in original)
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Stag Line, Limited v. Foscolo, Mango and Co., [1932] A.C. 328	SC	UK (HL)	[33] A clear purpose of multilateral treaties is to harmonize parties' domestic laws around agreed-upon rules, practices, and principles. The Hague Convention was intended to establish procedures common to all the contracting states that would ensure the prompt return of children: see preamble. The objective of multilateral treaty making "would be seriously weakened if the courts of every country interpreted [the treaty at issue] without any regard to how it was being interpreted and applied elsewhere": Connaught Laboratories Ltd. v. British Airways (2002), 61 O.R. (3d) 204 (S.C.J.), at para. 46. To avoid frustrating the harmonizing purpose behind the Hague Convention, domestic courts should give serious consideration to decisions by the courts of other contracting states on its meaning and application: see Vienna Convention, Article 31(3)(b); Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340, at para. 50; Stag Line, Limited v. Foscolo, Mango and Co., [1932] A.C. 328 (H.L.), at p. 350; Scruttons Ltd. v. Midland Silicones Ltd., [1962] A.C. 446 (H.L.), at p. 471; Air France v. Saks, 470 U.S. 392 (1985), at pp. 403-4; L.K. v. Director-General, Department of Community Services, [2009] HCA 9, 237 C.L.R. 582, at para. 36
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Scruttons Ltd. v. Midland Silicones Ltd., [1962] A.C. 446	SC	UK (HL)	[33] A clear purpose of multilateral treaties is to harmonize parties' domestic laws around agreed-upon rules, practices, and principles. The Hague Convention was intended to establish procedures common to all the contracting states that would ensure the prompt return of children: see preamble. The objective of multilateral treaty making "would be seriously weakened if the courts of every country interpreted [the treaty at issue] without any regard to how it was being interpreted and applied elsewhere": Connaught Laboratories Ltd. v. British Airways (2002), 61 O.R. (3d) 204 (S.C.J.), at para. 46. To avoid frustrating the harmonizing purpose behind the Hague Convention, domestic courts should give serious consideration to decisions by the courts of other contracting states on its meaning and application: see Vienna Convention, Article 31(3)(b); Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340, at para. 50; Stag Line, Limited v. Foscolo, Mango and Co., [1932] A.C. 328 (H.L.), at p. 350; Scruttons Ltd. v. Midland Silicones Ltd., [1962] A.C. 446 (H.L.), at p. 471; Air France v. Saks, 470 U.S. 392 (1985), at pp. 403-4; L.K. v. Director-General, Department of Community Services, [2009] HCA 9, 237 C.L.R. 582, at para. 36
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Air France v. Saks, 470 U.S. 392 (1985)	SC	US	[33] A clear purpose of multilateral treaties is to harmonize parties' domestic laws around agreed-upon rules, practices, and principles. The Hague Convention was intended to establish procedures common to all the contracting states that would ensure the prompt return of children: see preamble. The objective of multilateral treaty making "would be seriously weakened if the courts of every country interpreted [the treaty at issue] without any regard to how it was being interpreted and applied elsewhere": Connaught Laboratories Ltd. v. British Airways (2002), 61 O.R. (3d) 204 (S.C.J.), at para. 46. To avoid frustrating the harmonizing purpose behind the Hague Convention, domestic courts should give serious consideration to decisions by the courts of other contracting states on its meaning and application: see Vienna Convention, Article 31(3)(b); Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340, at para. 50; Stag Line, Limited v. Foscolo, Mango and Co., [1932] A.C. 328 (H.L.), at p. 350; Scruttons Ltd. v. Midland Silicones Ltd., [1962] A.C. 446 (H.L.), at p. 471; Air France v. Saks, 470 U.S. 392 (1985), at pp. 403-4; L.K. v. Director-General, Department of Community Services, [2009] HCA 9, 237 C.L.R. 582, at para. 36
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Mozes v. Mozes, 239 F.3d 1067 (2001)	lower-level court	US	[40] The parental intention approach determines the habitual residence of a child by the intention of the parents with the right to determine where the child lives: see Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001), at pp. 1076-79; Gitter v. Gitter, 396 F.3d 124 (2nd Cir. 2005), at pp. 131-33; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309, at p. 343.[3] Under this approach, time-limited travel to which the parents agree does not change the child's habitual residence. "Where the children are sent abroad to live with relatives or for educational purposes, their habitual residence will not change where the parents intend for them to return, but may change after a period of time where there is no such intention": Schuz, at p. 187, fn. 87. Where the parents have agreed that the child will stay outside the country of habitual residence for a limited time, that intent governs throughout the agreed period, and allows the parent in the original country to mount a claim for the child's return under the Hague Convention at the end of the agreed period. This approach currently dominates Canadian jurisprudence, where courts in a number of jurisdictions consider parental intent to be the primary consideration in determining a child's habitual residence: see, for example, Chan v. Chow, 2001 BCCA 276, 90 B.C.L.R. (3d) 222, at paras. 30-34; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at para. 20; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; S.K. v. J.Z., 2017 SKQB 136, at paras. 44-47 (CanLII); Monteiro v. Locke (2014), 354 Nfld. & P.E.I.R. 132 (Prov. Ct.), at paras. 13-22. [60] The hybrid approach deters parents from attempting to manipulate the Hague Convention. It discourages parents from attempting to alter a child's habitual residence by strengthening ties with a particular state (see my colleagues' reasons, at paras. 134-35; Mozes, at p. 1079), for two reasons: (1) parental intent is a relevant consideration under the hybrid approach, and (2) parents who know that the judge will look at all of the circumstances will be deterred from creating "legal and jurisdictional links which are more or less artificial" (Pérez-Vera, at p. 428)
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Gitter v. Gitter, 396 F.3d 124 (2005)	lower-level court	US	[40] The parental intention approach determines the habitual residence of a child by the intention of the parents with the right to determine where the child lives: see Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001), at pp. 1076-79; Gitter v. Gitter, 396 F.3d 124 (2nd Cir. 2005), at pp. 131-33; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309, at p. 343.[3] Under this approach, time-limited travel to which the parents agree does not change the child's habitual residence. "Where the children are sent abroad to live with relatives or for educational purposes, their habitual residence will not change where the parents intend for them to return, but may change after a period of time where there is no such intention": Schuz, at p. 187, fn. 87. Where the parents have agreed that the child will stay outside the country of habitual residence for a limited time, that intent governs throughout the agreed period, and allows the parent in the original country to mount a claim for the child's return under the Hague Convention at the end of the agreed period. This approach currently dominates Canadian jurisprudence, where courts in a number of jurisdictions consider parental intent to be the primary consideration in determining a child's habitual residence: see, for example, Chan v. Chow, 2001 BCCA 276, 90 B.C.L.R. (3d) 222, at paras. 30-34; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at para. 20; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; S.K. v. J.Z., 2017 SKQB 136, at paras. 44-47 (CanLII); Monteiro v. Locke (2014), 354 Nfld. & P.E.I.R. 132 (Prov. Ct.), at paras. 13-22. [69] In doing these things, the hybrid approach faces the shortcomings of the parental intention approach directly and moves beyond them. The fact is that the parental intention approach is unable to provide answers in all cases. Courts using this approach have admitted that in some circumstances — such as where parental intent is ambiguous or inconclusive — parental intent is not determinative, and they have considered objective factors connecting the child to the jurisdiction: see my colleagues' reasons, at para. 116; Gitter, at p. 134; Punter, at para. 107; Murphy v. Sloan, 764 F.3d 1144 (9th Cir. 2014), at p. 1152; Rey v. Getta, 2013 BCCA 369, 342 B.C.A.C. 30, at paras. 23 and 32-33. Similarly, courts using the child-centred approach have recognized that parental intention is a relevant factor: see Redmond, at p. 746; Feder, at p. 224. The hybrid approach simply acknowledges that absolute approaches to determining habitual residence under the Hague Convention do not work.

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2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309	SC	UK (HL)	[40] The parental intention approach determines the habitual residence of a child by the intention of the parents with the right to determine where the child lives: see Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001), at pp. 1076-79; Gitter v. Gitter, 396 F.3d 124 (2nd Cir. 2005), at pp. 131-33; R. v. Barnet London Borough Council, Ex parte Nilish Shah, [1983] 2 A.C. 309, at p. 343.[3] Under this approach, time-limited travel to which the parents agree does not change the child's habitual residence. "Where the children are sent abroad to live with relatives or for educational purposes, their habitual residence will not change where the parents intend for them to return, but may change after a period of time where there is no such intention": Schuz, at p. 187, fn. 87. Where the parents have agreed that the child will stay outside the country of habitual residence for a limited time, that intent governs throughout the agreed period, and allows the parent in the original country to mount a claim for the child's return under the Hague Convention at the end of the agreed period. This approach currently dominates Canadian jurisprudence, where courts in a number of jurisdictions consider parental intent to be the primary consideration in determining a child's habitual residence: see, for example, Chan v. Chow, 2001 BCCA 276, 90 B.C.L.R. (3d) 222, at paras. 30-34; Korutowska-Wooff v. Wooff (2004), 242 D.L.R. (4th) 385 (Ont. C.A.), at para. 8; A.E.S. v. A.M.W., 2013 ABCA 133, 544 A.R. 246, at para. 20; Rifkin v. Peled-Rifkin, 2017 NBCA 3, 89 R.F.L. (7th) 194, at para. 2; S.K. v. J.Z., 2017 SKQB 136, at paras. 44-47 (CanLII); Monteiro v. Locke (2014), 354 Nfld. & P.E.I.R. 132 (Prov. Ct.), at paras. 13-22.
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2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Feder v. Evans-Feder, 63 F.3d 217 (1995)	lower-level court	US	[41] The child-centred approach determines a child's habitual residence under Article 3 by the child's acclimatization in a given country, rendering the intentions of the parents largely irrelevant. It is backward-focused, looking to the child's connections with the state, rather than the more forward-looking parental intention model: see Friedrich v. Friedrich, 983 F.2d 1396 (6th Cir. 1993), at p. 1401; Feder v. Evans-Feder, 63 F.3d 217 (3rd Cir. 1995), at p. 224. No Canadian jurisdiction currently follows the child-centred approach, although courts in Quebec followed this approach (see Droit de la famille — 2454, [1996] R.J.Q. 2509 (C.A.)) until 2017, when it was abandoned in favour of the hybrid approach (see Droit de la famille — 17622, 2017 QCCA 529, at paras. 20, 27 and 29-30 (CanLII)). [69] In doing these things, the hybrid approach faces the shortcomings of the parental intention approach directly and moves beyond them. The fact is that the parental intention approach is unable to provide answers in all cases. Courts using this approach have admitted that in some circumstances — such as where parental intent is ambiguous or inconclusive — parental intent is not determinative, and they have considered objective factors connecting the child to the jurisdiction: see my colleagues' reasons, at para. 116; Gitter, at p. 134; Punter, at para. 107; Murphy v. Sloan, 764 F.3d 1144 (9th Cir. 2014), at p. 1152; Rey v. Getta, 2013 BCCA 369, 342 B.C.A.C. 30, at paras. 23 and 32-33. Similarly, courts using the child-centred approach have recognized that parental intention is a relevant factor: see Redmond, at p. 746; Feder, at p. 224. The hybrid approach simply acknowledges that absolute approaches to determining habitual residence under the Hague Convention do not work.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Mercredi v. Chaffe, C-497/10, [2010] E.C.R. I-14358	international	ECJ	[44] Considerations include "the duration, regularity, conditions and reasons for the [child's] stay in the territory of [a] Member State" and the child's nationality: Mercredi v. Chaffe, C-497/10, [2010] E.C.R. I-14358, at para. 56. No single factor dominates the analysis; rather, the application judge should consider the entirety of the circumstances: see Droit de la famille — 17622, at para. 30. Relevant considerations may vary according to the age of the child concerned; where the child is an infant, "the environment of a young child is essentially a family environment, determined by the reference person(s) with whom the child lives, by whom the child is in fact looked after and taken care of": O.L. v. P.Q. (2017), C-111/17 (C.J.E.U.), at para. 45.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	In re R. (Children), [2015] UKSC 35, [2016] A.C. 76	SC	UK (SC)	[46] It follows that there is no "rule" that the actions of one parent cannot unilaterally change the habitual residence of a child. Imposing such a legal construct onto the determination of habitual residence detracts from the task of the finder of fact, namely to evaluate all of the relevant circumstances in determining where the child was habitually resident at the date of wrongful retention or removal: see In re R. (Children), [2015] UKSC 35, [2016] A.C. 76, at para. 17; see also A. v. A., at paras. 39-40.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	In re J. (A Minor) (Abduction: Custody Rights), [1990] 2 A.C. 562	SC	UK (HL)	[54] The High Court of Australia approved Punter in L.K. Notably, that court observed that while Punter's references to "settled purpose" directs attention to the intentions of the parents, the question of habitual residence must still be decided "by reference to all the circumstances of any particular case": para. 44, quoting In re J. (A Minor) (Abduction: Custody Rights), [1990] 2 A.C. 562 (H.L.), at p. 578 (emphasis added in L.K.).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Karkkainen v. Kovalchuk, 445 F.3d 280 (2006)	lower-level court	US	[55] Finally, while courts in the United States disagree on the appropriate approach to determining habitual residence, there is strong support for the hybrid approach: see Redmond, at p. 746; Martinez v. Cahue, 826 F.3d 983 (7th Cir. 2016), at p. 990; Silverman v. Silverman, 338 F.3d 886 (8th Cir. 2003), at pp. 898-99; Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259 (3rd Cir. 2007), at pp. 271-72; Karkkainen v. Kovalchuk, 445 F.3d 280 (3rd Cir. 2006), at p. 297. In Silverman, the Eighth Circuit Court of Appeals for the United States considered a number of factors relevant to that case: the degree of settled purpose from the perspective of the children, the change in geography (with possessions and pets), the abandonment of the prior residence (including sale of the family home), the passage of time, the parent's application for benefits, the children's enrolment in school, and, "to some degree", the intentions of the parents at the time of the move: see pp. 898-99. In Tsai-Yi Yang, the Third Circuit Court of Appeals focused on the circumstances of the child in determining habitual residence, but also considered the intentions of the parents to be relevant: see pp. 271-72. And in Redmond, the Seventh Circuit Court of Appeals considered both the intentions of the parents and the circumstances of the child in determining habitual residence, commenting that "[i]n substance, all circuits — ours included — consider both parental intent and the child's acclimatization, differing only in their emphasis": p. 746 (emphasis in original).
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	*Ruiz v. Tenorio* , 392 F.3d 1247 (2004)	lower-level court	US	[61] By contrast, the parental intention approach facilitates manipulation of the Hague Convention scheme. It may lead parents to exercise intention in ways that artificially maintain the child's habitual residence in the initial state: see Gallagher, at p. 480; S. I. Winter, "Home is where the Heart is: Determining 'Habitual Residence' under the Hague Convention on the Civil Aspects of International Child Abduction" (2010), 33 Wash. U.J.L. & Pol'y 351, at p. 377; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at p. 1254. The parental intention approach may also allow parents to create artificial jurisdictional links by way of an agreement stipulating the parents' shared intent as to the child's habitual residence: see Barzilay v. Barzilay, 600 F.3d 912 (8th Cir. 2010). The hybrid approach guards against these manipulations.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Barzilay v. Barzilay, 600 F.3d 912 (2010)	lower-level court	US	[61] By contrast, the parental intention approach facilitates manipulation of the Hague Convention scheme. It may lead parents to exercise intention in ways that artificially maintain the child's habitual residence in the initial state: see Gallagher, at p. 480; S. I. Winter, "Home is where the Heart is: Determining 'Habitual Residence' under the Hague Convention on the Civil Aspects of International Child Abduction" (2010), 33 Wash. U.J.L. & Pol'y 351, at p. 377; Ruiz v. Tenorio, 392 F.3d 1247 (11th Cir. 2004), at p. 1254. The parental intention approach may also allow parents to create artificial jurisdictional links by way of an agreement stipulating the parents' shared intent as to the child's habitual residence: see Barzilay v. Barzilay, 600 F.3d 912 (8th Cir. 2010). The hybrid approach guards against these manipulations.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Murphy v. Sloan, 764 F.3d 1144 (2014)	lower-level court	US	[69] In doing these things, the hybrid approach faces the shortcomings of the parental intention approach directly and moves beyond them. The fact is that the parental intention approach is unable to provide answers in all cases. Courts using this approach have admitted that in some circumstances — such as where parental intent is ambiguous or inconclusive — parental intent is not determinative, and they have considered objective factors connecting the child to the jurisdiction: see my colleagues' reasons, at para. 116; Gitter, at p. 134; Punter, at para. 107; Murphy v. Sloan, 764 F.3d 1144 (9th Cir. 2014), at p. 1152; Rey v. Getta, 2013 BCCA 369, 342 B.C.A.C. 30, at paras. 23 and 32-33. Similarly, courts using the child-centred approach have recognized that parental intention is a relevant factor: see Redmond, at p. 746; Feder, at p. 224. The hybrid approach simply acknowledges that absolute approaches to determining habitual residence under the Hague Convention do not work.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	In re M. (Abduction: Rights of Custody), [2007] UKHL 55, [2008] 1 A.C. 1288	SC	UK (HL)	[77] The application judge's discretion to refuse to return the child to the country of habitual residence arises only if the party opposing return establishes that: (1) the child has reached an appropriate age and degree of maturity at which his or her views can be taken into account, and (2) the child objects to return: see Pérez-Vera, at pp. 433 and 450; Schuz, at p. 319; P. McEleavy, "Evaluating the views of abducted children: trends in appellate case-law" (2008), 20 C.F.L.Q. 230, at p. 232; De Silva v. Pitts, 2008 ONCA 9, 232 O.A.C. 180, at para. 42; Thompson v. Thompson, 2017 ABCA 299, at para. 16 (CanLII); In re M. (Abduction: Rights of Custody), [2007] UKHL 55, [2008] 1 A.C. 1288, at para. 46.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	England v. England, 234 F.3d 268 (2000)	lower-level court	US	[79] Determining sufficient age and maturity in most cases is simply a matter of inference from the child's demeanor, testimony, and circumstances: see Thompson, at para. 17; England v. England, 234 F.3d 268 (5th Cir. 2000), at pp. 273-74, per DeMoss J., dissenting; M. Fernando and N. Ross, "Stifled Voices: Hearing Children's Objections in Hague Child Abduction Convention Cases in Australia" (2018), 32 Int'l J.L. Pol'y & Fam. 93, at pp. 102-3. In some cases, it may be appropriate to call expert evidence or have the child professionally examined: see R.M. v. J.S., 2013 ABCA 441, 566 A.R. 230, at paras. 25-26; Greene, at pp. 127-28. However, this should not be allowed to delay the proceedings.
2018	Office of the Children's Lawyer v. Balev	4/20/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do	Office of the Children's Lawyer v. Balev, 2018 SCC 16, [2018] 1 S.C.R. 398	McLachlin C.J.	majority	Ontario	*Family law*	C	referred to	Fothergill v. Monarch Airlines Ltd., [1981] A.C. 251	SC	UK (HL)	[85] When international agreements come before the courts, performance of Canada's obligation to apply and interpret them according to the rules of treaty interpretation falls to Canada's judges. Lord Diplock made this point, in respect of United Kingdom courts, in Fothergill v. Monarch Airlines Ltd., [1981] A.C. 251 (H.L.), at p. 283: By ratifying the Convention, Her Majesty's Government has undertaken an international obligation on behalf of the United Kingdom to interpret future treaties in this manner and since under our constitution the function of interpreting the written law is an exercise of judicial power and rests with the courts of justice, that obligation assumed by the United Kingdom falls to be performed by those courts.

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2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Karakatsanis J.	dissenting	Alberta	Trusts	C	D	Segelov v. Ernst & Young Services Pty. Ltd., [2015] NSWCA 156, 89 N.S.W.L.R. 431	lower-level court	Australia	[60] Equity imposes different obligations depending on the particular context. As this Court recognized in Hodgkinson v. Simms, [1994] 3 S.C.R. 377, at p. 413, "the precise legal or equitable duties the law will enforce in any given relationship are tailored to the legal and practical incidents of a particular relationship". In determining the duties of a trustee, it is important to consider "the nature and terms of the relevant trust and the social or business environment in which the trust operates": Segelov v. Ernst & Young Services Pty. Ltd., [2015] NSWCA 156, 89 N.S.W.L.R. 431, at para. 130.
2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Karakatsanis J.	dissenting	Alberta	Trusts	C	D	Hawkesley v. May, [1956] 1 Q.B. 304	lower-level court	UK (England)	[61] Courts have imposed an obligation on a trustee to notify beneficiaries of the trust's existence in the context of a family trust or a trust for minors: see, e.g., Hawkesley v. May, [1956] 1 Q.B. 304; Brittlebank v. Goodwin (1868), L.R. 5 Eq. 545; and In re Short Estate, [1941] 1 W.W.R. 593 (B.C.S.C.). The dual rationales offered for imposing such a duty on the trustee are that absent this duty, the beneficiaries would have no way of knowing of their entitlement under the trust and they could not ensure the trustee respected the obligations and terms of the trust. See also D. Hayton (1996), at p. 49, and G. Lightman, "The Trustees' Duty to Provide Information to Beneficiaries", [2004] P.C.B. 23, at pp. 24-25 and 34-37.
2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Brown J.	majority	Alberta	Trusts	C	referred to	*In reLondonderry's Settlement* , [1965] 1 Ch. 918	*lower-level court*	UK (England)	[19] The extent of a trustee's duty to account is usually considered in circumstances where a beneficiary who is already aware of the trust's existence requests disclosure of information pertaining to the terms or administration of the trust.[14] In some cases, however, the beneficiary's right to enforce the terms of the trust can be meaningfully exercised only if he or she is first informed of the trust's existence. While this arises most frequently in cases where the beneficiary's interest under the trust is conditional upon attaining the age of majority,[15] equity imposes upon trustees a duty to disclose to beneficiaries the existence of the trust in a variety of circumstances.[16] In general, wherever "it could be said to be to the unreasonable disadvantage of the beneficiary not to be informed" of the trust's existence,[17] the trustee's fiduciary duty includes an obligation to disclose the existence of the trust. Whether a particular disadvantage is unreasonable must be considered in light of the nature and terms of the trust and the social or business environment in which it operates,[18] and in light of the beneficiary's entitlement thereunder. For example, where the enforcement of the trust requires that the beneficiary receive notice of the trust's existence, and the beneficiary would not otherwise have such knowledge, a duty to disclose will arise.[19] On the other hand, "where the interest of the beneficiary is remote in the sense that vesting is most unlikely, or the opportunity for the power or discretion to be exercised is equally unlikely",[20] it would be rare to find that the beneficiary could be said to suffer unreasonable disadvantage if uninformed of the trust's existence. lábjegyzet [14] In re Londonderry's Settlement, [1965] 1 Ch. 918 (C.A.); Schmidt v. Rosewood Trust Ltd., [2003] UKPC 26, [2003] 2 A.C. 709; Breakspear v. Ackland, [2008] EWHC 220, [2009] Ch. 32; Ballard Estate (Re) (1994), 20 O.R. (3d) 350 (Gen. Div.).
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2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Brown J.	majority	Alberta	Trusts	C	referred to	Segelov v. Ernst & Young Services Pty. Ltd., [2015] NSWCA 156, 89 N.S.W.L.R. 431	lower-level court	Australia	[19] The extent of a trustee's duty to account is usually considered in circumstances where a beneficiary who is already aware of the trust's existence requests disclosure of information pertaining to the terms or administration of the trust.[14] In some cases, however, the beneficiary's right to enforce the terms of the trust can be meaningfully exercised only if he or she is first informed of the trust's existence. While this arises most frequently in cases where the beneficiary's interest under the trust is conditional upon attaining the age of majority,[15] equity imposes upon trustees a duty to disclose to beneficiaries the existence of the trust in a variety of circumstances.[16] In general, wherever "it could be said to be to the unreasonable disadvantage of the beneficiary not to be informed" of the trust's existence,[17] the trustee's fiduciary duty includes an obligation to disclose the existence of the trust. Whether a particular disadvantage is unreasonable must be considered in light of the nature and terms of the trust and the social or business environment in which it operates,[18] and in light of the beneficiary's entitlement thereunder. For example, where the enforcement of the trust requires that the beneficiary receive notice of the trust's existence, and the beneficiary would not otherwise have such knowledge, a duty to disclose will arise.[19] On the other hand, "where the interest of the beneficiary is remote in the sense that vesting is most unlikely, or the opportunity for the power or discretion to be exercised is equally unlikely",[20] it would be rare to find that the beneficiary could be said to suffer unreasonable disadvantage if uninformed of the trust's existence. lábjegyzet [18] Segelov v. Ernst & Young Services Pty. Ltd., [2015] NSWCA 156, 89 N.S.W.L.R. 431, at para. 130.
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Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Brown J.	majority	Alberta	Trusts	C	referred to	Hartigan Nominees Pty. Ltd. v. Rydge (1992), 29 N.S.W.L.R. 405	lower-level court	Australia	[27] It will be readily apparent that what a trustee must do to discharge its duty to disclose the existence of the trust to beneficiaries is highly sensitive to the context in which the particular trust relationship arises. In this case, an honest and reasonably skillful and prudent trustee would have known, as recounted in the uncontradicted evidence of Mr. Wemyss, that labour and material payment bonds were uncommon on private oilsands construction projects. Conversely, Bird could not have known of all potential beneficiaries when the bond was procured, since (1) Valard (and presumably other subcontractors) had not yet contracted with Langford, and (2) under the terms of this particular trust, a beneficiary's interest would not vest until 90 days after the last day upon which it provided labour or materials on the project. It is well established that, where all potential beneficiaries cannot be identified at the time of the trust's creation, the trustee's obligation to disclose the existence of the trust extends not to ensuring that every potential beneficiary knows of the trust, but only to taking reasonable steps to that end.[34] lábjegyzet [34] Hayton, at p. 49, citing In re Manisty's Settlement, [1974] 1 Ch. 17, at p. 25; Hartigan Nominees Pty. Ltd. v. Rydge (1992), 29 N.S.W.L.R. 405 (C.A.); In re Baden's Deed Trusts (No. 2), [1973] 1 Ch. 9 (C.A.), at pp. 20 and 27; see also G. Lightman, "The Trustees' Duty to Provide Information to Beneficiaries", [2004] P.C.B. 23, at pp. 37-38.
2018	Valard Construction Ltd. v. Bird Construction Co.	2/15/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16983/index.do#_ftnref34	Valard Construction Ltd. v. Bird Construction Co., 2018 SCC 8, [2018] 1 S.C.R. 224	Brown J.	majority	Alberta	Trusts	C	referred to	In re Baden's Deed Trusts (No. 2), [1973] 1 Ch. 9	lower-level court	UK	[27] It will be readily apparent that what a trustee must do to discharge its duty to disclose the existence of the trust to beneficiaries is highly sensitive to the context in which the particular trust relationship arises. In this case, an honest and reasonably skillful and prudent trustee would have known, as recounted in the uncontradicted evidence of Mr. Wemyss, that labour and material payment bonds were uncommon on private oilsands construction projects. Conversely, Bird could not have known of all potential beneficiaries when the bond was procured, since (1) Valard (and presumably other subcontractors) had not yet contracted with Langford, and (2) under the terms of this particular trust, a beneficiary's interest would not vest until 90 days after the last day upon which it provided labour or materials on the project. It is well established that, where all potential beneficiaries cannot be identified at the time of the trust's creation, the trustee's obligation to disclose the existence of the trust extends not to ensuring that every potential beneficiary knows of the trust, but only to taking reasonable steps to that end.[34] lábjegyzet [34] Hayton, at p. 49, citing In re Manisty's Settlement, [1974] 1 Ch. 17, at p. 25; Hartigan Nominees Pty. Ltd. v. Rydge (1992), 29 N.S.W.L.R. 405 (C.A.); In re Baden's Deed Trusts (No. 2), [1973] 1 Ch. 9 (C.A.), at pp. 20 and 27; see also G. Lightman, "The Trustees' Duty to Provide Information to Beneficiaries", [2004] P.C.B. 23, at pp. 37-38.
2018	R. v. Canadian Broadcasting Corp.	2/9/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16981/index.do	R. v. Canadian Broadcasting Corp., 2018 SCC 5, [2018] 1 S.C.R. 196	Brown (All)	unanimous	Alberta	Injunctions	C	referred to	American Cyanamid Co. v. Ethicon Ltd., [1975] A.C. 396	SC	UK (HL)	[12] In Manitoba (Attorney General) v. Metropolitan Stores Ltd.[15] and then again in RJR — MacDonald, this Court has said that applications for an interlocutory injunction must satisfy each of the three elements of a test which finds its origins in the judgment of the House of Lords in American Cyanamid Co. v. Ethicon Ltd.[16] At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a "serious question to be tried", in the sense that the application is neither frivolous nor vexatious.[17] The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused.[18] Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.[19]
2018	R. v. Canadian Broadcasting Corp.	2/9/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16981/index.do	R. v. Canadian Broadcasting Corp., 2018 SCC 5, [2018] 1 S.C.R. 196	Brown (All)	unanimous	Alberta	Injunctions	C	referred to	Shepherd Home Ltd. v. Sandham, [1970] 3 All E.R. 402	lower-level court	UK (England)	[17] This brings me to just what is entailed by showing a "strong prima facie case". Courts have employed various formulations, requiring the applicant to establish a "strong and clear chance of success";[31] a "strong and clear" or "unusually strong and clear" case;[32] that he or she is "clearly right" or "clearly in the right";[33] that he or she enjoys a "high probability" or "great likelihood of success";[34] a "high degree of assurance" of success;[35] a "significant prospect" of success;[36] or "almost certain" success.[37] Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice. lábjegyzet [32] Fradenburgh v. Ontario Lottery and Gaming Corp., 2010 ONSC 5387, at para. 14 (CanLII); Boehringer Ingelheim (Canada) Inc. v. Bristol-Myers Squibb Canada Inc. (1998), 83 C.P.R. (3d) 51 (Ont. Ct. (Gen. Div.)), at paras. 49 and 52 (citing Shepherd Home Ltd. v. Sandham, [1970] 3 All E.R. 402 (Ch. D.), at p. 409)
2018	R. v. Canadian Broadcasting Corp.	2/9/2018	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16981/index.do	R. v. Canadian Broadcasting Corp., 2018 SCC 5, [2018] 1 S.C.R. 196	Brown (All)	unanimous	Alberta	Injunctions	C	referred to	Hadmor Productions Ltd. v. Hamilton, [1982] 1 All E.R. 1042	SC	UK (England)	[27] The decision to grant or refuse an interlocutory injunction is a discretionary exercise, with which an appellate court must not interfere solely because it would have exercised the discretion differently. In Metropolitan Stores,[54] the Court endorsed this statement of Lord Diplock in Hadmor Productions Ltd. v. Hamilton[55] about the circumstances in which that exercise of discretion may be set aside. Appellate intervention is justified only where the chambers judge proceeded "on a misunderstanding of the law or of the evidence before him", where an inference "can be demonstrated to be wrong by further evidence that has [since] become available", where there has been a change of circumstances, or where the "decision to grant or refuse the injunction is so aberrant that it must be set aside on the ground that no reasonable judge . . . could have reached it".[56] This principle was recently affirmed in Google,[57] lábjegyzet [55] [1982] 1 All E.R. 1042, at p. 1046 (H.L.).
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	South Australia Asset Management Corp. v. York Montague Ltd., [1997] A.C. 191	SC	UK (HL)	[136] For these reasons, common law courts have rejected a simple "but for" test for recovery of economic loss for negligent misstatement: BG Checo International Ltd. v. British Columbia Hydro and Power Authority, [1993] 1 S.C.R. 12, at p. 44; South Australia Asset Management Corp. v. York Montague Ltd., [1996] 3 All E.R. 365 (H.L.) ("SAAMCO"), at pp. 369-72, per Lord Hoffmann; Hughes-Holland v. BPE Solicitors, [2017] UKSC 21, [2017] 2 W.L.R. 1029, at para. 38, per Lord Sumption; Hogarth v. Rocky Mountain Slate Inc., 2013 ABCA 57, 542 A.R. 289, at paras. 37-38, per Slatter J.A.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Anns v. London Borough of Merton, [1977] 2 All E.R. 492	SC	UK (HL)	[144] For the purposes of these reasons, I will first consider whether the losses at issue fall within the scope of Deloitte's duty of care. This inquiry takes us to the two-part analysis for determining the existence of a duty of care and its scope prescribed in Anns v. London Borough of Merton, [1977] 2 All E.R. 492 (H.L.) — does the relationship between the parties give rise to a prima facie duty of care to avoid the type of loss claimed, and, if so, is that duty negatived by policy considerations? --- The duty of care inquiry leads to the two-part test set out in Anns v. London Borough of Merton, [1977] 2 All E.R. 492 (H.L.). The first part of the test asks whether there is proximity, or a sufficiently close relationship, between the parties. It focuses on the connection between the defendant's undertaking or statement and the loss claimed. The purpose for which the statement was made is pivotal, and is a matter of fact to be determined on the evidence adduced at trial.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568	SC	UK (HL)	[135] As Lord Bridge observed in Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568 (H.L.), at p. 576: To hold the maker of the statement to be under a duty of care in respect of the accuracy of the statement to all and sundry for any purpose for which they may choose to rely on it is not only to subject him, in the classic words of Cardozo C.J., to "liability in an indeterminate amount for an indeterminate time to an indeterminate class" ([Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at p. 444]), it is also to confer on the world at large a quite unwarranted entitlement to appropriate for their own purposes the benefit of the expert knowledge or professional expertise attributed to the maker of the statement. See also D'Amato v. Badger, [1996] 2 S.C.R. 1071, at para. 18; Hercules Managements Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165, at para. 31; Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021, at p. 1137, per McLachlin J.; R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 99, quoting Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, at para. 54
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Ultramares Corp. v. Touche, 174 N.E. 441 (1931)	lower-level court	US	[135] As Lord Bridge observed in Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568 (H.L.), at p. 576: To hold the maker of the statement to be under a duty of care in respect of the accuracy of the statement to all and sundry for any purpose for which they may choose to rely on it is not only to subject him, in the classic words of Cardozo C.J., to "liability in an indeterminate amount for an indeterminate time to an indeterminate class" ([Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at p. 444]), it is also to confer on the world at large a quite unwarranted entitlement to appropriate for their own purposes the benefit of the expert knowledge or professional expertise attributed to the maker of the statement. See also D'Amato v. Badger, [1996] 2 S.C.R. 1071, at para. 18; Hercules Managements Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165, at para. 31; Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021, at p. 1137, per McLachlin J.; R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 99, quoting Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, at para. 54
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., [1961] A.C. 388	SC	UK (PC)	[145] Courts in the United Kingdom have resiled from a two-step Anns test, but continue to insist that the scope of the duty of care must be carefully limited having regard to the relationship between the defendant's conduct and the plaintiff's injuries, context and policy. They have insisted that there is no such thing as a duty of care in the abstract; the duty is always defined by its scope. As Lord Bridge stated in Caparo, at p. 581, "[i]t is never sufficient to ask simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless": see also BPE Solicitors, at paras. 21-23; Sutherland Shire Council v. Heyman, (1985), 60 A.L.R. 1 (H.C.), at p. 40, per Brennan J.; Platform Home Loans, at p. 847, per Lord Hobhouse, quoting Overseas Tankship, (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. [1961] A.C. 388 (P.C.) ("The Wagon Mound No. 1") at p. 425; Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426 (C.A.), at p. 436, per Denning L.J., dissenting.

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2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Hughes-Holland v. BPE Solicitors, [2017] UKSC 21, [2017] 2 W.L.R. 1029	SC	UK (HL)	[136] For these reasons, common law courts have rejected a simple "but for" test for recovery of economic loss for negligent misstatement: BG Checo International Ltd. v. British Columbia Hydro and Power Authority, [1993] 1 S.C.R. 12, at p. 44; South Australia Asset Management Corp. v. York Montague Ltd., [1996] 3 All E.R. 365 (H.L.) ("SAAMCO"), at pp. 369-72, per Lord Hoffmann; Hughes-Holland v. BPE Solicitors, [2017] UKSC 21, [2017] 2 W.L.R. 1029, at para. 38, per Lord Sumption; Hogarth v. Rocky Mountain Slate Inc., 2013 ABCA 57, 542 A.R. 289, at paras. 37-38, per Slatter J.A. [143] I agree with Lord Sumption's observation in BPE Solicitors, a recent decision from the United Kingdom Supreme Court, that however one looks at the matter — from the perspective of the scope of the duty of care or from the perspective of remoteness — one arrives at the same point. In his Lordship's words, "[w]hether one describes the principle . . . as turning on the scope of the duty or the extent of the liability for breach of it does not alter the way in which the principle applies": para. 38; see also L. N. Klar and C.S.G. Jefferies, Tort Law (6th ed. 2017), at pp. 565-66.[145] Courts in the United Kingdom have resiled from a two-step Anns test, but continue to insist that the scope of the duty of care must be carefully limited having regard to the relationship between the defendant's conduct and the plaintiff's injuries, context and policy. They have insisted that there is no such thing as a duty of care in the abstract; the duty is always defined by its scope. As Lord Bridge stated in Caparo, at p. 581, "[i]t is never sufficient to ask simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless": see also BPE Solicitors, at paras. 21-23; Sutherland Shire Council v. Heyman, (1985), 60 A.L.R. 1 (H.C.), at p. 40, per Brennan J.; Platform Home Loans, at p. 847, per Lord Hobhouse, quoting Overseas Tankship, (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. [1961] A.C. 388 (P.C.) ("The Wagon Mound No. 1") at p. 425; Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426 (C.A.), at p. 436, per Denning L.J., dissenting. [148] Where an auditor falsely or wrongfully represents that the audit statements are sound and can therefore be used for their intended purpose, this constitutes negligence, or wrongdoing. Economic loss tied to that particular wrongdoing is recoverable; other loss is not. Whether in the United Kingdom, Quebec or the common law provinces of Canada, courts focus on the precise nature of the wrongdoing to determine what loss is recoverable. As Lord Sumption explained in BPE Solicitors, to be a reasonably foreseeable consequence of the defendant's wrongdoing, the economic loss claimed must have "flowed from the right thing, i.e. from the particular feature of the defendant's conduct which made it wrongful": para. 38. Or as Lord Hoffmann said in SAAMCO, at p. 371: Normally the law limits liability to those consequences which are attributable to that which made the act wrongful. In the case of liability in negligence for providing inaccurate information, this would mean liability for the consequences of the information being inaccurate. See also: Burns v. Homer Street Development Limited Partnership, 2016 BCCA 371, 91 B.C.L.R. (5th) 383, at para. 106; Hogarth, at paras. 37-38, per Slatter J.A. [149] Lord Sumption pointed out in BPE Solicitors, at para. 44, that the scope of the duty of care and the extent of the defendant's responsibility turns on the specific circumstances that inform the purpose for which the statement was prepared: A valuer or a conveyancer, for example, will rarely supply more than a specific part of the material on which his client's decision is based. He is generally no more than a provider of what Lord Hoffmann [in SAAMCO] called "information". At the opposite end of the spectrum, an investment adviser advising a client whether to buy a particular stock, or a financial adviser advising whether to invest self-invested pension fund in an annuity are likely, in Lord Hoffmann's terminology, to be regarded as giving "advice". Between these extremes, every case is likely to depend on the range of matters for which the defendant assumed responsibility and no more exact rule can be stated. See also Aneco Reinsurance Underwriting Ltd. (in liquidation) v. Johnson & Higgins Ltd., [2001] UKHL 51, [2001] 2 All E.R. (Comm.) 929, at paras. 40-41, per Lord Steyn, and para. 66, per Lord Millett; Canadian Imperial Bank of Commerce v. Deloitte & Touche, 2016 ONCA 922, 133 O.R. (3d) 561, at paras. 46-
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Platform Home Loans Ltd. v. Oyston Shipways Ltd., [2000] 2 A.C. 190	SC	UK (HL)	[141] The "scope of the duty of care" inquiry looks to the relationship between the defendant's advice and the plaintiff's loss. It asks if that relationship was "proximate". In cases of economic loss, it inquires into the purpose for which the advice was given and asks whether a reasonable person would have expected, or "foreseen", that negligent advice would lead to the loss in question by virtue of the plaintiff's reliance on the advice: Hercules, at paras. 24 and 41. Put simply: Did the loss flow from the advice, or from subsequent decisions and circumstances? Thus in Caparo, at p. 581, Lord Bridge confirmed that the scope of the tort determines the extent of the remedy to which the injured party is entitled. See also Platform Home Loans Ltd. v. Oyston Shipways Ltd., [1999] 1 All E.R. 833 (H.L.), at p. 847, per Lord Hobhouse. [145] Courts in the United Kingdom have resiled from a two-step Anns test, but continue to insist that the scope of the duty of care must be carefully limited having regard to the relationship between the defendant's conduct and the plaintiff's injuries, context and policy. They have insisted that there is no such thing as a duty of care in the abstract; the duty is always defined by its scope. As Lord Bridge stated in Caparo, at p. 581, "[i]t is never sufficient to ask simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless": see also BPE Solicitors, at paras. 21-23; Sutherland Shire Council v. Heyman, (1985), 60 A.L.R. 1 (H.C.), at p. 40, per Brennan J.; Platform Home Loans, at p. 847, per Lord Hobhouse, quoting Overseas Tankship, (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. [1961] A.C. 388 (P.C.) ("The Wagon Mound No. 1") at p. 425; Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426 (C.A.), at p. 436, per Denning L.J., dissenting
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2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426	lower-level court	UK	[145] Courts in the United Kingdom have resiled from a two-step Anns test, but continue to insist that the scope of the duty of care must be carefully limited having regard to the relationship between the defendant's conduct and the plaintiff's injuries, context and policy. They have insisted that there is no such thing as a duty of care in the abstract; the duty is always defined by its scope. As Lord Bridge stated in Caparo, at p. 581, "[i]t is never sufficient to ask simply whether A owes B a duty of care. It is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless": see also BPE Solicitors, at paras. 21-23; Sutherland Shire Council v. Heyman, (1985), 60 A.L.R. 1 (H.C.), at p. 40, per Brennan J.; Platform Home Loans, at p. 847, per Lord Hobhouse, quoting Overseas Tankship, (U.K.) Ltd. v. Morts Dock & Engineering Co. Ltd. [1961] A.C. 388 (P.C.) ("The Wagon Mound No. 1") at p. 425; Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426 (C.A.), at p. 436, per Denning L.J., dissenting.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Aneco Reinsurance Underwriting Ltd. (in liquidation) v. Johnson & Higgins Ltd., [2001] UKHL 51, [2001] 2 All E.R. (Comm.) 929	SC	UK (HL)	[149] Lord Sumption pointed out in BPE Solicitors, at para. 44, that the scope of the duty of care and the extent of the defendant's responsibility turns on the specific circumstances that inform the purpose for which the statement was prepared: A valuer or a conveyancer, for example, will rarely supply more than a specific part of the material on which his client's decision is based. He is generally no more than a provider of what Lord Hoffmann [in SAAMCO] called "information". At the opposite end of the spectrum, an investment adviser advising a client whether to buy a particular stock, or a financial adviser advising whether to invest self-invested pension fund in an annuity are likely, in Lord Hoffmann's terminology, to be regarded as giving "advice". Between these extremes, every case is likely to depend on the range of matters for which the defendant assumed responsibility and no more exact rule can be stated. See also Aneco Reinsurance Underwriting Ltd. (in liquidation) v. Johnson & Higgins Ltd., [2001] UKHL 51, [2001] 2 All E.R. (Comm.) 929, at paras. 40-41, per Lord Steyn, and para. 66, per Lord Millett; Canadian Imperial Bank of Commerce v. Deloitte & Touche, 2016 ONCA 922, 133 O.R. (3d) 561, at paras. 46-47 and 69-71; Temseel Holdings Ltd. v. Beaumonts Chartered Accountants, [2002] EWHC 2642 (Comm.), [2003] P.N.L.R. 27, at paras. 22-29 and 57-62.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	McLachlin C.J.	dissenting in part	Ontario	Torts	C	D	Temseel Holdings Ltd. v. Beaumonts Chartered Accountants, [2002] EWHC 2642 (Comm.), [2003] P.N.L.R. 27	lower-level court	uk	[149] Lord Sumption pointed out in BPE Solicitors, at para. 44, that the scope of the duty of care and the extent of the defendant's responsibility turns on the specific circumstances that inform the purpose for which the statement was prepared: A valuer or a conveyancer, for example, will rarely supply more than a specific part of the material on which his client's decision is based. He is generally no more than a provider of what Lord Hoffmann [in SAAMCO] called "information". At the opposite end of the spectrum, an investment adviser advising a client whether to buy a particular stock, or a financial adviser advising whether to invest self-invested pension fund in an annuity are likely, in Lord Hoffmann's terminology, to be regarded as giving "advice". Between these extremes, every case is likely to depend on the range of matters for which the defendant assumed responsibility and no more exact rule can be stated. See also Aneco Reinsurance Underwriting Ltd. (in liquidation) v. Johnson & Higgins Ltd., [2001] UKHL 51, [2001] 2 All E.R. (Comm.) 929, at paras. 40-41, per Lord Steyn, and para. 66, per Lord Millett; Canadian Imperial Bank of Commerce v. Deloitte & Touche, 2016 ONCA 922, 133 O.R. (3d) 561, at paras. 46-47 and 69-71; Temseel Holdings Ltd. v. Beaumonts Chartered Accountants, [2002] EWHC 2642 (Comm.), [2003] P.N.L.R. 27, at paras. 22-29 and 57-62.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	distinguished	South Australia Asset Management Corp. v. York Montague Ltd., [1997] A.C. 191	SC	UK (HL)	[89] The Chief Justice's reliance on the so-called "SAAMCO principle" — derived from the House of Lords' decision in South Australia Asset Management Corp. v. York Montague Ltd., [1997] A.C. 191 ("SAAMCO"); see also Nykredit Mortgage Bank plc. v. Edward Erdman Group Ltd. (No. 2), [1997] 1 W.L.R. 1627 (H.L.); Platform Home Loans Ltd. v. Oyston Shipways Ltd., [2000] 2 A.C. 190) (H.L.); and BPE Solicitors — is in our respectful view mistaken for the same reason as her reliance on the dichotomy between information and advice as described in BPE Solicitors. Her reliance on both U.K. decisions is premised on how Deloitte never assumed responsibility for injuries resulting from Livent's operations — either because those injuries were not caused by the mere information contained in the 1997 Audit (BPE Solicitors), or because those injuries did not flow from what was incorrect in the 1997 Audit (SAAMCO). But, in assuming responsibility for informing shareholder scrutiny of management, Deloitte did assume responsibility for injuries flowing from that impaired scrutiny.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	explained	Anns v. London Borough of Merton, [1977] 2 All E.R. 492	SC	England (HL)	Per Karakatsanis, Gascon, Brown and Rowe JJ.: The general framework set out in Anns v. London Borough of Merton, [1977] 2 All E.R. 492 (H.L.), and later refined in Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, applies in cases of pure economic loss arising from an auditor's negligent misrepresentation or performance of a service. Comprising two stages, the Anns/Cooper framework asks whether a prima facie duty of care exists between the parties, and if so, whether there are any residual policy considerations that may negate the imposition of a duty of care. At the first stage, a prima facie duty of care is recognized where proximity and reasonable foreseeability of injury are established. When assessing proximity, if a relationship falls within a previously established category, or is analogous to one, then the requisite close and direct relationship is shown. If a risk of reasonably foreseeable injury can also be shown, the first stage of the Anns/Cooper framework is complete and a duty of care may be identified. In such circumstances, the second stage of the framework will seldom be engaged because any residual policy considerations will have already been taken into account when the proximate relationship was first identified. [16] Traditionally, the test from Anns v. London Borough of Merton, [1977] 2 All E.R. 492 (H.L.), governed the duty analysis in decisions of this Court addressing claims for pure economic loss (Hercules; Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd., [1997] 3 S.C.R. 1210; Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021). Significantly, however, the Anns test for establishing tort liability in Canada has since been refined. In Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, this Court provided greater certainty to the law of tort by clarifying the factors which may be considered at each stage of the Anns test. While the resulting Anns/Cooper framework has yet to be applied by this Court in a case of auditor's negligence, we adopt this statement of La Forest J. for the Court in Hercules: ". . . to create a 'pocket' of negligent misrepresentation cases . . . in which the existence of a duty of care is determined differently from other negligence cases would, in our view, be incorrect" (para. 21).
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568		UK (HL)	[30] In cases of pure economic loss arising from negligent misrepresentation or performance of a service, two factors are determinative in the proximity analysis: the defendant's undertaking and the plaintiff's reliance. Where the defendant undertakes to provide a representation or service in circumstances that invite the plaintiff's reasonable reliance, the defendant becomes obligated to take reasonable care. And, the plaintiff has a right to rely on the defendant's undertaking to do so (W. N. Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913), 23 Yale L.J. 16, at pp. 49-50). These corollary rights and obligations create a relationship of proximity (Haig, at p. 477; Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568 (H.L.), at pp. 637-38; Glanzer v. Shepard, 135 N.E. 275 (N.Y. 1922) at pp. 275-76; Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at pp. 445-46; E. J. Weinrib, "The Disintegration of Duty" (2006), 31 Adv. Q. 212, at p. 230).
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Glanzer v. Shepard, 135 N.E. 275 (1922)	lower-level court	US	[30] In cases of pure economic loss arising from negligent misrepresentation or performance of a service, two factors are determinative in the proximity analysis: the defendant's undertaking and the plaintiff's reliance. Where the defendant undertakes to provide a representation or service in circumstances that invite the plaintiff's reasonable reliance, the defendant becomes obligated to take reasonable care. And, the plaintiff has a right to rely on the defendant's undertaking to do so (W. N. Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913), 23 Yale L.J. 16, at pp. 49-50). These corollary rights and obligations create a relationship of proximity (Haig, at p. 477; Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568 (H.L.), at pp. 637-38; Glanzer v. Shepard, 135 N.E. 275 (N.Y. 1922) at pp. 275-76; Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at pp. 445-46; E. J. Weinrib, "The Disintegration of Duty" (2006), 31 Adv. Q. 212, at p. 230).
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Ultramares Corp. v. Touche, 174 N.E. 441 (1931)	lower-level court	US	[30] In cases of pure economic loss arising from negligent misrepresentation or performance of a service, two factors are determinative in the proximity analysis: the defendant's undertaking and the plaintiff's reliance. Where the defendant undertakes to provide a representation or service in circumstances that invite the plaintiff's reasonable reliance, the defendant becomes obligated to take reasonable care. And, the plaintiff has a right to rely on the defendant's undertaking to do so (W. N. Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1913), 23 Yale L.J. 16, at pp. 49-50). These corollary rights and obligations create a relationship of proximity (Haig, at p. 477; Caparo Industries plc. v. Dickman, [1990] 1 All E.R. 568 (H.L.), at pp. 637-38; Glanzer v. Shepard, 135 N.E. 275 (N.Y. 1922) at pp. 275-76; Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at pp. 445-46; E. J. Weinrib, "The Disintegration of Duty" (2006), 31 Adv. Q. 212, at p. 230).
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Yuen Kun Yeu v. Attorney-General of Hong Kong, [1988] 1 A.C. 175	SC	UK (PC)	[41] The place within the Anns/Cooper framework of this policy inquiry is significant. It follows the proximity and foreseeability inquiries. The policy inquiry assesses whether, despite the proximate relationship between the parties, and despite the reasonably foreseeable quality of the plaintiff's injury, the defendant should nonetheless be insulated from liability (Cooper, at para. 30; Odhavji, at para. 51). That it would limit liability in the face of findings of both proximity and reasonable foreseeability makes plain how narrowly it should be relied upon (Cooper, at para. 30, citing Yuen Kun Yeu v. Attorney-General of Hong Kong, [1988] 1 A.C. 175 (P.C.); Edgeworth Construction Ltd. v. N.D. Lea & Associates Ltd., [1993] 3 S.C.R. 206, at p. 218). Only in rare cases — such as those concerning decisions of governmental policy (Cooper, at paras. 38 and 53) or quasi-judicial bodies (ibid., at para. 52; Edwards, at para. 19) — should liability be denied when a defendant's negligence causes reasonably foreseeable injury to a plaintiff with whom he or she shares a close and direct relationship. In light of the above, the stage at which certain factors are considered in the Anns/Cooper framework is material.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., [1961] A.C. 388	SC	UK (PC)	[77] In a successful negligence action, a plaintiff must demonstrate that (1) the defendant owed him or her a duty of care; (2) the defendant's behaviour breached the standard of care; (3) the plaintiff sustained damage; and (4) the damage was caused, in fact and in law, by the defendant's breach (Mustapha v. Culligan of Canada Ltd., 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 3; Saadati, at para. 13). The principle of remoteness, or legal causation, examines whether "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (Mustapha, at para. 12, citing A.M. Linden and B. Feldthusen, Canadian Tort Law (8th ed. 2006), at p. 360; see also Saadati, at para. 34). It is trite law that "it is the foresight of the reasonable man which alone can determine responsibility" (Mustapha, at paras. 11-13, citing Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., [1961] A.C. 388 (P.C.), at p. 424). Therefore, injury will be sufficiently related to the wrongful conduct if it is a reasonably foreseeable consequence of that conduct.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Hughes-Holland v. BPE Solicitors, [2017] UKSC 21, [2017] 2 W.L.R. 1029	SC	UK (SC)	[86] The Chief Justice seeks to limit Deloitte's liability because it merely provided "information" to Livent, not "advice", and, as a consequence, did not "assume responsibility for what the shareholders decide[d] to do with that information" (para. 170). In this regard, she cites (at para. 149) the following passage from Hughes-Holland v. BPE Solicitors, [2017] UKSC 21, [2017] 2 W.L.R. 1029, at para. 44: A valuer or a conveyancer, for example, will rarely supply more than a specific part of the material on which his client's decision is based. He is generally no more than a provider of what Lord Hoffmann [in SAAMCO] called "information". At the opposite end of the spectrum, an investment adviser advising a client whether to buy a particular stock, or a financial adviser advising whether to invest self-invested pension fund in an annuity are likely, in Lord Hoffmann's terminology, to be regarded as giving "advice". Between these extremes, every case is likely to depend on the range of matters for which the defendant assumed responsibility and no more exact rule can be stated.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Nykredit Mortgage Bank plc. v. Edward Erdman Group Ltd. (No. 2), [1997] 1 W.L.R. 1627	SC	UK (HL)	[89] The Chief Justice's reliance on the so-called "SAAMCO principle" — derived from the House of Lords' decision in South Australia Asset Management Corp. v. York Montague Ltd., [1997] A.C. 191 ("SAAMCO"); see also Nykredit Mortgage Bank plc. v. Edward Erdman Group Ltd. (No. 2), [1997] 1 W.L.R. 1627 (H.L.); Platform Home Loans Ltd. v. Oyston Shipways Ltd., [2000] 2 A.C. 190) (H.L.); and BPE Solicitors — is in our respectful view mistaken for the same reason as her reliance on the dichotomy between information and advice as described in BPE Solicitors. Her reliance on both U.K. decisions is premised on how Deloitte never assumed responsibility for injuries resulting from Livent's operations — either because those injuries were not caused by the mere information contained in the 1997 Audit (BPE Solicitors), or because those injuries did not flow from what was incorrect in the 1997 Audit (SAAMCO). But, in assuming responsibility for informing shareholder scrutiny of management, Deloitte did assume responsibility for injuries flowing from that impaired scrutiny.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Platform Home Loans Ltd. v. Oyston Shipways Ltd., [2000] 2 A.C. 190	SC	UK (HL)	[89] The Chief Justice's reliance on the so-called "SAAMCO principle" — derived from the House of Lords' decision in South Australia Asset Management Corp. v. York Montague Ltd., [1997] A.C. 191 ("SAAMCO"); see also Nykredit Mortgage Bank plc. v. Edward Erdman Group Ltd. (No. 2), [1997] 1 W.L.R. 1627 (H.L.); Platform Home Loans Ltd. v. Oyston Shipways Ltd., [2000] 2 A.C. 190) (H.L.); and BPE Solicitors — is in our respectful view mistaken for the same reason as her reliance on the dichotomy between information and advice as described in BPE Solicitors. Her reliance on both U.K. decisions is premised on how Deloitte never assumed responsibility for injuries resulting from Livent's operations — either because those injuries were not caused by the mere information contained in the 1997 Audit (BPE Solicitors), or because those injuries did not flow from what was incorrect in the 1997 Audit (SAAMCO). But, in assuming responsibility for informing shareholder scrutiny of management, Deloitte did assume responsibility for injuries flowing from that impaired scrutiny.
2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Stone & Rolls Ltd. (in liquidation) v. Moore Stephens, [2009] UKHL 39, [2009] 1 A.C. 1391	SC	UK (HL)	[104] While, therefore, this Court's decision in Canadian Dredge remains the authoritative test for the application of the corporate identification doctrine, we would reaffirm one qualification. The principles set out in Canadian Dredge provide a sufficient basis to find that the actions of a directing mind be attributed to a corporation, not a necessary one (pp. 681-82). As a principle that is grounded in policy, and which only serves as a means to hold a corporation criminally responsible or to deny civil liability, courts retain the discretion to refrain from applying it where, in the circumstances of the case, it would not be in the public interest to do so. And where, as here, its application would render meaningless the very purpose for which a duty of care was recognized, such application will rarely be in the public interest. If a professional undertakes to provide a service to detect wrongdoing, the existence of that wrongdoing will not normally weigh in favour of barring civil liability for negligence through the corporate identification doctrine. (That said, we leave for another day the question of whether the same is true in the context of a "one man" corporation, where the sole director and shareholder hires the auditor to uncover the wrongful action which he, himself, carries out: Stone & Rolls Ltd. (in liquidation) v. Moore Stephens, [2009] UKHL 39, [2009] 1 A.C. 1391; see also 373409 Alberta Ltd. (Receiver of) v. Bank of Montreal, 2002 SCC 81, [2002] 4 S.C.R. 312, at para. 22; Bilta (U.K.) Ltd. (in liquidation) v. Nazir (No. 2), [2015] UKSC 23, [2016] A.C. 1, at para. 30.)

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2017	Deloitte & Touche v. Livent Inc. (Receiver of)	12/20/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16920/index.do	Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63	Gascon and Brown JJ.	majority	Ontario	Torts	C	referred to	Bilta (U.K.) Ltd. (in liquidation) v. Nazir (No. 2), [2015] UKSC 23, [2016] A.C. 1	SC	UK (SC)	[104] While, therefore, this Court's decision in Canadian Dredge remains the authoritative test for the application of the corporate identification doctrine, we would reaffirm one qualification. The principles set out in Canadian Dredge provide a sufficient basis to find that the actions of a directing mind be attributed to a corporation, not a necessary one (pp. 681-82). As a principle that is grounded in policy, and which only serves as a means to hold a corporation criminally responsible or to deny civil liability, courts retain the discretion to refrain from applying it where, in the circumstances of the case, it would not be in the public interest to do so. And where, as here, its application would render meaningless the very purpose for which a duty of care was recognized, such application will rarely be in the public interest. If a professional undertakes to provide a service to detect wrongdoing, the existence of that wrongdoing will not normally weigh in favour of barring civil liability for negligence through the corporate identification doctrine. (That said, we leave for another day the question of whether the same is true in the context of a "one man" corporation, where the sole director and shareholder hires the auditor to uncover the wrongful action which he, himself, carries out: Stone & Rolls Ltd. (in liquidation) v. Moore Stephens, [2009] UKHL 39, [2009] 1 A.C. 1391; see also 373409 Alberta Ltd. (Receiver of) v. Bank of Montreal, 2002 SCC 81, [2002] 4 S.C.R. 312, at para. 22; Bilta (U.K.) Ltd. (in liquidation) v. Nazir (No. 2), [2015] UKSC 23, [2016] A.C. 1, at para. 30.)
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	Thorner v. Major, [2009] UKHL 18, [2009] 1 W.L.R. 776	SC	UK (HL)	[65] Generally, the promisor who makes the "representation or assurance" regarding the "right or benefit" must hold the promised right or benefit at the time of making the promise (Idle-O, at para. 49; Sabey, at para. 30; Clarke, at para. 26; Tiny, at para. 131; Schwark, at para. 16; but see Thorner v. Major, [2009] UKHL 18, [2009] 1 W.L.R. 776, at para. 61). The question presented by this appeal, then, is whether an equity sufficient to ground a claim in proprietary estoppel may still arise where the promisor does not in fact hold that right or benefit at the time of making the promise. While I agree with the Chief Justice that it can, my principal disagreement is on the time at which such an equity arises. While the Chief Justice finds that it arises at the moment of detrimental reliance, I view it as arising only if and when the promisor obtains the right or benefit that was promised to the claimant. Where, as here, a promisor's attainment of the promised right or benefit rests upon the satisfaction of a future contingency, no equity capable of being remedied through proprietary estoppel can arise until that contingency is satisfied.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	Taylors Fashions Ltd. v. Liverpool Victoria Trustees Co., [1981] 1 All E.R. 897	lower-level court	UK	[67] The Chief Justice holds that it is unnecessary in this case to decide whether the inchoate equity which grounds the remedy in proprietary estoppel is personal or proprietary in nature (para. 15). Respectfully, I disagree. In my view, to qualify as an equity justifying the operation of proprietary estoppel, the equity must be proprietary, because it must be capable of compelling a promisor to relinquish a proprietary right which he or she actually holds. While the three conditions necessary to prove an equity under the test for proprietary estoppel do not explicitly state this requirement, the broader question which those conditions serve to answer demonstrates that this is so. Specifically, those three conditions have been described as part of a broader inquiry into whether it would be "unconscionable" to permit the promisor to renege on the promise made to the claimant (*Crabb* , at p. 195; *Sabey* , at para. 27; *Idle-O* , at para. 61). The concept of unconscionability is not a separate element of the test for establishing the equity sufficient to ground proprietary estoppel, but rather serves as a mechanism for "unifying and confirming" the three conditions (*Yeoman's Row Management Ltd. v. Cobbe* , [2008] UKHL 55, [2008] 4 All E.R. 713, at para. 92). In this sense, the three conditions are designed to answer the question of "whether upon the facts of the particular case the situation has become such that it would be dishonest or unconscionable for the plaintiff, or the person having the right sought to be enforced, to continue to seek to enforce it" (*Taylors Fashions Ltd. v. Liverpool Victoria Trustees Co.* , [1982] 1 Q.B. 133 (Ch.), at p. 154 (emphasis added); see also *Crabb* , at p. 195). Alternatively put, "[t]he equity of estoppel arises in an 'inchoate' form as soon as . . . the landowner unconscionably sets up his rights adversely to the legitimate demands of the estoppel claimant" (K. Gray and S. F. Gray, *Land Law* (5th ed. 2007), at §10.22 (emphasis added)).
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	*Crabb v. Arun District Council* , [1975] 3 All E.R. 865	*lower-level court*	UK	[63] As the Chief Justice explains, a claim in proprietary estoppel requires a court to make three determinations: (1) Is an equity established? (2) If an equity is established, what is the extent of the equity? (3) What remedy is appropriate to satisfy the equity? (Idle-O Apartments Inc. v. Charlyn Investments Ltd., 2014 BCCA 451, [2015] 2 W.W.R. 243, at para. 49; Sabey v. von Hopffgarten Estate, 2014 BCCA 360, 378 D.L.R. (4th) 64, at para. 25, citing Crabb v. Arun District Council, [1975] 1 Ch. 179 (C.A.), at pp. 193-97.)
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	Watson v. Goldsbrough, [1986] 1 E.G.L.R. 265	lower-level court	UK	[69] In my respectful view, imprecision in characterizing the type of equitable interest at stake in these cases risks introducing legal uncertainty to cases where competing equitable claims are advanced in relation to the same property. More particularly, the notion that a mere personal equitable right may be sufficient to give rise to a proprietary estoppel is difficult to reconcile with the principles governing the priority of equitable interests in land (Snell's Equity (33rd ed. 2015), by J. McGhee, at para. 4-047). In the United Kingdom, the House of Lords and, in turn, the Supreme Court have each recognized that where a promise gives rise to a merely personal equitable right in favour of the claimant (because the promisor does not have the promised right or benefit at the time of his or her promise), the promisor's subsequent acquisition of the right or benefit does not permit the claimant to assert an equity which takes priority over a third party's proprietary right that was established in the meantime — that is, after the claimant's personal equitable right against the promisor arose, but before the promisor attained the right or benefit. Seen in this light, Lord Collins' statement at para. 79 in Scott, cited above, that mere personal rights "would only become proprietary and capable of taking priority over a mortgage when they were fed by the [promisor's] acquisition of the [promised right or benefit]" is not a suggestion that personal equitable rights could be retroactively transformed into proprietary rights. Rather, he meant that the establishment of the equity underlying the claimant's personal right prior to the establishment of the third party's proprietary right is insufficient to elevate the claimant's personal right so as to displace the priority enjoyed by the third party's proprietary right (Scott, at para. 71; Abbey, at pp. 89 and 95; see also Watson v. Goldsbrough, [1986] 1 E.G.L.R. 265 (C.A.)). But were it possible, as is necessarily suggested by the Chief Justice's reasons, to satisfy the requirement for "an equity" within the test for proprietary estoppel by showing a mere personal equitable right, priority could be accorded to an interest that does not ground an equitable claim in land, to the detriment of an interest that does.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	Jennings v. Rice, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100	lower-level court	UK	[71] It follows that I disagree that, in this case, the requisite equity was established at the moment of Max's detrimental reliance. In my view, it will only arise from the moment that Gloria holds the right or benefit that was the subject of her promise to Max — that is, from the time that this Court orders her, as executor, to "divide the property forthwith into equal one-third interests and deliver these to herself, Max and Nathan [Cowper-Smith] as beneficiaries of Elizabeth's estate" (reasons of the Chief Justice, at para. 44). While I agree with the Chief Justice that a court's task, when determining the remedy which is "appropriate to satisfy the equity" (para. 17) under the test for proprietary estoppel, is "to do justice" (para. 56, citing Jennings v. Rice, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100, at para. 36), "do[ing] justice" — even at equity — does not permit a court to take into consideration a merely personal equitable right. Therefore, the minimum necessary to satisfy the equity, once it arises, is to permit Max to purchase Gloria's one-third share of the property as of the date of this Court's order.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	*Southern Pacific Mortgages Ltd. v. Scott* , [2014] UKSC 52, [2015] A.C. 385	*SC*	UK (SC)	[66] The Chief Justice states that, where a representation or assurance is made pertaining to a right or benefit which the promisor does not hold at the time of the promise, an inchoate equity nonetheless arises in favour of the claimant at the moment of the claimant's detrimental reliance thereon. This is undoubtedly so. Courts in the United Kingdom, for example, have recognized that in such circumstances an equity may arise in favour of the claimant before the promisor holds the promised right or benefit (Abbey National Building Society v. Cann, [1991] 1 A.C. 56 (H.L.), at pp. 95 and 102; Southern Pacific Mortgages Ltd. v. Scott, [2014] UKSC 52, [2015] A.C. 385, at para. 79). But such an equity cannot confer a proprietary right in the promised property, but rather a mere personal right against the promisor (Abbey, at pp. 89 and 95; Scott, at paras. 104 and 111; S. Wilken and K. Ghaly, The Law of Waiver, Variation, and Estoppel (3rd ed. 2012), at §11.130). Before an equity capable of conferring a proprietary right can be shown to arise, the promisor must gain the right or benefit that was the subject of his or her promise "[s]ince no one can grant what he does not have" (Abbey, at p. 102). As Lord Collins explained for (on this point) a unanimous Supreme Court of the United Kingdom in Scott, at para. 79, "the [claimants] acquired no more than personal rights against the [promisors] when they agreed to sell their properties on the basis of the [promisors'] promises that they would be entitled to remain in occupation. Those rights would only become proprietary and capable of taking priority over a mortgage when they were fed by the [promisors'] acquisition of the legal estate on completion" (emphasis added).
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	Brown J.	concurring partially	British Columbia	Wills and estates	C	C	Abbey National Building Society v. Cann, [1991] 1 A.C. 56	SC	UK (HL)	[66] The Chief Justice states that, where a representation or assurance is made pertaining to a right or benefit which the promisor does not hold at the time of the promise, an inchoate equity nonetheless arises in favour of the claimant at the moment of the claimant's detrimental reliance thereon. This is undoubtedly so. Courts in the United Kingdom, for example, have recognized that in such circumstances an equity may arise in favour of the claimant before the promisor holds the promised right or benefit (Abbey National Building Society v. Cann, [1991] 1 A.C. 56 (H.L.), at pp. 95 and 102; Southern Pacific Mortgages Ltd. v. Scott, [2014] UKSC 52, [2015] A.C. 385, at para. 79). But such an equity cannot confer a proprietary right in the promised property, but rather a mere personal right against the promisor (Abbey, at pp. 89 and 95; Scott, at paras. 104 and 111; S. Wilken and K. Ghaly, The Law of Waiver, Variation, and Estoppel (3rd ed. 2012), at §11.130). Before an equity capable of conferring a proprietary right can be shown to arise, the promisor must gain the right or benefit that was the subject of his or her promise "[s]ince no one can grant what he does not have" (Abbey, at p. 102). As Lord Collins explained for (on this point) a unanimous Supreme Court of the United Kingdom in Scott, at para. 79, "the [claimants] acquired no more than personal rights against the [promisors] when they agreed to sell their properties on the basis of the [promisors'] promises that they would be entitled to remain in occupation. Those rights would only become proprietary and capable of taking priority over a mortgage when they were fed by the [promisors'] acquisition of the legal estate on completion" (emphasis added).

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2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	considered	Thorner v. Major, [2009] UKHL 18, [2009] 1 W.L.R. 776	SC	UK (HL)	[15] An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word: see Thorner v. Major, [2009] UKHL 18, [2009] 1 W.L.R. 776, at para. 29, per Lord Walker; see also Sabey v. von Hopffgarten Estate, 2014 BCCA 360, 378 D.L.R. (4th) 64, at para. 30; Clarke v. Johnson, 2014 ONCA 237, 371 D.L.R. (4th) 618, at para. 52; Idle-O Apartments Inc. v. Charlyn Investments Ltd., 2014 BCCA 451, [2015] 2 W.W.R. 243, at para. 49; Scholz v. Scholz, 2013 BCCA 309, 340 B.C.A.C. 151, at para. 31. The representation or assurance may be express or implied: see Wolff v. Canada (Attorney General), 2017 BCCA 30, 95 B.C.L.R. (5th) 15, at para. 21; Sabey, at para. 33; B. MacDougall, Estoppel (2012), at p. 446; Snell's Equity (33rd ed. 2015), by J. McGhee, at p. 335. An inchoate equity arises at the time of detrimental reliance on a representation or assurance. It is not necessary to determine, in this case, whether this equity is personal or proprietary in nature. When the party responsible for the representation or assurance possesses an interest in the property sufficient to fulfill the claimant's expectation, proprietary estoppel may give effect to the equity by making the representation or assurance binding.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Taylors Fashions Ltd. v. Liverpool Victoria Trustees Co., [1981] 1 All E.R. 897	lower-level court	UK	[16] Proprietary estoppel protects the equity, which in turn protects the claimant's reasonable reliance: see S. Bright and B. McFarlane, "Proprietary Estoppel and Property Rights" (2005), 64 Cambridge L.J. 449, at p. 452. Like other estoppels, proprietary estoppel avoids the unfairness or injustice that would result to one party if the other were permitted to break her word and insist on her strict legal rights: see Taylors Fashions Ltd. v. Liverpool Victoria Trustees Co., [1981] 1 All E.R. 897 (Ch.), at pp. 909, 915-16 and 918. As Lord Denning M.R. put it in Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd., [1982] 1 Q.B. 84 (C.A.), at p. 122: When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands. See also Ryan v. Moore, 2005 SCC 38, [2005] 2 S.C.R. 53, at para. 51; MacDougall, at pp. 15-16. [18] Consensus as to the elements of proprietary estoppel has proved elusive: see Thorner, at para. 29, per Lord Walker; MacDougall, at pp. 444-47. Recent decades have seen a softening of the five criteria, or "probanda", set out by Fry J. in Willmott v. Barber (1880), 15 Ch. D. 96, at pp. 105-6 — and cited by this Court in Canadian Superior Oil Ltd. v. Paddon-Hughes Development Co., [1970] S.C.R. 932, at pp. 938-39, and Sohio Petroleum Co. v. Weyburn Security Co., [1971] S.C.R. 81, at pp. 85-86 — as judges have moved away from strict requirements that would constrain their ability to do justice in the circumstances of a particular case: see Clarke, at paras. 41-53; Sykes v. Rosebery Parklands Development Society, 2011 BCCA 15, 330 D.L.R. (4th) 84, at paras. 44-49; Erickson v. Jones, 2008 BCCA 379, 299 D.L.R. (4th) 465, at paras. 52-57; Crabb, at pp. 876-77, per Scarman L.J.; Taylors Fashions, at pp. 915-18. [26] Reasonableness is circumstantial. As Lord Walker put it in Thorner, "to establish a proprietary estoppel the relevant assurance must be clear enough", that is, "[t]he promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made": para. 56, quoting Walton v. Walton, E.W.C.A., April 14, 1994 (unreported), at para. 16, per Hoffmann L.J.; see also Gillett v. Holt, [2001] Ch. 210 (C.A.), at p. 225; Taylors Fashions, at pp. 915-16; McGhee, at p. 338. What matters is what one party induced the other to expect; as Lord Hoffmann stated in Thorner, the question is whether "the meaning . . . conveyed would reasonably have been understood as intended to be taken seriously as an assurance which could be relied upon": para. 5; see also Crabb,
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	*Crabb v. Arun District Council*, [1975] 3 All E.R. 865	lower-level court	UK	[17] Where protecting the equity of the case may demand the recognition of "new rights and interests . . . in or over land" (Crabb v. Arun District Council, [1975] 3 All E.R. 865 (C.A.), at p. 871, per Lord Denning M.R.), proprietary estoppel can do what other estoppels cannot — it can found a cause of action: see MacDougall, at p. 424; McGhee, at pp. 330-33. Where the ingredients for a proprietary estoppel are present, the court must determine whether it is appropriate to satisfy the equity by recognizing the modification or creation of property rights "in situations where there is want of consideration or of writing": Anger & Honsberger Law of Real Property (3rd ed. (loose-leaf)), by A. W. La Forest, at p. 28-3.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Cobbe v. Yeoman's Row Management Ltd., [2008] UKHL 55, [2008] 1 W.L.R. 1752	SC	UK (HL)	[29] In a proprietary estoppel claim, where the equity is said to have arisen when the claimant relied on an expectation that he would enjoy some right or benefit over property, it may be that the party responsible for the expectation had such a speculative interest in the property that the claimant's reliance could not have been reasonable: see Cobbe v. Yeoman's Row Management Ltd., [2008] UKHL 55, [2008] 1 W.L.R. 1752, at para. 20, per Lord Scott. But whether this is so will depend on context, not on ex ante doctrinal restrictions. The Court of Appeal majority's proposed bright line rule — namely, that reliance on a promise by a party with no present interest in property can never be reasonable — is out of step with equity's purpose, which is to temper the harsh effects of strict legal rules.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Re Basham (deceased), [1987] 1 All E.R. 405	lower-level court	UK	[35] I cannot agree. With respect, the conclusion reached by the Court of Appeal majority conflates proprietary estoppel with the equity to which it gives effect. That Gloria did not own an interest in her mother's property at the time of Max's reliance is not dispositive in itself: see MacDougall, at p. 456; see also Thorner, at para. 61, per Lord Walker; Re Basham (deceased), [1987] 1 All E.R. 405 (Ch.), at p. 415. An equity arises when the claimant reasonably relies to his detriment on the expectation that he will enjoy a right or benefit over property, whether or not the party responsible for that expectation owns an interest in the property at the time of the claimant's reliance. Proprietary estoppel may not protect that equity immediately. It may not protect the equity until considerable time has passed. If the party responsible for the expectation never acquires a sufficient interest in the property, proprietary estoppel may not arise at all; where there is proprietary estoppel, there must be an equity, but not vice versa. When the party responsible for the expectation has or acquires a sufficient interest in the property, however, proprietary estoppel attaches to that interest and protects the equity: see MacDougall, at p. 458; Wilken and Ghaly, at pp. 265-66; see also Watson v. Goldsbrough, [1986] 1 E.G.L.R. 265 (C.A.), at p. 267. Ownership at the time the representation or assurance was relied on is not a requirement of a proprietary estoppel claim.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Watson v. Goldsbrough, [1986] 1 E.G.L.R. 265	lower-level court	UK	[35] I cannot agree. With respect, the conclusion reached by the Court of Appeal majority conflates proprietary estoppel with the equity to which it gives effect. That Gloria did not own an interest in her mother's property at the time of Max's reliance is not dispositive in itself: see MacDougall, at p. 456; see also Thorner, at para. 61, per Lord Walker; Re Basham (deceased), [1987] 1 All E.R. 405 (Ch.), at p. 415. An equity arises when the claimant reasonably relies to his detriment on the expectation that he will enjoy a right or benefit over property, whether or not the party responsible for that expectation owns an interest in the property at the time of the claimant's reliance. Proprietary estoppel may not protect that equity immediately. It may not protect the equity until considerable time has passed. If the party responsible for the expectation never acquires a sufficient interest in the property, proprietary estoppel may not arise at all; where there is proprietary estoppel, there must be an equity, but not vice versa. When the party responsible for the expectation has or acquires a sufficient interest in the property, however, proprietary estoppel attaches to that interest and protects the equity: see MacDougall, at p. 458; Wilken and Ghaly, at pp. 265-66; see also Watson v. Goldsbrough, [1986] 1 E.G.L.R. 265 (C.A.), at p. 267. Ownership at the time the representation or assurance was relied on is not a requirement of a proprietary estoppel claim.
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2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Jennings v. Rice, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100	lower-level court	UK	[47] Still, "the court must take a principled approach, and cannot exercise a completely unfettered discretion according to the individual judge's notion of what is fair in any particular case": Jennings v. Rice, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100, at para. 43, per Walker L.J. A claimant who establishes the need for proprietary estoppel is entitled only to the minimum relief necessary to satisfy the equity in his favour: see Clarke, at para. 81; Sabey, at para. 78; Idle-O Apartments, at para. 73; Sykes, at paras. 57-58; MacDougall, at p. 498; R. Megarry and W. Wade, The Law of Real Property (8th ed. 2012), by C. Harpum, S. Bridge and M. Dixon, at p. 731. Since the equity aims to address the unfair or unjust detriment the claimant would suffer if the owner were permitted to resile from her inducement, encouragement, or acquiescence, "there must be a proportionality between the remedy and the detriment which is its purpose to avoid": Commonwealth of Australia v. Verwayen (1990), 170 C.L.R. 394 (H.C.A.), at p. 413, per Mason C.J.; see also Sabey, at paras. 73-75; Idle-O Apartments, at para. 76; Jennings, at para. 36, per Aldous L.J.; Sledmore v. Dalby (1996), 72 P. & C.R. 196 (C.A.), at pp. 208-9, per Hobhouse L.J.; S. Gardner, "The Remedial Discretion in Proprietary Estoppel — Again" (2006), 122 L.Q.R. 492, at pp. 499-503; Bright and McFarlane, at pp. 453-54.
2017	Cowper-Smith v. Morgan	12/14/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16898/index.do	Cowper-Smith v. Morgan, 2017 SCC 61, [2017] 2 S.C.R. 754	McLachlin C.J.	majority	British Columbia	Wills and estates	C	referred to	Sledmore v. Dalby (1996), 72 P. & C.R. 196 (C.A.)	lower-level court	UK	[47] Still, "the court must take a principled approach, and cannot exercise a completely unfettered discretion according to the individual judge's notion of what is fair in any particular case": Jennings v. Rice, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100, at para. 43, per Walker L.J. A claimant who establishes the need for proprietary estoppel is entitled only to the minimum relief necessary to satisfy the equity in his favour: see Clarke, at para. 81; Sabey, at para. 78; Idle-O Apartments, at para. 73; Sykes, at paras. 57-58; MacDougall, at p. 498; R. Megarry and W. Wade, The Law of Real Property (8th ed. 2012), by C. Harpum, S. Bridge and M. Dixon, at p. 731. Since the equity aims to address the unfair or unjust detriment the claimant would suffer if the owner were permitted to resile from her inducement, encouragement, or acquiescence, "there must be a proportionality between the remedy and the detriment which is its purpose to avoid": Commonwealth of Australia v. Verwayen (1990), 170 C.L.R. 394 (H.C.A.), at p. 413, per Mason C.J.; see also Sabey, at paras. 73-75; Idle-O Apartments, at para. 76; Jennings, at para. 36, per Aldous L.J.; Sledmore v. Dalby (1996), 72 P. & C.R. 196 (C.A.), at pp. 208-9, per Hobhouse L.J.; S. Gardner, "The Remedial Discretion in Proprietary Estoppel — Again" (2006), 122 L.Q.R. 492, at pp. 499-503; Bright and McFarlane, at pp. 453-54.

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2017	R. v. Marakah	12/8/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16896/index.do	R. v. Marakah, 2017 SCC 59, [2017] 2 S.C.R. 608	McLachlin C.J.	majority	Ontario	Constitutional law	C	referred to	Katz v. United States, 389 U.S. 347 (1967)	SC	US	[10] Section 8 applies "where a person has a reasonable privacy interest in the object or subject matter of the state action and the information to which it gives access": R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34, at para. 34; see also R. v. Spencer, 2014 SCC 43, [2014] 2 S.C.R. 212, at para. 16; R. v. Tessling, 2004 SCC 67, [2004] 3 S.C.R. 432, at para. 18. To claim s. 8 protection, a claimant must first establish a reasonable expectation of privacy in the subject matter of the search, i.e., that the person subjectively expected it would be private and that this expectation was objectively reasonable: R. v. Edwards, [1996] 1 S.C.R. 128, at para. 45; see also Hunter v. Southam Inc., [1984] 2 S.C.R. 145, at pp. 159-60; Katz v. United States, 389 U.S. 347 (1967), at p. 361, per Harlan J., concurring. Whether the claimant had a reasonable expectation of privacy must be assessed in "the totality of the circumstances": Edwards, at paras. 31 and 45; see also Spencer, at paras. 16-18; Cole, at para. 39; R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579, at para. 26; Tessling, at para. 19. This approach applies to determining whether there is a reasonable expectation of privacy in a given text message conversation.
2017	R. v. Sciascia	11/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16852/index.do	R. v. Sciascia, 2017 SCC 57, [2017] 2 S.C.R. 539	Moldaver J.	majority	Ontario	Courts	C	referred to	In re Clayton, [1983] 2 W.L.R. 555	SC	UK (HL)	[12] With respect, I find this approach to be unduly formalistic. A less restrictive and more flexible approach to process accords with the approach adopted by this Court in Clunas, where Lamer C.J. endorsed, at p. 599, the following observation of Lord Roskill in In re Clayton, [1983] 2 W.L.R. 555 (H.L.), at pp. 562-63: Magistrates' courts today try the vast majority of criminal cases that arise for hearing in this country as well as many civil cases. Any rule of practice or procedure which makes their task more difficult or demands subservience to technicalities is to be deprecated and your Lordships may think that this House should now encourage the adoption of rules of procedure and practice which encourage the better attainment of justice, which includes the interests of the prosecution as well as of defendants, so long as the necessary safeguards are maintained to prevent any risk of injustice to defendants. [Emphasis added.]
2017	Tran v. Canada (Public Safety and Emergency Preparedness)	10/19/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16803/index.do	Tran v. Canada (Public Safety and Emergency Preparedness), 2017 SCC 50, [2017] 2 S.C.R. 289	Côté J.	unanimous	Federal Court of Appeal	Immigration	C	referred to	Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., [1975] A.C. 591	SC	UK (HL)	[44] The presumption against retrospectivity engages the rule of law. Lord Diplock explained that the rule of law "requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it" (Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., [1975] A.C. 591 (H.L.), at p. 638). As this Court explained in Reference re Secession of Quebec, [1998] 2 S.C.R. 217, at para. 70, the rule of law "vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs".
2017	Montréal (City) v. Dorval	10/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16801/index.do	Montréal (City) v. Dorval, 2017 SCC 48, [2017] 2 S.C.R. 250	Côté and Brown JJ. (dissenting)	dissenting	Quebec	Prescription	R		*Code civil* (France), art. 2226.	*statute*	France	[98] Furthermore, as the appellant astutely notes, the French legislature intervened in 2008 to enact a clear provision, art. 2226 of the Code civil (France), according to which a single prescriptive period applies to [translation] "[a]n action in civil liability arising from an event that resulted in bodily injury, brought by the direct or indirect victim of the harm". If the Quebec legislature intended to make a change such as this to art. 2930, it could do so.
2017	India v. Badesha	9/8/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16771/index.do	India v. Badesha, 2017 SCC 44, [2017] 2 S.C.R. 127	Moldaver J.	unanimous	British Columbia	Constitutional law	C	adopted	Othman (Abu Qatada) v. The United Kingdom, No. 8139/09, ECHR 2012-I	international	ECHR	[47] In Othman (Abu Qatada) v. The United Kingdom, No. 8139/09, ECHR 2012-I, the European Court of Human Rights ("ECHR") examined whether the deportation of Mr. Qatada, which was made conditional on diplomatic assurances, was consistent with art. 3(1) of the CAT, which prevents expulsion where substantial grounds have been shown for believing that the person, if deported, faces a "real risk" of being subjected to ill-treatment: para. 185. The ECHR found that the proper inquiry to be conducted to determine whether the deportation is consistent with art. 3(1) is "whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment": para. 186. [49] In Othman, the ECHR took a similar contextual approach to determining the reliability of assurances: . . . assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time . . . . [Emphasis added; para. 187.] [50] The ECHR noted in Othman that the threshold question when evaluating the weight to be given to assurances is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances . . . . More usually, the Court will assess, firstly, the quality of the assurances given and, secondly, whether, in light of the receiving State's practices, they can be relied upon. [paras. 188-89] [51] The ECHR set out a detailed list of contextual factors to be examined when assessing the reliability of diplomatic assurances. Many of these factors may be considered by Canadian courts. To be clear, these factors are not exhaustive and their relevance will depend on the circumstances of the particular case: 1. Whether the assurances are specific or are general and vague; 2. Who has given the assurances and whether that person can bind the receiving state; 3. If the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them; 4. Whether the assurances concern treatment which is legal or illegal in the receiving state; 5. The length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances; 6. Whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the individual's lawyers;
2017	India v. Badesha	9/8/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16771/index.do	India v. Badesha, 2017 SCC 44, [2017] 2 S.C.R. 127	Moldaver J.	unanimous	British Columbia	Constitutional law	C	**referred to**	Chahal v. United Kingdom (1996), 23 E.H.R.R. 413	international	ECHR	[44] In Suresh v. Canada (Minister of Citizenship and Immigration), 2002 SCC 1, [2002] 1 S.C.R. 3, the Court stated that the Minister's assessment of whether the potential deportee faces a substantial risk of torture is a "fact-driven inquiry", which requires consideration of the human rights record of the receiving state, among other factors: para. 39. In the extradition context, when evaluating whether there is a substantial risk of torture or mistreatment in the requesting state, it logically follows that the Minister can consider evidence of the general human rights situation in that state, which may include reports from reputable government and non-governmental organizations: see, e.g., Chahal v. United Kingdom (1996), 23 E.H.R.R. 413, at paras. 99-100; Said v. the Netherlands, July 5, 2005, Reports 2005-VI, at para. 54. Accordingly, I am unable to accept Goepel J.A.'s statement in his dissenting reasons that evidence of systemic human rights abuses in a receiving state amounts to a general indictment of that state's justice system and is thus an "unsatisfactory underpinning for finding that an individual's s. 7 Charter rights will be violated if surrendered": C.A. reasons, at para. 125. With respect, I believe this statement is too sweeping in nature.
2017	India v. Badesha	9/8/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16771/index.do	India v. Badesha, 2017 SCC 44, [2017] 2 S.C.R. 127	Moldaver J.	unanimous	British Columbia	Constitutional law	C	referred to	Said v. the Netherlands, July 5, 2005, Reports 2005-VI	international	ECHR	[44] In *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3, the Court stated that the Minister's assessment of whether the potential deportee faces a substantial risk of torture is a "fact-driven inquiry", which requires consideration of the human rights record of the receiving state, among other factors: para. 39. In the extradition context, when evaluating whether there is a substantial risk of torture or mistreatment in the requesting state, it logically follows that the Minister can consider evidence of the general human rights situation in that state, which may include reports from reputable government and non-governmental organizations: see, e.g., *Chahal v. United Kingdom* (1996), 23 E.H.R.R. 413, at paras. 99-100; *Said v. the Netherlands*, July 5, 2005, *Reports* 2005-VI, at para. 54. Accordingly, I am unable to accept Goepel J.A.'s statement in his dissenting reasons that evidence of systemic human rights abuses in a receiving state amounts to a general indictment of that state's justice system and is thus an "unsatisfactory underpinning for finding that an individual's s. 7 *Charter* rights will be violated if surrendered": C.A. reasons, at para. 125. With respect, I believe this statement is too sweeping in nature.
2017	Uniprix inc. v. Gestion Gosselin et Bérubé inc.	7/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16746/index.do	Uniprix inc. v. Gestion Gosselin et Bérubé inc., 2017 SCC 43, [2017] 2 S.C.R. 59	Wagner and Gascon JJ.	majority	Quebec	Contracts	C	referred to	Cass. civ. 1re, January 18, 2000, Bull. civ. 1 10, no 98-10.378	SC	France	[86] This being said, it is true that before that recent legislative amendment in France, some French authors had concluded on the basis of a few articles of specific application that perpetuity was, in principle, contrary to public order (see e.g. J. Carbonnier, Droit civil, vol. 4, Les obligations (22nd ed. 2000), at No. 140). Their opinion was based largely on [translation] "the objective of protecting individual freedom" (J. Ghestin, C. Jamin and M. Billiau, Les effets du contrat (3rd ed. 2001), at No. 264; see e.g. Cass. civ. 1re, January 18, 2000, Bull. civ. 1 10, No. 98-10.378), however, and individual freedom is at stake only in the context of certain types of contracts. Other authors had noted the more nuanced approach taken by certain French courts, which had upheld the validity of certain perpetual obligations, especially in commercial matters, while finding such obligations to be invalid if they might have had a real effect on individual freedom (Ghestin, Jamin and Billiau, at No. 200, quoting Cass. civ., June 25, 1907, D.P. 1907.1.337; see also Lluelles and Moore, at No. 2153). As we will see in discussing the concept of public order, this nuanced approach is preferable to a categorical prohibition against all perpetual obligations. However, it has no bearing on this case.

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2017	Uniprix inc. v. Gestion Gosselin et Bérubé inc.	7/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16746/index.do	Uniprix inc. v. Gestion Gosselin et Bérubé inc., 2017 SCC 43, [2017] 2 S.C.R. 59	Wagner and Gascon JJ.	majority	Quebec	Contracts	C	referred to	Cass. civ., June 25, 1907, D.P. 1907.1.337	SC	France	[86] This being said, it is true that before that recent legislative amendment in France, some French authors had concluded on the basis of a few articles of specific application that perpetuity was, in principle, contrary to public order (see e.g. J. Carbonnier, Droit civil, vol. 4, Les obligations (22nd ed. 2000), at No. 140). Their opinion was based largely on [translation] "the objective of protecting individual freedom" (J. Ghestin, C. Jamin and M. Billiau, Les effets du contrat (3rd ed. 2001), at No. 264; see e.g. Cass. civ. 1re, January 18, 2000, Bull. civ. 1 10, No. 98-10.378), however, and individual freedom is at stake only in the context of certain types of contracts. Other authors had noted the more nuanced approach taken by certain French courts, which had upheld the validity of certain perpetual obligations, especially in commercial matters, while finding such obligations to be invalid if they might have had a real effect on individual freedom (Ghestin, Jamin and Billiau, at No. 200, quoting Cass. civ., June 25, 1907, D.P. 1907.1.337; see also Lluelles and Moore, at No. 2153). As we will see in discussing the concept of public order, this nuanced approach is preferable to a categorical prohibition against all perpetual obligations. However, it has no bearing on this case.
2017	Uniprix inc. v. Gestion Gosselin et Bérubé inc.	7/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16746/index.do	Uniprix inc. v. Gestion Gosselin et Bérubé inc., 2017 SCC 43, [2017] 2 S.C.R. 59	Wagner and Gascon JJ.	majority	Quebec	Contracts	R		Code civil (France), art. 1210.	statute	France	[85] As for the analogy with French law on which Professors Pineau, Burman and Gaudet rely, we find it flawed and inconclusive. First of all, it should be noted that the French legislature recently enacted a provision expressly prohibiting all perpetual contracts (art. 1210 C. civ.). The Quebec legislature has not seen fit to do the same; the positions of the two legislatures are therefore not comparable.
2017	Wilson v. Alharayeri	7/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16724/index.do	Wilson v. Alharayeri, 2017 SCC 39, [2017] 1 S.C.R. 1037	Côté J.	unanimous	Quebec	Commercial law		referred to	Ebrahimi v. Westbourne Galleries Ltd., [1973] A.C. 360	SC	UK (HL)	[50] To be clear, this is not a closed list of factors or a set of criteria to be slavishly applied. And as explained above, neither a personal benefit nor bad faith is a necessary condition in the personal liability equation. The appropriateness of an order under s. 241(3) turns on equitable considerations, and in the context of an oppression claim, "[i]t would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise" (Ebrahimi v. Westbourne Galleries Ltd., [1973] A.C. 360 ("Ebrahimi"), at p. 379). But personal benefit and bad faith remain hallmarks of conduct properly attracting personal liability, and although the possibility of personal liability in the absence of both of these elements is not foreclosed, one of them will typically be present in cases in which it is fair and fit to hold a director personally liable for oppressive corporate conduct. With respect to these two elements, four potential scenarios can arise: (i) The director acted in bad faith and obtained a personal benefit; (ii) The director acted in bad faith but did not obtain a personal benefit; (iii) The director acted in good faith and obtained a personal benefit; and (iv) The director acted in good faith and did not obtain a personal benefit
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	*Cartier International AG v. British Sky Broadcasting Ltd.* , [2016] EWCA Civ 658, [2017] 1 All E.R. 700	*lower-level court*	UK	[58] In Fourie, Lord Scott explained that "provided the court has in personam jurisdiction over the person against whom an injunction, whether interlocutory or final, is sought, the court has jurisdiction, in the strict sense, to grant it" (para. 30). However, simply because a court has the jurisdiction to grant an injunction does not mean that it should. A court "will not according to its settled practice do so except in a certain way and under certain circumstances" (Lord Scott, at para. 25, quoting from Guaranty Trust Co. of New York v. Hannay & Co., [1915] 2 K.B. 536, at p. 563; see also Cartier International AG v. British Sky Broadcasting Ltd., [2014] EWHC 3354 (Ch.), [2015] 1 All E.R. 949, at paras. 98-100). Professor Spry comes to similar conclusions (I. C. F. Spry, The Principles of Equitable Remedies (9th ed. 2014), at p. 333): The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. [Footnote omitted.] [73] Norwich orders are made to compel information from third parties. In Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.), at p. 175, Lord Reid identified a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. Lord Reid found that "without certain action on [Customs'] part the infringements could never have been committed" (p. 174). In spite of this finding, the court did not require Customs to take specific action to prevent importers from infringing the patent of Norwich Pharmacal; rather the court issued a limited order compelling Customs to disclose the names of importers. In Cartier, the court analogized from Norwich to support an injunction requiring Internet service providers ("ISPs") to block access to trademark-infringing websites because "it is via the ISPs' services" that customers view and purchase the infringing material (para. 155). That injunction did not extend to parties merely assisting in finding the websites. [74] In the case at bar, we are of the view that Google does not play a role in Datalink's breach of the December 2012 Order. Whether or not the December 2012 Order is violated does not hinge on the degree of success of the prohibited website business. Rather, the December 2012 Order is violated merely by Datalink conducting business through a website, regardless of the visibility of that website or the number of customers that visit the website. Thus Google does not play a role analogous to Customs in Norwich nor the ISPs in Cartier. And unlike the order in Norwich, the Google Order compels positive action aimed at the illegal activity rather than simply requiring the provision of information to the court. [81] Highlighting the lack of effectiveness are the alternatives available to Equustek. An equitable remedy is not required unless there is no other appropriate remedy at law (Spry, at pp. 402-3). In our view, Equustek has an alternative remedy in law. Datalink has assets in France. Equustek sought a world-wide Mareva injunction to freeze those assets, but the Court of Appeal for British Columbia urged Equustek to pursue a remedy in French courts: "At present, it appears that the proposed defendants reside in France. . . . The information before the Court is that French courts will assume jurisdiction and entertain an application to freeze the assets in that country" (2016 BCCA 190, 88 B.C.L.R. (5th) 168, at para. 24). We see no reason why Equustek cannot do what the Court of Appeal urged it to do. Equustek could also pursue injunctive relief against the ISPs, as was done in Cartier, in order to enforce the December 2012 Order. In addition, Equustek could initiate contempt proceedings in France or in any other jurisdiction with a link to the illegal websites.
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133	SC	UK (HL)	[73] Norwich orders are made to compel information from third parties. In Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.), at p. 175, Lord Reid identified a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. Lord Reid found that "without certain action on [Customs'] part the infringements could never have been committed" (p. 174). In spite of this finding, the court did not require Customs to take specific action to prevent importers from infringing the patent of Norwich Pharmacal; rather the court issued a limited order compelling Customs to disclose the names of importers. In Cartier, the court analogized from Norwich to support an injunction requiring Internet service providers ("ISPs") to block access to trademark-infringing websites because "it is via the ISPs' services" that customers view and purchase the infringing material (para. 155). That injunction did not extend to parties merely assisting in finding the websites.
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2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Mercedes Benz A.G. v. Leiduck, [1996] 1 A.C. 284 (P.C.), at p. 308: "As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice." [72] We agree with our colleague Justice Abella that Mareva injunctions and Norwich orders can operate against non-parties. However, we respectfully disagree that the Google Order is similar in nature to those remedies. Mareva injunctions are granted to freeze assets until the completion of a trial — they do not enforce a plaintiff's substantive rights (Mercedes Benz, at p. 302). In contrast, the Google Order enforces Equustek's asserted intellectual property rights by seeking to minimize harm to those rights. It does not freeze Datalink's assets (and, in fact, may erode those assets).	SC	UK (PC)	[59] The importance of appropriately modifying judicial restraint to meet the needs of justice was summarized by Lord Nicholls in Mercedes Benz A.G. v. Leiduck, [1996] 1 A.C. 284 (P.C.), at p. 308: "As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice." [72] We agree with our colleague Justice Abella that Mareva injunctions and Norwich orders can operate against non-parties. However, we respectfully disagree that the Google Order is similar in nature to those remedies. Mareva injunctions are granted to freeze assets until the completion of a trial — they do not enforce a plaintiff's substantive rights (Mercedes Benz, at p. 302). In contrast, the Google Order enforces Equustek's asserted intellectual property rights by seeking to minimize harm to those rights. It does not freeze Datalink's assets (and, in fact, may erode those assets).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Acrow (Automation) Ltd. v. Rex Chainbelt Inc., [1971] 1 W.L.R. 1676	lower-level court	UK	[70] There is no doubt that non-parties also risk contempt proceedings by aiding and abetting the doing of a prohibited act (Seaward v. Paterson, [1897] 1 Ch. 545 (C.A.); D. Bean, A. Burns and I. Parry, Injunctions (11th ed. 2012), at para. 9-08). Lord Denning said in Acrow (Automation) Ltd. v. Rex Chainbelt Inc., [1971] 1 W.L.R. 1676 (C.A.), at p. 1682: It has long been held that the court has jurisdiction to commit for contempt a person, not a party to the action, who, knowing of an injunction, aids and abets the defendant in breaking it. The reason is that by aiding and abetting the defendant, he is obstructing the course of justice.
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	National Commercial Bank of Jamaica Ltd. v. Olint Corp., [2009] 1 W.L.R. 1405	SC	UK (PC)	[75] While the distinction between mandatory and prohibitive injunctions has been questioned (see National Commercial Bank of Jamaica Ltd. v. Olint Corp., [2009] 1 W.L.R. 1405 (P.C.), at para. 20), courts have rightly, in our view, proceeded cautiously where an injunction requires the defendant to incur additional expenses to take positive steps (Redland Bricks Ltd. v. Morris, [1970] A.C. 652 (H.L.), at pp. 665-66; J. Berryman, The Law of Equitable Remedies (2nd ed. 2013), at pp. 199-200). Also relevant to the decision of whether to grant a mandatory injunction is whether it might require continued supervision by the courts, especially where the terms of the order cannot be precisely drawn and where it may result in wasteful litigation over compliance (Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd., [1998] A.C. 1 (H.L.)).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Redland Bricks Ltd. v. Morris, [1970] A.C. 652	SC	UK (HL)	[75] While the distinction between mandatory and prohibitive injunctions has been questioned (see National Commercial Bank of Jamaica Ltd. v. Olint Corp., [2009] 1 W.L.R. 1405 (P.C.), at para. 20), courts have rightly, in our view, proceeded cautiously where an injunction requires the defendant to incur additional expenses to take positive steps (Redland Bricks Ltd. v. Morris, [1970] A.C. 652 (H.L.), at pp. 665-66; J. Berryman, The Law of Equitable Remedies (2nd ed. 2013), at pp. 199-200). Also relevant to the decision of whether to grant a mandatory injunction is whether it might require continued supervision by the courts, especially where the terms of the order cannot be precisely drawn and where it may result in wasteful litigation over compliance (Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd., [1998] A.C. 1 (H.L.)).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd., [1998] A.C. 1	SC	UK (HL)	[75] While the distinction between mandatory and prohibitive injunctions has been questioned (see National Commercial Bank of Jamaica Ltd. v. Olint Corp., [2009] 1 W.L.R. 1405 (P.C.), at para. 20), courts have rightly, in our view, proceeded cautiously where an injunction requires the defendant to incur additional expenses to take positive steps (Redland Bricks Ltd. v. Morris, [1970] A.C. 652 (H.L.), at pp. 665-66; J. Berryman, The Law of Equitable Remedies (2nd ed. 2013), at pp. 199-200). Also relevant to the decision of whether to grant a mandatory injunction is whether it might require continued supervision by the courts, especially where the terms of the order cannot be precisely drawn and where it may result in wasteful litigation over compliance (Co-operative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd., [1998] A.C. 1 (H.L.)).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Côté and Rowe JJ. (dissenting)	dissenting	British Columbia	Injunctions	C	D	Attorney General v. Observer Ltd., [1990] 1 A.C. 109	SC	UK (HL)	[77] A court may decline to grant an injunction on the basis that it would be futile or ineffective in achieving the purpose for which it is sought (Spry, at pp. 419-20; Berryman, at p. 113). For example, in Attorney General v. Observer Ltd., [1990] 1 A.C. 109 (H.L.), the Spycatcher memoirs of an M.I.5 agent were already readily available, thus making a perpetual injunction against publication by the defendant newspapers ineffective.
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	**considered**	Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133	SC	UK (HL)	[31] Norwich orders are analogous and can also be used to compel non-parties to disclose information or documents in their possession required by a claimant (Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.), at p. 175). Norwich orders have increasingly been used in the online context by plaintiffs who allege that they are being anonymously defamed or defrauded and seek orders against Internet service providers to disclose the identity of the perpetrator (York University v. Bell Canada Enterprises (2009), 311 D.L.R. (4th) 755 (Ont. S.C.J.)). Norwich disclosure may be ordered against non-parties who are not themselves guilty of wrongdoing, but who are so involved in the wrongful acts of others that they facilitate the harm. In Norwich, this was characterized as a duty to assist the person wronged (p. 175; Cartier International AG v. British Sky Broadcasting Ltd., [2017] 1 All E.R. 700 (C.A.), at para. 53). Norwich supplies a principled rationale for granting injunctions against non-parties who facilitate wrongdoing (see Cartier, at paras. 51-55; and Warner-Lambert Co. v. Actavis Group PTC EHF, 144 B.M.L.R. 194 (Ch.)).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	*Cartier International AG v. British Sky Broadcasting Ltd.*, [2016] EWCA Civ 658, [2017] 1 All E.R. 700	*lower-level court*	UK	[31] Norwich orders are analogous and can also be used to compel non-parties to disclose information or documents in their possession required by a claimant (Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.), at p. 175). Norwich orders have increasingly been used in the online context by plaintiffs who allege that they are being anonymously defamed or defrauded and seek orders against Internet service providers to disclose the identity of the perpetrator (York University v. Bell Canada Enterprises (2009), 311 D.L.R. (4th) 755 (Ont. S.C.J.)). Norwich disclosure may be ordered against non-parties who are not themselves guilty of wrongdoing, but who are so involved in the wrongful acts of others that they facilitate the harm. In Norwich, this was characterized as a duty to assist the person wronged (p. 175; Cartier International AG v. British Sky Broadcasting Ltd., [2017] 1 All E.R. 700 (C.A.), at para. 53). Norwich supplies a principled rationale for granting injunctions against non-parties who facilitate wrongdoing (see Cartier, at paras. 51-55; and Warner-Lambert Co. v. Actavis Group PTC EHF, 144 B.M.L.R. 194 (Ch.)). [32] This approach was applied in Cartier, where the Court of Appeal of England and Wales held that injunctive relief could be awarded against five non-party Internet service providers who had not engaged in, and were not accused of any wrongful act. The Internet service providers were ordered to block the ability of their customers to access certain websites in order to avoid facilitating infringements of the plaintiff's trademarks. (See also Jaani Riordan, The Liability of Internet Intermediaries (2016), at pp. 412 and 498-99.)
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Warner-Lambert Co. v. Actavis Group PTC EHF, [2015] EWHC 485 (Pat.), 144 B.M.L.R. 194	lower-level court	UK	[31] Norwich orders are analogous and can also be used to compel non-parties to disclose information or documents in their possession required by a claimant (Norwich Pharmacal Co. v. Customs and Excise Commissioners, [1974] A.C. 133 (H.L.), at p. 175). Norwich orders have increasingly been used in the online context by plaintiffs who allege that they are being anonymously defamed or defrauded and seek orders against Internet service providers to disclose the identity of the perpetrator (York University v. Bell Canada Enterprises (2009), 311 D.L.R. (4th) 755 (Ont. S.C.J.)). Norwich disclosure may be ordered against non-parties who are not themselves guilty of wrongdoing, but who are so involved in the wrongful acts of others that they facilitate the harm. In Norwich, this was characterized as a duty to assist the person wronged (p. 175; Cartier International AG v. British Sky Broadcasting Ltd., [2017] 1 All E.R. 700 (C.A.), at para. 53). Norwich supplies a principled rationale for granting injunctions against non-parties who facilitate wrongdoing (see Cartier, at paras. 51-55; and Warner-Lambert Co. v. Actavis Group PTC EHF, 144 B.M.L.R. 194 (Ch.)).
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Babanaft International Co. S.A. v. Bassatne, [1990] 1 Ch. 13	lower-level court	UK	[38] When a court has in personam jurisdiction, and where it is necessary to ensure the injunction's effectiveness, it can grant an injunction enjoining that person's conduct anywhere in the world. (See Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc., [2007] 1 S.C.R. 867, at para. 6; Berryman, at p. 20; Pitel and Valentine, at p. 389; Sharpe, at para. 1.1190; Spry, at p. 37.) Mareva injunctions have been granted with worldwide effect when it was found to be necessary to ensure their effectiveness. (See Mooney v. Orr (1994), 98 B.C.L.R. (2d) 318 (S.C.); Berryman, at pp. 20 and 136; Babanaft International Co. S.A. v. Bassatne, [1990] 1 Ch. 13 (C.A.); Republic of Haiti v. Duvalier, [1990] 1 Q.B. 202 (C.A.); Derby & Co. v. Weldon, [1990] 1 Ch. 48 (C.A.); and Derby & Co. v. Weldon (Nos. 3 and 4), [1990] 1 Ch. 65 (C.A.); Sharpe, at paras. 1.1190 to 1.1220.)
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Republic of Haiti v. Duvalier, [1990] 1 Q.B. 202	lower-level court	UK	[38] When a court has in personam jurisdiction, and where it is necessary to ensure the injunction's effectiveness, it can grant an injunction enjoining that person's conduct anywhere in the world. (See Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc., [2007] 1 S.C.R. 867, at para. 6; Berryman, at p. 20; Pitel and Valentine, at p. 389; Sharpe, at para. 1.1190; Spry, at p. 37.) Mareva injunctions have been granted with worldwide effect when it was found to be necessary to ensure their effectiveness. (See Mooney v. Orr (1994), 98 B.C.L.R. (2d) 318 (S.C.); Berryman, at pp. 20 and 136; Babanaft International Co. S.A. v. Bassatne, [1990] 1 Ch. 13 (C.A.); Republic of Haiti v. Duvalier, [1990] 1 Q.B. 202 (C.A.); Derby & Co. v. Weldon, [1990] 1 Ch. 48 (C.A.); and Derby & Co. v. Weldon (Nos. 3 and 4), [1990] 1 Ch. 65 (C.A.); Sharpe, at paras. 1.1190 to 1.1220.)
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Derby & Co. v. Weldon, [1990] 1 Ch. 48	lower-level court	UK	[38] When a court has in personam jurisdiction, and where it is necessary to ensure the injunction's effectiveness, it can grant an injunction enjoining that person's conduct anywhere in the world. (See Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc., [2007] 1 S.C.R. 867, at para. 6; Berryman, at p. 20; Pitel and Valentine, at p. 389; Sharpe, at para. 1.1190; Spry, at p. 37.) Mareva injunctions have been granted with worldwide effect when it was found to be necessary to ensure their effectiveness. (See Mooney v. Orr (1994), 98 B.C.L.R. (2d) 318 (S.C.); Berryman, at pp. 20 and 136; Babanaft International Co. S.A. v. Bassatne, [1990] 1 Ch. 13 (C.A.); Republic of Haiti v. Duvalier, [1990] 1 Q.B. 202 (C.A.); Derby & Co. v. Weldon, [1990] 1 Ch. 48 (C.A.); and Derby & Co. v. Weldon (Nos. 3 and 4), [1990] 1 Ch. 65 (C.A.); Sharpe, at paras. 1.1190 to 1.1220.)

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2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Derby & Co. v. Weldon (Nos. 3 and 4), [1990] 1 Ch. 65	lower-level court	UK	[38] When a court has in personam jurisdiction, and where it is necessary to ensure the injunction's effectiveness, it can grant an injunction enjoining that person's conduct anywhere in the world. (See Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc., [2007] 1 S.C.R. 867, at para. 6; Berryman, at p. 20; Pitel and Valentine, at p. 389; Sharpe, at para. 1.1190; Spry, at p. 37.) Mareva injunctions have been granted with worldwide effect when it was found to be necessary to ensure their effectiveness. (See Mooney v. Orr (1994), 98 B.C.L.R. (2d) 318 (S.C.); Berryman, at pp. 20 and 136; Babanaft International Co. S.A. v. Bassatne, [1990] 1 Ch. 13 (C.A.); Republic of Haiti v. Duvalier, [1990] 1 Q.B. 202 (C.A.); Derby & Co. v. Weldon, [1990] 1 Ch. 48 (C.A.); and Derby & Co. v. Weldon (Nos. 3 and 4), [1990] 1 Ch. 65 (C.A.); Sharpe, at paras. 1.1190 to 1.1220.)
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	McKeogh v. Doe (Irish High Court, case no. 20121254P)	SC	Ireland	[39] Groberman J.A. pointed to the international support for this approach: I note that the courts of many other jurisdictions have found it necessary, in the context of orders against Internet abuses, to pronounce orders that have international effects. Several such cases are cited in the arguments of [International Federation of Film Producers Associations and International Federation of the Phonographic Industry], including APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris); McKeogh v. Doe (Irish High Court, case no. 20121254P); Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris); Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/) and ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA.[3]
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/)	lower-level court	Germany	[39] Groberman J.A. pointed to the international support for this approach: I note that the courts of many other jurisdictions have found it necessary, in the context of orders against Internet abuses, to pronounce orders that have international effects. Several such cases are cited in the arguments of [International Federation of Film Producers Associations and International Federation of the Phonographic Industry], including APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris); McKeogh v. Doe (Irish High Court, case no. 20121254P); Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris); Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/) and ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA.[3]
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris);	lower-level court	France	[39] Groberman J.A. pointed to the international support for this approach: I note that the courts of many other jurisdictions have found it necessary, in the context of orders against Internet abuses, to pronounce orders that have international effects. Several such cases are cited in the arguments of [International Federation of Film Producers Associations and International Federation of the Phonographic Industry], including APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris); McKeogh v. Doe (Irish High Court, case no. 20121254P); Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris); Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/) and ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA.[3]
2017	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris)	lower-level court	France	[39] Groberman J.A. pointed to the international support for this approach: I note that the courts of many other jurisdictions have found it necessary, in the context of orders against Internet abuses, to pronounce orders that have international effects. Several such cases are cited in the arguments of [International Federation of Film Producers Associations and International Federation of the Phonographic Industry], including APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris); McKeogh v. Doe (Irish High Court, case no. 20121254P); Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris); Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/) and ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA.[3]
2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	McLachlin C.J and Côté J. (dissenting)	dissenting	British Columbia	Private international law	C	D	Donohue v. Armco Inc., [2001] UKHL 64, [2002] 1 All E.R. 749	SC	UK (HL)	[148] Forum selection clauses, far from being unconscionable or contrary to public policy, are supported by strong policy considerations. Forum selection clauses are well-established and routinely enforced around the world: see e.g. Donohue v. Armco Inc., [2001] UKHL 64, [2002] 1 All E.R. 749, at para. 24; Atlantic Marine Construction Co. v. U.S. Dist. Court for Western Dist. of Texas, 134 S.Ct. 568 (2013), at pp. 581-82, citing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), at pp. 17-18; Akai Pty Ltd. v. People's Insurance Co. (1996), 188 C.L.R. 418, at pp. 441-42 (H.C.A.); Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186 (C.A.). Forum selection clauses serve an important role of increasing certainty and predictability in transactions that take place across borders. The fact that a contract is in standard form does not affect the validity of such a clause: Pompey, at para. 28; Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991), at pp. 593-94.
2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	McLachlin C.J and Côté J. (dissenting)	dissenting	British Columbia	Private international law	C	D	Berkson v. Gogo LLC, 97 F. Supp.3d 359 (2015)	lower-level court	UK	[138] Ms. Douez relies on Berkson v. Gogo LLC, 97 F. Supp.3d 359 (E.D.N.Y. 2015), at para. 22, where a U.S. district court, in the absence of legislation on electronic formation of contract, adopted a four-step procedure to determine whether a contract was formed by accepting terms of use online. In British Columbia, s. 15(1) of the Electronic Transactions Act answers the question, providing that clicking on a screen suffices to indicate acceptance.
2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	McLachlin C.J and Côté J. (dissenting)	dissenting	British Columbia	Private international law	C	D	Atlantic Marine Construction Co. v. U.S. Dist. Court for Western Dist. of Texas, 134 S.Ct. 568 (2013)	SC	US	[148] Forum selection clauses, far from being unconscionable or contrary to public policy, are supported by strong policy considerations. Forum selection clauses are well-established and routinely enforced around the world: see e.g. Donohue v. Armco Inc., [2001] UKHL 64, [2002] 1 All E.R. 749, at para. 24; Atlantic Marine Construction Co. v. U.S. Dist. Court for Western Dist. of Texas, 134 S.Ct. 568 (2013), at pp. 581-82, citing The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), at pp. 17-18; Akai Pty Ltd. v. People's Insurance Co. (1996), 188 C.L.R. 418, at pp. 441-42 (H.C.A.); Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186 (C.A.). Forum selection clauses serve an important role of increasing certainty and predictability in transactions that take place across borders. The fact that a contract is in standard form does not affect the validity of such a clause: Pompey, at para. 28; Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991), at pp. 593-94.
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2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	McLachlin C.J and Côté J. (dissenting)	dissenting	British Columbia	Private international law	R		Regulation (E.U.) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), [2012] O.J. L. 351/1, arts. 18, 19.	international	EU	[143] We do not dispute that legislation can limit the scope of forum selection clauses or render them altogether unenforceable: see Pompey, at para. 38. Nor do we dispute that some jurisdictions have adopted a "protective model" limiting the impact of forum selection clauses in consumer contracts: Z. S. Tang, Electronic Consumer Contracts in the Conflict of Laws (2nd ed. 2015), at p. 357. However, when they have done so, they have used clear language. For example, Regulation (E.U.) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), [2012] O.J. L. 351/1, provides consumers with a positive right to bring proceedings in his or her home state (art. 18), unless the clause was agreed to after a dispute had arisen, provides additional forum options to the consumer, or concerns parties resident in the same state (art. 19). The Civil Code of Québec is more absolute: art. 3149 provides that Québec courts have jurisdiction to hear actions based on consumer contracts, and that "the waiver of such jurisdiction by the consumer or worker may not be set up against him".
2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	Karakatsanis, Wagner and Gascon JJ.	majority	British Columbia	Private international law	C	referred to	The Fehmarn, [1958] 1 All E.R. 333	lower-level court	UK	[27] Of course, parties are generally held to their bargain and are bound by the enforceable terms of their contract. However, because forum selection clauses encroach on the public sphere of adjudication, Canadian courts do not simply enforce them like any other clause. In common law provinces, a forum selection clause cannot bind a court or interfere with a court's jurisdiction. As the English Court of Appeal recognized long ago, "no one by his private stipulation can oust these courts of their jurisdiction in a matter that properly belongs to them" (The Fehmarn, [1958] 1 All E.R. 333, at p. 335).
2017	Douez v. Facebook, Inc.	6/23/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16700/index.do	Douez v. Facebook, Inc., 2017 SCC 33, [2017] 1 S.C.R. 751	Karakatsanis, Wagner and Gascon JJ.	majority	British Columbia	Private international law	C	referred to	Donohue v. Armco Inc., [2001] UKHL 64, [2002] 1 All E.R. 749	SC	UK (HL)	[30] The strong cause factors were meant to provide some flexibility. Importantly, Pompey did not set out a closed list of factors governing the court's discretion to decline to enforce a forum selection clause. Both Pompey and The "Eleftheria" acknowledged that courts should consider "all the circumstances" of the particular case (Pompey, at para. 30; The "Eleftheria", at p. 242). And the leading authority in England continues to recognize that the court in The "Eleftheria" did not intend its list of factors to be comprehensive (Donohue v. Armco Inc., [2001] UKHL 64, [2002] 1 All E.R. 749, at para. 24).
2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	McLoughlin v. O'Brian, [1983] 1 A.C. 410	SC	UK (HL)	[14] The early common law's posture towards claims for negligently caused mental harm was one of suspicion and sometimes outright hostility (McLoughlin v. O'Brian, [1983] 1 A.C. 410 (H.L.), at p. 433), and was "virtually programmed to entrench primitive suspicions and prejudices about 'invisible', intangible harm" (H. Teff, Causing Psychiatric and Emotional Harm: Reshaping the Boundaries of Legal Liability (2009), at p. 40). Mental injury was seen as "not derived through the senses, but [as] a product of the imagination" (Miner v. Canadian Pacific Railway Co. (1911), 18 W.L.R. 476 (Alta. S.C. en banc), at p. 478). This scepticism persisted into the last century, such that mental injury was not compensable unless accompanied by physical injury (see L. Bélanger-Hardy, "Reconsidering the 'Recognizable Psychiatric Illness' Requirement in Canadian Negligence Law" (2013), 38 Queen's L.J. 583, at pp. 599-600). [16] Further obstacles to recovery for mental injury arose in English law. In McLoughlin v. O'Brian, at pp. 419-21, Lord Wilberforce posited three considerations that could limit the boundaries of compensable "nervous shock": the class of persons whose claims should be recognized (often referred to as relational proximity), the proximity of such persons to the accident (locational, or geographical proximity), and the means by which the "shock" is caused (temporal proximity) (G. H. L. Fridman, The Law of Torts in Canada (3rd ed. 2010), at p. 326). Where claimants alleged mental injury arising out of a sudden traumatic event, later judgments further distinguished between a "primary" victim (who was directly involved as a participant) and a "secondary" victim (who witnessed physical injuries caused to others) (see Alcock v. Chief Constable of South Yorkshire Police, [1992] 1 A.C. 310 (H.L.); and Page v. Smith, [1996] 1 A.C. 155 (H.L.)). This distinction has, however, sometimes proven difficult to apply in practice (as shown by the English law's difficulty in categorizing the status of rescuers — see White v. Chief Constable of South Yorkshire Police, [1999] 2 A.C. 455 (H.L.)), and has been criticized as lacking foundation in principle, having no relevance to the justice of the claimant's case (A. Beever, Rediscovering the Law of Negligence (2007), at pp. 405-7; J. Stapleton, "In Restraint of Tort", in P. Birks, ed., The Frontiers of Liability (1994), vol. 2, 83, at p. 95; Mustapha v. Culligan of Canada Ltd. (2006), 84 O.R. (3d) 457 (C.A.), at para. 43). That this is so has never really been disputed. As Lord Hoffmann candidly acknowledged in White, "in this area of the law, the search for principle was called off in Alcock . . . . No one can pretend that the existing law . . . is founded upon principle." [18] Like the English courts, Canadian courts have occasionally struggled, as Professor Klar has described, "to find words which can clearly explain why, on the basis of arbitrary policy choices, certain types of claims seem to be too remote and uncompensable" (L. N. Klar, Tort Law (5th ed. 2012), at p. 505 (emphasis in original)). In Beecham v. Hughes (1988), 27 B.C.L.R. (2d) 1 (C.A.), and Rhodes v. Canadian National Railway (1990), 75 D.L.R. (4th) 248 (B.C.C.A.), for example, the multi-faceted proximity analysis formalized in McLoughlin v. O'Brian found favour. In Beecham, Lambert J.A. wrote (at p. 43): . . . I would not put the entire emphasis on "causal proximity", to the exclusion of "temporal proximity", "geographical proximity" or "emotional proximity". I would try to balance them all. A close but foreseeable emotional bond, as between a parent and child, may compensate, in the determination of the composite answer on liability, for a more remote causal proximity, as where the parent is not present when the child is injured. [19] This Court has not, however, adopted either the primary/secondary victim distinction, or McLoughlin v. O'Brian's disaggregated proximity analysis. Rather, in Mustapha, recoverability of mental injury was viewed (at para. 3) as depending upon the claimant satisfying the criteria applicable to any successful action in negligence — that is, upon the claimant proving a duty of care, a breach, damage, and a legal and factual causal relationship between the breach and the damage. Each of these elements can pose a significant hurdle: not all claimants alleging mental injury will be in a relationship of proximity with defendants necessary to ground a duty of care; not all conduct resulting in mental harm will breach the standard of care; not all mental disturbances will amount to true "damage" qualifiying as mental injury, which is "serious and prolonged" and rises above the ordinary emotional disturbances that will occasionally afflict any member of civil society without violating his or her right to be free of negligently caused mental injury (Mustapha, at para. 9); and not all mental injury is caused, in fact or in law, by the defendant's negligent conduct. [24] It is also implicit in Mustapha that the ordinary duty of care analysis is to be applied to claims for negligently caused mental injury. With great respect to courts

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2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	*White v. Chief Constable of South Yorkshire Police* , [1999] 2 A.C. 455	SC	UK (HL)	[16] Further obstacles to recovery for mental injury arose in English law. In McLoughlin v. O'Brian, at pp. 419-21, Lord Wilberforce posited three considerations that could limit the boundaries of compensable "nervous shock": the class of persons whose claims should be recognized (often referred to as relational proximity), the proximity of such persons to the accident (locational, or geographical proximity), and the means by which the "shock" is caused (temporal proximity) (G. H. L. Fridman, The Law of Torts in Canada (3rd ed. 2010), at p. 326). Where claimants alleged mental injury arising out of a sudden traumatic event, later judgments further distinguished between a "primary" victim (who was directly involved as a participant) and a "secondary" victim (who witnessed physical injuries caused to others) (see Alcock v. Chief Constable of South Yorkshire Police, [1992] 1 A.C. 310 (H.L.); and Page v. Smith, [1996] 1 A.C. 155 (H.L.)). This distinction has, however, sometimes proven difficult to apply in practice (as shown by the English law's difficulty in categorizing the status of rescuers — see White v. Chief Constable of South Yorkshire Police, [1999] 2 A.C. 455 (H.L.)), and has been criticized as lacking foundation in principle, having no relevance to the justice of the claimant's case (A. Beever, Rediscovering the Law of Negligence (2007), at pp. 405-7; J. Stapleton, "In Restraint of Tort", in P. Birks, ed., The Frontiers of Liability (1994), vol. 2, 83, at p. 95; Mustapha v. Culligan of Canada Ltd. (2006), 84 O.R. (3d) 457 (C.A.), at para. 43). That this is so has never really been disputed. As Lord Hoffmann candidly acknowledged in White, "in this area of the law, the search for principle was called off in Alcock . . . . No one can pretend that the existing law . . . is founded upon principle."
2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	Tame v. New South Wales, [2002] HCA 35, 211 C.L.R. 317	SC	Australia	[17] Other Commonwealth courts have taken a different path. The High Court of Australia expressly rejected the categories delineated by the House of Lords, preferring a more flexible foreseeability of harm test (Tame v. New South Wales, [2002] HCA 35, 211 C.L.R. 317). In New Zealand, the primary/secondary victim distinction has not been definitively considered (S. Todd et al., The Law of Torts in New Zealand (5th ed. 2009), at pp. 182-84).
2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	*Hinz v. Berry* , [1970] 2 Q.B. 40	*lower-level court*	UK	[26] The origins of the putative requirement of showing a recognized psychiatric illness appear to lie in Lord Denning M.R.'s speech in Hinz v. Berry, [1970] 2 Q.B. 40 (C.A.), at p. 42: In English law no damages are awarded for grief or sorrow caused by a person's death. No damages are to be given for the worry about the children, or for the financial strain or stress, or the difficulties of adjusting to a new life. Damages are, however, recoverable for nervous shock, or, to put it in medical terms, for a recognisable psychiatric illness caused by the breach of duty by the defendant. This statement has been reiterated, albeit with some variation as to terminology. In McLoughlin v. O'Brian, at p. 431, for example, Lord Bridge described this hurdle as requiring "a positive psychiatric illness". It has also been variously referred to as a "genuine", "recognized" or "recognizable" psychiatric illness (Mulheron, at p. 81). [27] Howsoever the term is phrased, it is far from clear on the text of Hinz v. Berry that it was intended to impose upon claimants the burden of showing a positive expert diagnosis. At the very least, it is not obvious that Hinz v. Berry sought to download to expert psychiatric witnesses the trier of fact's task of determining whether the claimant sustained mental injury (Teff, at p. 53; Bélanger-Hardy, at pp. 607-11). The respondents' submission, therefore — that, by "recognizable psychiatric illness", it was intended that mental injury be "recognizable" to a psychiatrically trained expert witness, and not to an ordinary witness — is founded upon a shaky premise. [28] Despite some early resistance, however (e.g. McDermott v. Ramadanovic Estate (1988), 27 B.C.L.R. (2d) 45 (S.C.); Rhodes, per Southin J.A., concurring; Cox v. Fleming (1995), 15 B.C.L.R. (3d) 201 (C.A.); Mason v. Westside Cemeteries Ltd. (1996), 135 D.L.R. (4th) 361 (Ont. C.J. (Gen. Div.)); Flett v. Maxwell, [1996] B.C.J. No. 1455 (QL) (Prov. Ct. (Civ. Div.)), Canadian trial and appellate courts after Hinz v. Berry began to see the requirement of a "recognizable psychiatric illness" as conditioning recovery for mental injury upon the claimant adducing expert testimony verifying a condition recognizable to the expert (e.g. Vanek v. Great Atlantic & Pacific Co. of Canada (1999), 48 O.R. (3d) 228 (C.A.), at paras. 65-67; Healey v. Lakeridge Health Corp., 2011 ONCA 55, 103 O.R. (3d) 401; Frazer v. Haukioja, 2010 ONCA 249, 101 O.R. (3d) 528; Kotai v. "Queen of the North" (The), 2009 BCSC 1405, 70 C.C.L.T. (3d) 221; Young v. Borzoni, 2007 BCCA 16, 277 D.L.R. (4th) 685; Graham v. MacMillan, 2003 BCCA 90, 15 C.C.L.T. (3d) 155; Koerfer v. Davies, [1994] O.J. No. 1408 (QL) (C.A.); Duwyn v. Kaprielian (1978), 22 O.R. (2d) 736 (C.A.)). Similarly, despite some resistance elsewhere in the Commonwealth to restricting recovery for mental injury to claimants who can adduce such expert psychiatric evidence (N. J. Mullany and P. R. Handford, Tort Liability for Psychiatric Damage (1993), at p. 21), this threshold now prevails in the United Kingdom, Australia, and New Zealand (White, at p. 491; Tame, at paras. 193-94; van Soest v. Residual Health Management Unit, [1999] NZCA 206,

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	van Soest v. Residual Health Management Unit, [1999] NZCA 206, [2000] 1 N.Z.L.R. 179	lower-level court	New Zealand	[28] Despite some early resistance, however (e.g. McDermott v. Ramadanovic Estate (1988), 27 B.C.L.R. (2d) 45 (S.C.); Rhodes, per Southin J.A., concurring; Cox v. Fleming (1995), 15 B.C.L.R. (3d) 201 (C.A.); Mason v. Westside Cemeteries Ltd. (1996), 135 D.L.R. (4th) 361 (Ont. C.J. (Gen. Div.)); Flett v. Maxwell, [1996] B.C.J. No. 1455 (QL) (Prov. Ct. (Civ. Div.)), Canadian trial and appellate courts after Hinz v. Berry began to see the requirement of a "recognizable psychiatric illness" as conditioning recovery for mental injury upon the claimant adducing expert testimony verifying a condition recognizable to the expert (e.g. Vanek v. Great Atlantic & Pacific Co. of Canada (1999), 48 O.R. (3d) 228 (C.A.), at paras. 65-67; Healey v. Lakeridge Health Corp., 2011 ONCA 55, 103 O.R. (3d) 401; Frazer v. Haukioja, 2010 ONCA 249, 101 O.R. (3d) 528; Kotai v. "Queen of the North" (The), 2009 BCSC 1405, 70 C.C.L.T. (3d) 221; Young v. Borzoni, 2007 BCCA 16, 277 D.L.R. (4th) 685; Graham v. MacMillan, 2003 BCCA 90, 15 C.C.L.T. (3d) 155; Koerfer v. Davies, [1994] O.J. No. 1408 (QL) (C.A.); Duwyn v. Kaprielian (1978), 22 O.R. (2d) 736 (C.A.)). Similarly, despite some resistance elsewhere in the Commonwealth to restricting recovery for mental injury to claimants who can adduce such expert psychiatric evidence (N. J. Mullany and P. R. Handford, Tort Liability for Psychiatric Damage (1993), at p. 21), this threshold now prevails in the United Kingdom, Australia, and New Zealand (White, at p. 491; Tame, at paras. 193-94; van Soest v. Residual Health Management Unit, [1999] NZCA 206, [2000] 1 N.Z.L.R. 179, at para. 65).
2017	Saadati v. Moorhead	6/2/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16664/index.do	Saadati v. Moorhead, 2017 SCC 28, [2017] 1 S.C.R. 543	Brown J.	unanimous	British Columbia	Torts	C	referred to	Sutherland v. Hatton, [2002] EWCA Civ 76, [2002] 2 All E.R. 1	lower-level court	UK	[30] Usually, this has been done with reference to what has been said to represent a "considerable degree of international agreement on the classification of mental disorders and their diagnostic criteria", which are contained in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), published by the American Psychiatric Association, and the International Statistical Classification of Diseases and Related Health Problems ("ICD"), published by the World Health Organization (Mulheron, at p. 78, citing Sutherland v. Hatton, [2002] EWCA Civ 76, [2002] 2 All E.R. 1, per Hale L.J. (as she then was); see also Bélanger-Hardy, at p. 586). The DSM, now in its 5th edition (2013), stipulates diagnostic criteria for, and classifies, mental disorders, while the ICD, now in its 10th revision (1992), contains statistically based classifications of all diseases (including "mental and behavioural disorders").
2017	Ostiguy v. Allie	4/6/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16516/index.do	Ostiguy v. Allie, 2017 SCC 22, [2017] 1 S.C.R. 402	Côté J.	dissenting	Quebec	Prescription	R		Declaration of the Rights of Man and of the Citizen (1789), arts. II, XVII.	constitution	France	[105] The right of ownership occupies a primordial position among real rights in the C.C.Q. Its conceptual lineage can be traced back to the resurgence of Roman ideals of property law following the French Revolution. The Declaration of the Rights of Man and of the Citizen of 1789 — emblematic as it was of the rejection of the Ancien Régime — espoused a notion of property rights consistent with Roman ideals of sole ownership. Article II listed property as one of four natural rights that was imprescriptible. Article XVII described it as sacred and inviolable.
2017	Ostiguy v. Allie	4/6/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16516/index.do	Ostiguy v. Allie, 2017 SCC 22, [2017] 1 S.C.R. 402	Gascon J.	majority	Quebec	Prescription	R		Code Napoléon, art. 544.	statute	France	[25] Acquisitive prescription was once described as the patron of humankind (A. Mayrand, "Bonne foi et prescription par tiers acquéreur" (1942), 2 R. du B. 9, at p. 9). The drafters of the Code Napoléon, from which the drafters of the C.C.L.C. borrowed heavily, even considered that among civil law institutions, acquisitive prescription was [translation] "the most necessary for social order", finding that without its capacity for legalizing situations resulting from possession, "everything would be uncertain and confused" (F. J. J. Bigot de Préameneu, "Motifs exposés au Corps législatif sur la loi, titre XX, livre III du Code civil, relative à la Prescription", in Recueil des lois composant le Code civil (1804), vol. 9, 26, at pp. 27-29).
2017	Sabean v. Portage La Prairie Mutual Insurance Co.	1/27/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16361/index.do	Sabean v. Portage La Prairie Mutual Insurance Co., 2017 SCC 7, [2017] 1 S.C.R. 121	Karakatsanis J.	unanimous	Nova Scotia	Insurance	C	referred to	Parry v. Cleaver, [1970] A.C. 1	SC	UK (HL)	[32] In the tort context, the collateral benefits rule assists in fixing an award of damages. As a general rule, the compensation principle holds that an injured person should be compensated for the full amount of his or her loss but no more: Ratych v. Bloomer, [1990] 1 S.C.R. 940, at p. 948. Thus, some benefits received by an injured person as a result of the tort are deducted from a damages award in order to prevent overcompensation. However, the collateral benefits rule is an exception to this general principle. At common law, the collateral benefits rule acknowledges that it would be unfair to allow the tortfeasor to benefit from the insurance held by the plaintiff because he or she has paid premiums for the eventuality: Parry v. Cleaver, [1970] A.C. 1 (H.L.); Bradburn v. Great Western Railway Co. (1874), L.R. 10 Ex. 1.
2017	Ernst v. Alberta Energy Regulator	1/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16325/index.do?q=%22agencies+including+administrative+bodies+such+as+the+Board%22	Ernst v. Alberta Energy Regulator, 2017 SCC 1, [2017] 1 S.C.R. 3	Abella J.	concurring in the results	Alberta	Constitutional law	C	C	Sirros v. Moore, [1975] 1 Q.B. 118	lower-level court	UK	[116] Immunizing these judicial and quasi-judicial adjudicators from personal damages claims is grounded in attempts to protect their independence and impartiality, and to facilitate the proper and efficient administration of justice. In Canada (Attorney General) v. Slansky, [2015] 1 F.C.R. 81 (C.A.), at paras. 134-37, Mainville J.A. summarized the role that immunity plays for the judiciary: The principle of judicial independence has resulted in concomitant immunities, most notably (a) the immunity of a judge from suit and prosecution, and (b) the immunity of a judge from testifying about or otherwise justifying the reasons for a particular decision beyond those given in open court: MacKeigan v. Hickman, [1989] 2 S.C.R. 796 (MacKeigan), at page 830. The immunity of a judge from suit and prosecution has long been recognized as necessary to maintain public confidence in the judicial system: Garnett v. Ferrand (1827), 6 B. & C. 611, at pages 625-626, quoted approvingly in Morier et al. v. Rivard, [1985] 2 S.C.R. 716 (Morier), at page 737. The immunity serves to ensure that the judge is free in thought and independent in judgment: Morier, at pages 737-745. As noted by Lord Denning in Sirros v. Moore, [1975] 1 Q.B. 118 (C.A.), quoted approvingly in Morier, at page 739 and in R. v. Lippé, [1991] 2 S.C.R. 114, at pages 155-156: If the reason underlying this immunity is to ensure "that they may be free in thought and independent in judgment," it applies to every judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: "If I do this, shall I be liable to damages?" The additional immunity from accounting for or justifying judicial decisions beyond those reasons provided in open court also serves to ensure the independence of judges and to instil public confidence in the judicial process: MacKeigan, at pages 828-830. As noted by McLachlin J. (as she then was), at page 831 of that decision, "To entertain the demand that a judge testify before a civil body, an emanation of the legislature or executive, on how and why he or she made his or her decision would be to strike at the most sacrosanct core of judicial independence." It is important to bear in mind that these immunities are there not for the benefit of individual judges; rather they exist for the benefit of the community as a whole. Indeed, an independent judiciary free from improper influence is an essential component of a free and democratic society.
2017	Ernst v. Alberta Energy Regulator	1/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16325/index.do?q=%22agencies+including+administrative+bodies+such+as+the+Board%22	Ernst v. Alberta Energy Regulator, 2017 SCC 1, [2017] 1 S.C.R. 3	McLachlin C.J. and Moldaver and Brown JJ. (dissenting)	dissenting	Alberta	Constitutional law	C	D	Sirros v. Moore, [1975] 1 Q.B. 118	lower-level court	UK	[171] We acknowledge that our common law recognizes absolute immunity from personal liability for judges in the exercise of their adjudicative function. This is necessary to maintain judicial independence and impartiality (Sirros v. Moore, [1975] 1 Q.B. 118 (C.A.); Gonzalez v. British Columbia (Ministry of Attorney General), 2009 BCSC 639, 95 B.C.L.R. (4th) 185; Taylor v. Canada (Attorney General), [2000] 3 F.C. 298 (C.A.), leave to appeal refused, [2000] 2 S.C.R. xiv). Such immunity is not inconsistent with the Charter , as judicial immunity itself is a fundamental constitutional principle (Taylor, at para. 57). Similarly, we anticipate that compelling good governance concerns rendering Charter damages inappropriate or unjust will exist where the state actor has breached a Charter right while performing an adjudicative function.
2017	Ernst v. Alberta Energy Regulator	1/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16325/index.do?q=%22agencies+including+administrative+bodies+such+as+the+Board%22	Ernst v. Alberta Energy Regulator, 2017 SCC 1, [2017] 1 S.C.R. 3	Cromwell J.	majority	Alberta	Constitutional law	C	referred to	Crispin v. Registrar of the District Court, [1986] 2 N.Z.L.R. 246	SC	New Zealand	[50] The strong common law immunity of judges from civil suits has been extended by common law and statute to many quasi-judicial bodies and agencies including administrative bodies such as the Board, as aptly articulated by my colleague Justice Abella in her reasons; and see also, e.g., Morier v. Rivard, [1985] 2 S.C.R. 716; Crispin v. Registrar of the District Court, [1986] 2 N.Z.L.R. 246 (H.C.), at p. 252; Sirros v. Moore, [1975] 1 Q.B. 118 (C.A.), at p. 136, cited by Morier, at pp. 739-40; Hazel v. Ainsworth Engineered Corp., 2009 HRTO 2180, 69 C.H.R.R. D/155, at para. 84; Agnew v. Ontario Assn. of Architects (1987), 64 O.R. (2d) 8 (Div. Ct.); Ermina v. Canada (Minister of Citizenship and Immigration) (1998), 167 D.L.R. (4th) 764 (F.C.T.D.); Cartier v. Nairn, 2009 HRTO 2208, 8 Admin. L.R. (5th) 150; Courts of Justice Act, R.S.O. 1990, c. C.43; Provincial Court Act, R.S.A. 2000, c. P-31; Court of Queen's Bench Act, R.S.A. 2000, c. C-31; A. A. Olowofoyeku, Suing Judges: A Study of Judicial Immunity (1993), at pp. 1-32; P. W. Hogg, P. J. Monahan and W. K. Wright, Liability of the Crown (4th ed. 2011), at p. 289. This immunity is broad and has been applied even in the face of alleged human rights infringements: Hazel; Cartier; Gonzalez v. British Columbia (Ministry of Attorney General), 2009 BCSC 639, 95 B.C.L.R. (4th) 185; Taylor v. Canada (Attorney General), [2000] 3 F.C. 298 (C.A.), leave to appeal refused, [2000] 2 S.C.R. xiv. The common law is a source of "practical wisdom" about exposing quasi-judicial and regulatory decision-makers such as the Board to damages claims. And the policy reasons that have led legislatures across Canada to enact many statutory immunity clauses, like the one that protects this Board, may also inform the analysis of countervailing considerations relating to good governance. Of course, these sorts of statutory provisions cannot override constitutional rights, but the policy reasons on which they are based can and should be taken into account by a reviewing court.

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2017	Ernst v. Alberta Energy Regulator	1/13/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16325/index.do?q=%22agencies+including+administrative+bodies+such+as+the+Board%22	Ernst v. Alberta Energy Regulator, 2017 SCC 1, [2017] 1 S.C.R. 3	Cromwell J.	majority	Alberta	Constitutional law	C	referred to	Sirros v. Moore, [1975] 1 Q.B. 118	lower-level court	UK	[50] The strong common law immunity of judges from civil suits has been extended by common law and statute to many quasi-judicial bodies and agencies including administrative bodies such as the Board, as aptly articulated by my colleague Justice Abella in her reasons; and see also, e.g., Morier v. Rivard, [1985] 2 S.C.R. 716; Crispin v. Registrar of the District Court, [1986] 2 N.Z.L.R. 246 (H.C.), at p. 252; Sirros v. Moore, [1975] 1 Q.B. 118 (C.A.), at p. 136, cited by Morier, at pp. 739-40; Hazel v. Ainsworth Engineered Corp., 2009 HRTO 2180, 69 C.H.R.R. D/155, at para. 84; Agnew v. Ontario Assn. of Architects (1987), 64 O.R. (2d) 8 (Div. Ct.); Ermina v. Canada (Minister of Citizenship and Immigration) (1998), 167 D.L.R. (4th) 764 (F.C.T.D.); Cartier v. Nairn, 2009 HRTO 2208, 8 Admin. L.R. (5th) 150; Courts of Justice Act, R.S.O. 1990, c. C.43; Provincial Court Act, R.S.A. 2000, c. P-31; Court of Queen's Bench Act, R.S.A. 2000, c. C-31; A. A. Olowofoyeku, Suing Judges: A Study of Judicial Immunity (1993), at pp. 1-32; P. W. Hogg, P. J. Monahan and W. K. Wright, Liability of the Crown (4th ed. 2011), at p. 289. This immunity is broad and has been applied even in the face of alleged human rights infringements: Hazel; Cartier; Gonzalez v. British Columbia (Ministry of Attorney General), 2009 BCSC 639, 95 B.C.L.R. (4th) 185; Taylor v. Canada (Attorney General), [2000] 3 F.C. 298 (C.A.), leave to appeal refused, [2000] 2 S.C.R. xiv. The common law is a source of "practical wisdom" about exposing quasi-judicial and regulatory decision-makers such as the Board to damages claims. And the policy reasons that have led legislatures across Canada to enact many statutory immunity clauses, like the one that protects this Board, may also inform the analysis of countervailing considerations relating to good governance. Of course, these sorts of statutory provisions cannot override constitutional rights, but the policy reasons on which they are based can and should be taken into account by a reviewing court.
2016	Canada (Attorney General) v. Fairmont Hotels Inc.	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16281/index.do	Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56, [2016] 2 S.C.R. 720	Abella J. (dissenting)	dissenting	Ontario	Commercial law	C	D	*Swainland Builders Ltd. v. Freehold Properties Ltd.* , [2002] EWCA Civ 560	*lower-level court*	UK	[61] While parties seeking rectification must provide evidence of what they actually intended, they are not required to provide "an expressed antecedent agreement in order to found a successful claim": Peter Pan Drive-In Ltd., at p. 296. Courts have long recognized that "the exact form of words in which the common intention is to be expressed is immaterial" (McLean v. McLean (2013), 118 O.R. (3d) 216 (C.A.), at para. 46, citing Swainland Builders Ltd. v. Freehold Properties Ltd., [2002] EWCA Civ 560, at para. 34 (BAILII); see also Co-operative Insurance Society Ltd. v. Centremoor Ltd., [1983] 2 E.G.L.R. 52 (C.A.), at p. 54, per Dillon L.J.; Snell's Equity (33rd ed. 2015), at pp. 426-37). In other words, as Professor Swan explains:
2016	Canada (Attorney General) v. Fairmont Hotels Inc.	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16281/index.do	Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56, [2016] 2 S.C.R. 720	Abella J. (dissenting)	dissenting	Ontario	Commercial law	C	D	*Co-operative Insurance Society Ltd v. Centremoor Ltd.* , [1983] 2 E.G.L.R. 52	*lower-level court*	UK	[61] While parties seeking rectification must provide evidence of what they actually intended, they are not required to provide "an expressed antecedent agreement in order to found a successful claim": Peter Pan Drive-In Ltd., at p. 296. Courts have long recognized that "the exact form of words in which the common intention is to be expressed is immaterial" (McLean v. McLean (2013), 118 O.R. (3d) 216 (C.A.), at para. 46, citing Swainland Builders Ltd. v. Freehold Properties Ltd., [2002] EWCA Civ 560, at para. 34 (BAILII); see also Co-operative Insurance Society Ltd. v. Centremoor Ltd., [1983] 2 E.G.L.R. 52 (C.A.), at p. 54, per Dillon L.J.; Snell's Equity (33rd ed. 2015), at pp. 426-37). In other words, as Professor Swan explains: . . . it is "sufficient if [the party] establishes a common continuing intention in regard to the particular provision in question". There is no need to hedge the remedy about with requirements that are no more than technical and to require precise agreement on every point in the actual agreement to prevent the court from giving relief where it is clearly justified in doing so to prevent injustice. [Footnote omitted; p. 773.]
2016	Canada (Attorney General) v. Fairmont Hotels Inc.	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16281/index.do	Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56, [2016] 2 S.C.R. 720	Brown J.	majority	Ontario	Commercial law	C	referred to	Re Slocock's Will Trusts, [1979] 1 All E.R. 358	lower-level court	UK	[17] In Juliar, the parties had, by a written agreement and in the course of the restructuring of a family business, transferred shares to a corporation in exchange for promissory notes for an amount equal to what the parties believed to be the value of the shares. Upon discovering that the promissory notes were worth more than the shares' value (resulting in the taxpaying party being assessed as having received a taxable deemed dividend), the parties sought rectification in order to convert what had originally been structured as a shares-for-promissory notes transfer into a shares-for-shares transfer (which would have been tax-deferred). For the Court of Appeal, and citing the decision of Re Slocock's Will Trusts, [1979] 1 All E.R. 358 (Ch. D.), Austin J.A. held that the written agreement could be rectified as sought, citing the trial judge's finding that the parties had "a common . . . continuing intention" to transfer shares in a way that would avoid immediate tax liability (para. 19). In order to achieve that objective, Austin J.A. said, the deal "had to be . . . a shares for shares transaction" (para. 25). [20] Secondly, even on its own terms, Juliar's expansion of the availability of rectification cannot be justified. By way of explanation, in the case upon which Austin J.A. relied, Re Slocock's Will Trusts, the plaintiff was the life beneficiary of her father's residuary estate, with the capital and income after her death to be paid to her issue as she should appoint. She appointed her children to take after her death. Later, lands owned by her father's family were sold to a development company, with the proceeds to be received and distributed by a management company in which the plaintiff received an allotment of shares, proportionate to her interest in the proceeds. After taking legal advice, the plaintiff and her children decided that she should surrender by deed her life interest in those proceeds as well as her shares in the management company (pp. 359-60). The deed, however, did not faithfully record the parties' agreement, because it released only the plaintiff's shares in the management company, and not her beneficial interest in the proceeds of sale (p. 360). [21] While the outcome sought by the plaintiff and her children would have also secured a tax advantage for the children (specifically, avoidance of capital transfer tax upon the plaintiff's death), Graham J. granted rectification not to secure that tax advantage, but on the strength of his finding (Re Slocock's Will Trusts, at p. 361) that the deed as recorded omitted the proceeds of the sale of the lands, thereby failing to record fully the terms of the parties' original agreement. This was, therefore, an unremarkable application of rectification to cure an omission in the instrument recording an antecedent agreement. Nothing in Re Slocock's Will Trusts justifies Juliar's modified threshold for granting rectification solely to avoid an unanticipated tax liability. Re Slocock's Will Trusts simply confirmed that, provided that the underlying mechanism by which the parties had agreed to seek a particular tax outcome was omitted or incorrectly recorded, and provided that all other conditions for granting rectification are satisfied, a court retains discretion to grant rectification. The focus of the inquiry remained properly fixed on whether that originally intended mechanism was properly recorded, and not on whether it achieved the desired tax outcome or resulted in a party incurring an undesired or unexpected tax outcome. [22] Subsequent English authorities confirm that Re Slocock [24] This point goes to the respondents' submission that "[r]ectification is necessary to . . . avoid unjust enrichment of the Crown" (R.F., at para. 76), echoing the Court of Appeal's concern in Juliar (at paras. 33-34, quoting Re Slocock's Will Trusts, at p. 363) for the Crown's "accidental and unexpected windfall" and the chambers judge's concern in the present appeal (at para. 44) about the CRA's "unintended gain" and (at para. 52) the Crown's "tax windfall". With respect, the premise underlying such concerns misses the point of the inquiry, inasmuch as it concerns the CRA. Tax consequences, including those which follow an assessment by the CRA, flow from freely chosen legal arrangements, not from the intended or unintended effects of those arrangements, whether upon the taxpayer or upon the public treasury. The proper inquiry is no more into the "windfall" for the public treasury when a taxpayer loses a benefit than it is into the "windfall" for the taxpayer when that taxpayer secures a benefit. The inquiry, rather, is into what the taxpayer agreed to do. Juliar erroneously departed from this principle, and in so doing allowed for impermissible retroactive tax planning: Harvest Operations Corp. v. Canada (Attorney General), 2015 ABQB 327,
2016	Canada (Attorney General) v. Fairmont Hotels Inc.	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16281/index.do	Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56, [2016] 2 S.C.R. 720	Brown J.	majority	Ontario	Commercial law	C	referred to	*Racal Group Services Ltd. v. Ashmore* (1995), 68 T.C. 86	*lower-level court*	UK	[22] Subsequent English authorities confirm that Re Slocock's Will Trusts created no distinct threshold for granting rectification in the tax context. In Racal Group Services Ltd. v. Ashmore (1995), 68 T.C. 86 (C.A.), the English Court of Appeal made clear that a mere intention to obtain a fiscal objective is insufficient to ground a claim in rectification: ". . . the court cannot rectify a document merely on the ground that it failed to achieve the grantor's fiscal objective. The specific intention of the grantor as to how the objective was to be achieved must be shown if the court is to order rectification" (p. 106). Similarly, the court in Ashcroft v. Barnsdale, [2010] EWHC 1948, [2010] S.T.C. 2544 (Ch. D.), held that it could not rectify an instrument "merely because it fails to achieve the fiscal objectives of the parties to it": para. 17 (emphasis in original). See also D. Hodge, Rectification: The Modern Law and Practice Governing Claims for Rectification for Mistake (2nd ed. 2016), at para. 4-145: A mere misapprehension as to the tax consequences of executing a particular document will not justify an order for its rectification. The specific intention of the parties (or the grantor or covenantor) as to how the objective was to be achieved must be shown if the court is to order rectification. [Emphasis deleted.]
2016	Canada (Attorney General) v. Fairmont Hotels Inc.	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16281/index.do	Canada (Attorney General) v. Fairmont Hotels Inc., 2016 SCC 56, [2016] 2 S.C.R. 720	Brown J.	majority	Ontario	Commercial law	C	referred to	Ashcroft v. Barnsdale, [2010] EWHC 1948, [2010] S.T.C. 2544		UK	[22] Subsequent English authorities confirm that Re Slocock's Will Trusts created no distinct threshold for granting rectification in the tax context. In Racal Group Services Ltd. v. Ashmore (1995), 68 T.C. 86 (C.A.), the English Court of Appeal made clear that a mere intention to obtain a fiscal objective is insufficient to ground a claim in rectification: ". . . the court cannot rectify a document merely on the ground that it failed to achieve the grantor's fiscal objective. The specific intention of the grantor as to how the objective was to be achieved must be shown if the court is to order rectification" (p. 106). Similarly, the court in Ashcroft v. Barnsdale, [2010] EWHC 1948, [2010] S.T.C. 2544 (Ch. D.), held that it could not rectify an instrument "merely because it fails to achieve the fiscal objectives of the parties to it": para. 17 (emphasis in original). See also D. Hodge, Rectification: The Modern Law and Practice Governing Claims for Rectification for Mistake (2nd ed. 2016), at para. 4-145: A mere misapprehension as to the tax consequences of executing a particular document will not justify an order for its rectification. The specific intention of the parties (or the grantor or covenantor) as to how the objective was to be achieved must be shown if the court is to order rectification. [Emphasis deleted.]
2016	Jean Coutu Group (PJC) Inc. v. Canada (Attorney General)	12/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16280/index.do	Jean Coutu Group (PJC) Inc. v. Canada (Attorney General), 2016 SCC 55, [2016] 2 S.C.R. 670	Wagner J.	majority	Quebec	Commercial law	R		Code Napoléon, art. 1156	statute	France	[45] Rectification under Quebec civil law stems from principles of contract formation and interpretation, as codified in the C.C.Q., particularly art. 1425. A similar provision appeared in its predecessor, the Civil Code of Lower Canada (art. 1013), and in the Code Napoléon (art. 1156), on which the latter was partly based.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2016	Lizotte v. Aviva Insurance Company of Canada	11/25/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16250/index.do	Lizotte v. Aviva Insurance Company of Canada, 2016 SCC 52, [2016] 2 S.C.R. 521	Gascon J	unanimous	Quebec	Law of professions	C	referred to	*Susan Hosiery Ltd. v. Minister of National Revenue* , [1969] 2 Ex. C.R. 27	*lower-level court*	UK	[20] Litigation privilege is a common law rule of English origin: Lyell v. Kennedy (No. 2) (1883), 9 App. Cas. 81 (H.L.). It was introduced to Canada, including Quebec, in the 20th century as a privilege linked to solicitor-client privilege, which at the time was considered to be a rule of evidence that was necessary to ensure the proper conduct of trials: A. Cardinal, "Quelques aspects modernes du secret professionnel de l'avocat" (1984), 44 R. du B. 237, at pp. 266-67. In an oft-cited case, Jackett P. of the former Exchequer Court of Canada explained the purpose of litigation privilege, once known as the lawyer's brief rule, as follows: Turning to the "lawyer's brief" rule, the reason for the rule is, obviously, that, under our adversary system of litigation, a lawyer's preparation of his client's case must not be inhibited by the possibility that the materials that he prepares can be taken out of his file and presented to the court in a manner other than that contemplated when they were prepared. What would aid in determining the truth when presented in the manner contemplated by the solicitor who directed its preparation might well be used to create a distortion of the truth to the prejudice of the client when presented by someone adverse in interest who did not understand what gave rise to its preparation. If lawyers were entitled to dip into each other's briefs by means of the discovery process, the straightforward preparation of cases for trial would develop into a most unsatisfactory travesty of our present system. [Emphasis added.] (Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 27, at pp. 33-34)
2016	Lizotte v. Aviva Insurance Company of Canada	11/25/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16250/index.do	Lizotte v. Aviva Insurance Company of Canada, 2016 SCC 52, [2016] 2 S.C.R. 521	Gascon J	unanimous	Quebec	Law of professions	C	referred to	*Hickman v. Taylor* , 329 U.S. 495 (1947)	*SC*	US	[53] I would add that any uncertainty in this regard could have a chilling effect on parties preparing for litigation, who may fear that documents otherwise covered by litigation privilege could be made public. The United States Supreme Court gave a good description of this chilling effect, which litigation privilege (referred to as the "work product doctrine") is in fact meant to avoid: Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways — aptly though roughly termed by the Circuit Court of Appeals in this case as the "work product of the lawyer." Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served. [Emphasis added.] (Hickman v. Taylor, 329 U.S. 495 (1947), at pp. 510-11)
2016	Benhaim v. St-Germain	11/10/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16224/index.do	Benhaim v. St-Germain, 2016 SCC 48, [2016] 2 S.C.R. 352	Wagner J.	majority	Quebec	Torts	C	referred to	McGhee v. National Coal Board, [1973] 1 W.L.R. 1	SC	UK (HL)	[46] I will begin by discussing Snell, in which Sopinka J. examined developments in English tort law that purported to reverse the onus of proving causation in some circumstances.[2] Traditionally, the plaintiff in a common law negligence claim had to prove on a balance of probabilities that, but for the defendant's negligent conduct, the plaintiff would not have been injured. Sopinka J. stated that his task was "to determine whether a departure from well-established principles is necessary for the resolution of this appeal" (p. 320). Sopinka J. concluded that such a departure was not warranted, provided that the traditional principles are not applied in an overly rigid manner (p. 328). lábjegyzet [2] McGhee v. National Coal Board, [1973] 1 W.L.R. 1 (H.L.); Wilsher v. Essex Area Health Authority, [1988] 2 W.L.R. 557 (H.L.).
2016	Benhaim v. St-Germain	11/10/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16224/index.do	Benhaim v. St-Germain, 2016 SCC 48, [2016] 2 S.C.R. 352	Wagner J.	majority	Quebec	Torts	C	referred to	Wilsher v. Essex Area Health Authority, [1988] 2 W.L.R. 557	SC	UK (HL)	[46] I will begin by discussing Snell, in which Sopinka J. examined developments in English tort law that purported to reverse the onus of proving causation in some circumstances.[2] Traditionally, the plaintiff in a common law negligence claim had to prove on a balance of probabilities that, but for the defendant's negligent conduct, the plaintiff would not have been injured. Sopinka J. stated that his task was "to determine whether a departure from well-established principles is necessary for the resolution of this appeal" (p. 320). Sopinka J. concluded that such a departure was not warranted, provided that the traditional principles are not applied in an overly rigid manner (p. 328). lábjegyzet [2] McGhee v. National Coal Board, [1973] 1 W.L.R. 1 (H.L.); Wilsher v. Essex Area Health Authority, [1988] 2 W.L.R. 557 (H.L.).
2016	Benhaim v. St-Germain	11/10/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16224/index.do	Benhaim v. St-Germain, 2016 SCC 48, [2016] 2 S.C.R. 352	Wagner J.	majority	Quebec	Torts	C	referred to	Sentilles v. Inter-Caribbean Shipping Corp., 361 U.S. 107 (1959)	SC	US	[47] First, Sopinka J. held that it is not necessary that the plaintiff adduce expert scientific or medical evidence definitively supporting the plaintiff's theory of causation, as "[c]ausation need not be determined by scientific precision" (p. 328; see also pp. 330-31). This is because the law requires proof of causation only on a balance of probabilities, whereas scientific or medical experts often require a higher degree of certainty before drawing conclusions on causation (p. 330). Simply put, scientific causation and factual causation for legal purposes are two different things. Factual causation for legal purposes is a matter for the trier of fact, not for the expert witnesses, to decide: Laferrière v. Lawson, [1991] 1 S.C.R. 541, at pp. 607-8; see also Sentilles v. Inter-Caribbean Shipping Corp., 361 U.S. 107 (1959), at pp. 109-10.
2016	Morasse v. Nadeau-Dubois	10/27/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16202/index.do	Morasse v. Nadeau-Dubois, 2016 SCC 44, [2016] 2 S.C.R. 232	Wagner J. (dissenting)	dissenting	Quebec	Civil procedure	C	D	*Attorney-General v. Times Newspapers Ltd.* , [1973] 3 All E.R. 54	*SC*	UK (HL)	[107] The actus reus under the first portion of art. 50 para. 1 C.C.P. is disobeying any process or order of a court or of a judge thereof. By contrast, the actus reus contemplated by the final portion of that provision consists of any action that interferes or tends to interfere with the orderly administration of justice, or that impairs or tends to impair the authority or dignity of the court (Baxter, at p. 396; B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 S.C.R. 214, per Dickson C.J.; Attorney-General of Quebec v. Hebert, [1967] 2 C.C.C. 111 (Que. Q.B.), at p. 131, per Tremblay C.J.Q.). The danger of prejudice to the administration of justice or to the authority of the court must be serious, real or substantial (Attorney-General v. Times Newspapers Ltd., [1973] 3 All E.R. 54 (H.L.), at pp. 66-67, quoted in R. v. Kopyto (1987), 62 O.R. (2d) 449 (C.A.), at p. 512, per Dubin J.A., dissenting in part). Inciting and encouraging others to disobey any process or order can constitute the actus reus of the offence defined in the final portion of art. 50 para. 1 C.C.P. (Attorney-General of Quebec v. Charbonneau (1972), 13 C.C.C. (2d) 226 (Que. C.A.); Boon-Strachan Coal Co. v. Campbell, [1981] C.S. 923; P.-A. Gendreau et al., L'injonction (1998), at p. 356).
2016	Morasse v. Nadeau-Dubois	10/27/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16202/index.do	Morasse v. Nadeau-Dubois, 2016 SCC 44, [2016] 2 S.C.R. 232	Abella and Gascon JJ.	majority	Quebec	Civil procedure	C	referred to	*Attorney-General v. Times Newspapers Ltd.* , [1973] 3 All E.R. 54	*SC*	UK (HL)	[27] The second branch of art. 50 para. 1 is different. The actus reus is made out where a person "acts in such a way as to interfere with the orderly administration of justice" or "to impair the authority or dignity of the court". The acts done, or the words complained of must either succeed in doing so, or create a serious or substantial risk of having this effect: Adrian Popovici, L'outrage au tribunal (1977), at p. 41; R. v. Kopyto (1987), 62 O.R. (2d) 449 (C.A.), at p. 512, citing Attorney-General v. Times Newspapers Ltd., [1973] 3 All E.R. 54 (H.L.), at pp. 66-67, per Lord Morris of Borth-y-Gest. Encouraging third parties to breach a court order is just one example of what may constitute the actus reus for this branch of civil contempt: Denis Ferland, "La Cour suprême et l'outrage au tribunal en matière d'injonction: Baxter Travenol Laboratories of Canada Ltd. c. Cutter (Canada) Ltd." (1985), 45 R. du B. 462, at p. 464; Borrie & Lowe: The Law of Contempt (4th ed. 2010), at p. 145.
2016	Endean v. British Columbia	10/20/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16189/index.do	Endean v. British Columbia, 2016 SCC 42, [2016] 2 S.C.R. 162	Wagner J.	concurring	British Columbia	Courts	C	referred to	Inc. v. Virginia, 448 U.S. 555 (1980)	SC	US	[94] As "surrogates for the public", the media play a central role in ensuring that the public can access information about the courts: Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980), at p. 573; Edmonton Journal, at p. 1360. Open access to information about our courts is the public's right, but "[p]ractically speaking, this information can only be obtained from the newspapers or other media": Edmonton Journal, at p. 1340. While the decision to sit outside of the judges' home provinces does not preclude the media from attending and reporting on these cases, this does not mean that the decision does not affect the media's ability to report on these cases.
2016	Canada (Attorney General) v. Igloo Vikski Inc.	9/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16146/index.do#_ftnref1	[2016] 2 SCR 80	Brown J.	majority	Federal Court of Appeal	Customs and excise	C	referred to	Miller v. Jackson, [1977] 1 Q.B. 966	lower-level court	UK	[1] In wintertime ice hockey is the delight of everyone.[1] Across the country, countless players of all ages take to ice rinks and frozen ponds daily to shoot pucks at the net. Often the puck is stopped or turned aside by a goaltender blocking it with a blocker or catching it with a catcher. This is notoriously difficult business.[2] The goaltender's attention must remain fixed on the play, and not on off-ice matters. His or her focus must not drift to thoughts of the crowd, missed shots or taunts from opponents. And, certainly, the goaltender should strain to avoid being distracted by the question before the Court in this appeal — being whether, for customs tariff classification purposes, he or she blocks and catches the puck with a "glove, mitten or mitt", or with an "article of plastics". lábjegyzet [1] "In summertime village cricket is the delight of everyone" (Miller v. Jackson, [1977] 1 Q.B. 966 (C.A.), at p. 976, per Lord Denning M.R.).
2016	Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.	9/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16121/index.do	Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co., 2016 SCC 37, [2016] 2 S.C.R. 23	Cromwell J.	concurring in the results	Alberta	Insurance	C	referred to	Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570	SC	UK (HL)	[106] I accept, of course, that standard form contracts generally do not have relevant surrounding circumstances relating to their negotiation because there was in no real sense any negotiation of their terms. However, standard form contracts, like all contracts, have many other surrounding circumstances: they have a purpose, they create a relationship of a particular nature and they frequently operate within a particular market or industry. These factors are all part of the context — of the surrounding circumstances — that must be taken into account in interpreting the text of the contract. As Lord Wilberforce put it in a passage cited with approval in Sattva, "In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating": Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570 (H.L.), at p. 574, quoted in Sattva, at para. 47. This point is further developed in a short passage from Investors Compensation Scheme Ltd. v. West Bromwich Building Society, [1998] 1 All E.R. 98 (H.L.), also quoted by the Court in Sattva, at para. 48: The meaning which a document . . . would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2016	Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.	9/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16121/index.do	Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co., 2016 SCC 37, [2016] 2 S.C.R. 23	Cromwell J.	concurring in the results	Alberta	Insurance		referred to	*Investors Compensation Scheme Ltd. v. West Bromwich Building Society* , [1998] 1 All E.R. 98	SC	UK (HL)	[106] I accept, of course, that standard form contracts generally do not have relevant surrounding circumstances relating to their negotiation because there was in no real sense any negotiation of their terms. However, standard form contracts, like all contracts, have many other surrounding circumstances: they have a purpose, they create a relationship of a particular nature and they frequently operate within a particular market or industry. These factors are all part of the context — of the surrounding circumstances — that must be taken into account in interpreting the text of the contract. As Lord Wilberforce put it in a passage cited with approval in Sattva, "In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating": Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570 (H.L.), at p. 574, quoted in Sattva, at para. 47. This point is further developed in a short passage from Investors Compensation Scheme Ltd. v. West Bromwich Building Society, [1998] 1 All E.R. 98 (H.L.), also quoted by the Court in Sattva, at para. 48: The meaning which a document . . . would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]
2016	R. v. K.R.J.	7/21/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16069/index.do	R. v. K.R.J., 2016 SCC 31, [2016] 1 S.C.R. 906	Brown J. (dissenting in part)	dissenting	British Columbia	Constitutional law	C	D	*New Jersey v. T.L.O.* , 469 U.S. 325 (1985)	*SC*	US	[160] Balancing these deleterious and salutary effects at the proportionality stage of the s. 1 analysis entails, as the majority recognizes, "difficult value judgments" (para. 79). This is never a "neutral utilitarian calculus": New Jersey v. T.L.O., 469 U.S. 325 (1985), at p. 369, per Brennan J., dissenting in part. Despite claims to the contrary (see D. M. Beatty, The Ultimate Rule of Law (2004), at pp. 166-69; A. Barak, "Proportionality and Principled Balancing" (2010), 4 L. & Ethics Hum. Rts. 1 (abstract)), undertaking a proportionality analysis does not entail making a truly objective calculation, because it requires the court to weigh incommensurables — in this case, to weigh the deleterious impact on the sexual offender and on the rule of law against the possible benefit of protecting children from sexual offenders.
2016	R. v. K.R.J.	7/21/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16069/index.do	R. v. K.R.J., 2016 SCC 31, [2016] 1 S.C.R. 906	Karakatsanis J.	majority	British Columbia	Constitutional law	C	referred to	*Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.* , [1975] A.C. 591	*SC*	UK (HL)	[23] This constitutional aversion to retrospective criminal laws is in part motivated by the desire to safeguard the rule of law. As Lord Diplock put it, "acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it" (Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., [1975] A.C. 591 (H.L.), at p. 638). One author expressed the rule of law implications of retrospective laws in these terms: According to the ideal of the rule of law, the law must be such that those subject to it can reliably be guided by it, either to avoid violating it or to build the legal consequences of having violated it into their thinking about what future actions may be open to them. People must be able to find out what the law is and to factor it into their practical deliberations. The law must avoid taking people by surprise, ambushing them, putting them into conflict with its requirements in such a way as to defeat their expectations and frustrate their plans. (J. Gardner, "Introduction", in H. L. A. Hart, Punishment and Responsibility: Essays in the Philosophy of Law (2nd ed. 2008), xiii, at p. xxxvii)
2016	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP	7/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16063/index.do	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP, 2016 SCC 30, [2016] 1 S.C.R. 851	Côté J. (dissenting)	dissenting	Ontario	Private international law	C	D	Brinkibon Ltd. v. Stahag Stahl und Stahlwarenhandelsgesellschaft m.b.H., [1983] 2 A.C. 34	SC	UK (HL)	[79] The only outstanding issue, then, is where this notice would have been provided. In Ontario, it is well established that when acceptance of a contract is transmitted instantaneously, acceptance will be considered notified in the place where it is received: Eastern Power Ltd. v. Azienda Comunale Energia & Ambiente (1999), 178 D.L.R. (4th) 409 (Ont. C.A.), at paras. 23 and 27-29, leave to appeal refused, [2000] 1 S.C.R. xi, citing Brinkibon Ltd. v. Stahag Stahl und Stahlwarenhandelsgesellschaft m.b.H., [1983] 2 A.C. 34 (H.L.); Inukshuk Wireless Partnership v. 4253311 Canada Inc., 2013 ONSC 5631, 117 O.R. (3d) 206, at paras. 25-29; Christmas v. Fort McKay First Nation, 2014 ONSC 373, 119 O.R. (3d) 21, at para. 18.
2016	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP	7/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16063/index.do	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP, 2016 SCC 30, [2016] 1 S.C.R. 851	Côté J. (dissenting)	dissenting	Ontario	Private international law	C	D	White v. Jones, [1995] 2 A.C. 207	SC	UK (HL)	[94] On the basis of what was alleged in the statement of claim, Van Breda appears to represent this kind of case. However, such a situation can also occur in the context of providing legal services. For instance, if a solicitor is instructed by a testator to make changes to a will and the solicitor neglectfully fails to make the changes before the testator dies, the would-be beneficiaries may sue in tort: Earl v. Wilhelm, 2000 SKCA 1, 183 D.L.R. (4th) 45, at paras. 32-42; White v. Jones, [1995] 2 A.C. 207 (H.L.), at pp. 259-60 and 265-66; see also Whittingham v. Crease & Co. (1978), 88 D.L.R. (3d) 353 (B.C.S.C.). [95] In these cases, the contract is at the very root of the defendant's liability in tort. The contract does not simply contribute to the factual circumstances in which an entirely separate tort is committed. Rather, the defendant's breach of contract and his tort are indissociable. The duty of care owed to the third party beneficiaries flows immediately from that contractual relationship: White, at pp. 274-76, per Lord Browne-Wilkinson, cited approvingly in Earl, at paras. 39-41. Moreover, in these cases, the defendant in tort will necessarily be a party to the contract formed in that jurisdiction, further strengthening that forum's connection to the dispute. Finally, it would fly in the face of order and fairness to allow a party to the contract to sue the defendant in the jurisdiction where the contract was formed, but to deny that same right to the third party beneficiary suing that same defendant in tort.
2016	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP	7/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16063/index.do	Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP, 2016 SCC 30, [2016] 1 S.C.R. 851	Côté J. (dissenting)	dissenting	Ontario	Private international law	R		European Communities. Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] O.J. L. 12/1, art. 5(1), (3).	international	EU	[114] For its part, the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2001] O.J. L. 12/1 (the "Brussels Regulation I"), only provides subject matter jurisdiction over a claim "in matters relating to tort" in the courts "for the place where the harmful event occurred or may occur": art. 5(3). The Brussels Regulation I is an important international benchmark, as it applies to all European Community Member States with the exception of Denmark, in cases where the defendant is domiciled in any one of those Member States: see J. Fawcett and J. Carruthers, Cheshire, North & Fawcett Private International Law (14th ed. 2008), at pp. 200 and 204-5.
2016	Wilson v. Atomic Energy of Canada Ltd.	7/14/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16062/index.do	Wilson v. Atomic Energy of Canada Ltd., 2016 SCC 29, [2016] 1 S.C.R. 770	Côté and Brown JJ. (dissenting)	dissenting	Federal Court of Appeal	Administrative law	C	D	*Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.* , [1975] A.C. 591	*SC*	UK (HL)	[102] This is a distilled question requiring statutory interpretation and, accordingly, we must begin with the modern principle of statutory interpretation articulated in Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87: Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. The modern principle requires that statutes "be read to give the words their most obvious ordinary meaning which accords with the context and purpose of the enactment in which they occur": CanadianOxy Chemicals Ltd. v. Canada (Attorney General), [1999] 1 S.C.R. 743, at para. 14; Rizzo Shoes, at para. 41. When a court interprets a statute, it is "seeking not what Parliament meant but the true meaning of what they said": Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., [1975] A.C. 591 (H.L.), at p. 613 (per Lord Reid). In our view, the true meaning of what Parliament said is clear: federally regulated employers can dismiss their employees without cause.
2016	R. v. Jordan	7/8/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do	R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631	Cromwell J.	concurring in the result	British Columbia	Constitutional law	C	referred to	*Beavers v. Haubert* , 198 U.S. 77 (1905)	*SC*	US	[257] In Conway, L'Heureux-Dubé J. wrote for the majority that the "protection afforded by s. 11 (b) of the Charter is not expressed in absolute terms" and that "the right to a speedy trial 'is necessarily relative. It is consistent with delays and depends upon circumstances'": p. 1672, quoting Beavers v. Haubert, 198 U.S. 77 (1905), at p. 87. [258] In Smith, Sopinka J. for the Court elaborated on this point: The question is, at what point does the delay become unreasonable? If this were simply a function of time, the matter could be easily resolved. Indeed a sliding scale of times could be developed with respect to specified offences which could be adjusted because of the special circumstances of the case. But it is not simply a function of time, but of time and several other factors. What those basic factors are is not the subject of disagreement. [p. 1131]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2016	R. v. Jordan	7/8/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do	R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631	Cromwell J.	concurring in the result	British Columbia	Constitutional law	R		*Speedy Trial Act of 1974* , 18 U.S.C. § 3161 (2012).	*statute*	US	[295] We can look to the experience of other jurisdictions. It appears that even fixed limitation periods set by legislatures have not succeeded in avoiding complexity. Various states in the United States have created statutory time limitation periods dealing with overall delay in criminal proceedings. At the federal level, there is the Speedy Trial Act of 1974, 18 U.S.C. § 3161, and there are similar provisions in many states: W. R. LaFave et al., Criminal Procedure (5th ed. 2009), at pp. 892-93. These provisions create time limitations, but also include a number of contingencies to account for the plethora of different circumstances under which criminal cases may arise: pp. 895-97. In short, to be workable, the legislated limits inevitably require that a number of factors be balanced and considered in determining whether any case or charge should be dismissed: p. 897. But these contingencies and this balancing simply give rise to the sort of litigation that the limits were supposed to avoid: see S. Hopwood, "The Not So Speedy Trial Act" (2014), 89 Wash. L. Rev. 709, at p. 715.
2016	R. v. Jordan	7/8/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do	R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631	Cromwell J.	concurring in the result	British Columbia	Constitutional law	G		*Venice Commission*	*document*	Venice Commission	[261] Moreover, a judicially fixed ceiling for overall case disposition is at odds with jurisprudence arising from every other jurisdiction with a speedy trial guarantee of which I am aware. In Trial Within a Reasonable Time (1992), Michael A. Code wrote that "[i]t is generally foreign to the U.S. speedy trial jurisprudence to establish numerical standards of any kind": p. 119. The presence of time limitations, whether judicial or statutory, are virtually unheard of in European jurisdictions. In Can excessive length of proceedings be remedied? (2007), the Venice Commission polled a number of jurisdictions ranging from Albania to the former Yugoslav Republic of Macedonia, all of which replied in the negative to the questions as to whether there was a deadline or fixed time frame in which the competent authorities need rule on a criminal matter: Section II (pp. 65-322). Statutory timelines are, of course, an entirely different matter and I will have more to say about them in a moment.
2016	British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority	6/24/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16042/index.do	British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority, 2016 SCC 25, [2016] 1 S.C.R. 587	Côté J. (dissenting in part)	dissenting	British Columbia	Workers' compensation	C	D	Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2003] 1 A.C. 32	SC	UK (HL)	[79] My colleague Brown J. has emphasized the importance of drawing inferences in fact finding. While this may be so, I must insist that the evidence in the record must still be capable of supporting the inferences drawn. Otherwise, the fct-finder is at risk of straying outside the realm of inference and reasonable deductions, and into the "wilderness of 'mere speculation or conjecture'": Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2003] 1 A.C. 32, per Lord Rodger, at para. 150, citing Caswell v. Powell Duffryn Associated Collieries, Ltd., [1940] A.C. 152, per Lord Wright, at pp. 169-70; see also D. Cheifetz, "The Snell Inference and Material Contribution: Defining the Indefinable and Hunting the Causative Snark" (2005), 30 Advocates' Q. 1, at pp. 46-47.
2016	R. v. Saeed	6/23/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16023/index.do	R. v. Saeed, 2016 SCC 24, [2016] 1 S.C.R. 518	Karakatsanis J.	concurring in the results	Alberta	Constitutional law	R		Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, ss. 62(1), (10), 63, 65.		UK	[106] The highly invasive and dehumanizing nature of genital swabs has been recognized in the United Kingdom, where genital swabs are treated as a particularly invasive kind of search and seizure. Under the U.K. legislation Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60 (P.A.C.E.), a genital swab is governed by the rules for "intimate samples", not body searches, and is prohibited altogether except on consent (ss. 62(1) and 65). Genital swabs and other intimate samples — like blood, urine, and semen samples — are in a separate category from both strip searches and non-intimate samples — such as hair samples and other swabs. The definition of an intimate sample makes no reference to the purpose of the sample. What makes these samples "intimate" under P.A.C.E. is the high degree of bodily invasion, not the purpose of the search.
2016	R. v. Saeed	6/23/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16023/index.do	R. v. Saeed, 2016 SCC 24, [2016] 1 S.C.R. 518	Moldaver J.	majority	Alberta	Constitutional law	R		Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, ss. 62(1), (10), 63, 65.	statute	UK	[57] Unlike my colleague Karakatsanis J., I do not find the approach in the United Kingdom to be particularly helpful in assessing the privacy interests implicated here. The regime in the United Kingdom operates in an entirely different context, with different rules. The treatment of penile swabs in the United Kingdom cannot be considered in a contextual vacuum. For example, in the United Kingdom, if an individual refuses to consent to a penile swab without "good cause", this can be used by the court or jury in determining whether that person is guilty of the offence charged (Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60 ("P.A.C.E."), s. 62(10)). Further, while the United Kingdom allows these swabs to be taken only with consent, it allows for hair (other than pubic hair) and saliva samples to be taken without consent or a warrant, unlike in Canada (P.A.C.E., s. 63). At bottom, while the majority of the Court in Golden found P.A.C.E. useful in the context of strip searches (para. 101), it does not follow that P.A.C.E.'s treatment of penile swabs — or any other type of search incident to arrest — reflects Canadian constitutional standards.
2016	R. v. D.L.W.	6/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15991/index.do	R. v. D.L.W., 2016 SCC 22, [2016] 1 S.C.R. 402	Cromwell J.	majority	British Columbia	Criminal law	C	referred to	*R. v. Bourne* (1952), 36 Cr. App. R. 125	*lower-level court*	UK	[36] The later case law is also consistent with this view. In R. v. Bourne (1952), 36 Cr. App. R. 125, in upholding convictions of a husband for aiding and abetting his wife to commit buggery with a dog, Lord Chief Justice Goddard stated that "if a woman has connection with a dog, or allows a dog to have connection with her, that is the full offence of buggery": p. 128. The court noted that the offence was "commonly called bestiality": p. 127.
2016	R. v. D.L.W.	6/9/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15991/index.do	R. v. D.L.W., 2016 SCC 22, [2016] 1 S.C.R. 402	Cromwell J.	majority	British Columbia	Criminal law	R		Sexual Offences Act, 1956 (U.K.), 4 & 5 Eliz. 2, c. 69, s. 12(1).	statute	UK	[34] This understanding of the offence continued in England for many years. Later commentators are almost uniformly of the view that buggery with an animal required penetration. I have already referred to Russell on Crime. In 1957, in Sexual Offences: A Report of the Cambridge Department of Criminal Science, at p. 345, the director of the department, Leon Radzinowicz, commented on s. 12(1) of the Sexual Offences Act, 1956 (U.K.), 4 & 5 Eliz. 2, c. 69, which made it a felony for a person to commit buggery with another person or with an animal. This section is virtually identical to the version of the offence found in the 1861 Act and therefore to the English version of the Canadian offence up until 1955. The report explains that [t]he crime consists of carnal knowledge, or sexual intercourse, by man with man per anum, man with woman per anum, or man or woman with beast in any manner. The word 'sodomy' is frequently used to indicate the offence when committed with mankind, and 'bestiality' when committed with an animal. [p. 345]
2016	Heritage Capital Corp. v. Equitable Trust Co.	5/6/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15939/index.do	Heritage Capital Corp. v. Equitable Trust Co., 2016 SCC 19, [2016] 1 S.C.R. 306	Gascon and Côté JJ.	unanimous	Alberta	Property	C	referred to	Rhone v. Stephens, [1994] 2 A.C. 310	SC	UK (HL)	[25] The idea of a payment obligation running with land is by its nature unusual. In fact, it is undisputed that at common law, positive covenants cannot run with the land (Austerberry v. Corporation of Oldham (1885), 29 Ch. D. 750). This rule is founded on the principle that at common law, a person cannot be made liable upon a contract unless he or she was party to it (Rhone v. Stephens, [1994] 2 A.C. 310 (H.L.)). The rule against positive covenants running with the land applies even if an agreement contains an express intention to the contrary (Amberwood Investments Ltd. v. Durham Condominium Corp. No. 123 (2002), 58 O.R. (3d) 481 (C.A.)). As a result, the common law rule is that "[n]o personal or affirmative covenant, requiring the expenditure of money or the doing of some act, can, apart from statute, be made to run with the land" (V. Di Castri, Registration of Title to Land (loose-leaf), vol. 1, at p. 10-4 (emphasis added), quoted in Westbank Holdings Ltd. v. Westgate Shopping Centre Ltd., 2001 BCCA 268, 155 B.C.A.C. 1, at para. 16). The issue in the instant case is whether and to what extent s. 29 of the HRA displaces the common law rule by permitting positive covenants to run with the land.
2016	Krayzel Corp. v. Equitable Trust Co.	5/6/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15938/index.do	Krayzel Corp. v. Equitable Trust Co., 2016 SCC 18, [2016] 1 S.C.R. 273	Côté J. (dissenting)	dissenting	Alberta	Mortgages	C	D	Inland Revenue Commissioners v. Hinchy, [1960] A.C. 748	lower-level court	UK	[48] Section 2 of the Interest Act affirms freedom of contract in the law of lending and, in so doing, expressly permits discounts: ". . . any person may stipulate for . . . any rate of interest or discount that is agreed on". Section 8 sets out an exception to the foundational principle of freedom of contract by prohibiting increased charges on arrears. However, as my colleague observes, it does not expressly prohibit discounts. The absence of the term "discount" from s. 8 — and its corresponding presence in s. 2 — must inform our interpretation, since every word of a statute must be found to have a meaning and a function (R. Sullivan, Sullivan on the Construction of Statutes (6th ed. 2014), at p. 211; Communities Economic Development Fund v. Canadian Pickles Corp., [1991] 3 S.C.R. 388, at p. 408) and since it is settled law that each provision of a statute is presumed to have been drafted with the others in mind (Sullivan, at pp. 211 and 405-6; Inland Revenue Commissioners v. Hinchy, [1960] A.C. 748, at p. 766, per Lord Reid).
2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C		Scimet v. African Development Bank (1997), 128 I.L.R. 582	lower-level court	Belgium	[58] A plain reading suggests that this is merely a descriptive, purposive clause. It states the reason for according the IBRD and the IDA the immunities set out in Article VII and Article VIII of their respective Articles of Agreement. As the Court of First Instance of Brussels concluded with regards to similar immunities outlined in the governing agreement of the African Development Bank, this kind of purposive clause explains why the enumerated immunities were granted. It is not meant to require international organizations to justify the application of the asserted immunity (Scimet v. African Development Bank (1997), 128 I.L.R. 582, at p. 584). Our conclusion that the provision is only an interpretive aid is further supported by the fact that, unlike ss. 3, 5 and 8, s. 1 is not implemented in Canadian law through the Orders in Council.
2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C	referred to	Shearson Lehman Bros. Inc. v. Maclaine Watson & Co. (No. 2), [1988] 1 All E.R. 116	SC	UK (HL)	[73] Limiting the protection of s. 5 to historical documents would leave exposed current and more sensitive documents, whose confidentiality is likely more important to the IBRD's independent functioning. For all of these reasons, we are of the view that the term "archives" is better construed as the entire collection of stored documents of the IBRD and the IDA, including their official records and correspondences. We note, in passing, that the House of Lords endorsed a similarly broad definition of "archives" in the context of interpreting the International Tin Council's immunities (Shearson Lehman Bros. Inc. v. Maclaine Watson & Co. (No. 2), [1988] 1 All E.R. 116, at p. 122). [83] We have already concluded that archival inviolability connotes protection from all forms of unilateral interference with the INT's archives. As a result, where the World Bank Group has expressly permitted the consultation of documents in its archives, the sanctity of those archives is respected. In other words, where there is express permission to consult, s. 5 simply does not apply. This likely explains why, unlike the personnel immunity outlined in s. 8, s. 5 does not contemplate the possibility of waiver. Moreover, where a document has been copied and transmitted to an external party, that transmitted copy no longer forms part of the "archives", as we have defined them. As a result, s. 5 no longer applies to shield that transmitted copy. The House of Lords arrived at a similar conclusion in Shearson Lehman Bros. Inc.

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2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C	referred to	R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 3), [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921	lower-level court	UK	[80] Finally, it is worth noting that our interpretation is also favoured in the decisions of foreign courts. The Court of Appeal for England and Wales has written recently that "the universal definition of 'inviolability' is freedom from any act of interference on the part of the receiving state" (R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 3), [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921, at para. 61 (emphasis added)). What is more, several foreign courts appear to have specifically taken it for granted that the inviolability of archives shields international organizations from document production orders (Taiwan v. United States District Court for the Northern District of California, 128 F.3d 712 (9th Cir. 1997); Iraq v. Vinci Constructions (2002), 127 I.L.R. 101 (Brussels C.A.); Owens, Re Application for Judicial Review, [2015] NIQB 29, at paras. 63 and 69 (BAILII)).
2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C	referred to	Taiwan v. United States District Court for the Northern District of California, 128 F.3d 712 (1997)	lower-level court	US	[80] Finally, it is worth noting that our interpretation is also favoured in the decisions of foreign courts. The Court of Appeal for England and Wales has written recently that "the universal definition of 'inviolability' is freedom from any act of interference on the part of the receiving state" (R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 3), [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921, at para. 61 (emphasis added)). What is more, several foreign courts appear to have specifically taken it for granted that the inviolability of archives shields international organizations from document production orders (Taiwan v. United States District Court for the Northern District of California, 128 F.3d 712 (9th Cir. 1997); Iraq v. Vinci Constructions (2002), 127 I.L.R. 101 (Brussels C.A.); Owens, Re Application for Judicial Review, [2015] NIQB 29, at paras. 63 and 69 (BAILII)).
2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C	referred to	Iraq v. Vinci Constructions (2002), 127 I.L.R. 101	lower-level court	Belgium	[80] Finally, it is worth noting that our interpretation is also favoured in the decisions of foreign courts. The Court of Appeal for England and Wales has written recently that "the universal definition of 'inviolability' is freedom from any act of interference on the part of the receiving state" (R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 3), [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921, at para. 61 (emphasis added)). What is more, several foreign courts appear to have specifically taken it for granted that the inviolability of archives shields international organizations from document production orders (Taiwan v. United States District Court for the Northern District of California, 128 F.3d 712 (9th Cir. 1997); Iraq v. Vinci Constructions (2002), 127 I.L.R. 101 (Brussels C.A.); Owens, Re Application for Judicial Review, [2015] NIQB 29, at paras. 63 and 69 (BAILII)).
2016	World Bank Group v. Wallace	4/29/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15915/index.do	World Bank Group v. Wallace, 2016 SCC 15, [2016] 1 S.C.R. 207	Moldaver and Côté JJ.	unanimous	Ontario	Public international law	C	referred to	Owens, Re Application for Judicial Review, [2015] NIQB 29	lower-level court	UK	[80] Finally, it is worth noting that our interpretation is also favoured in the decisions of foreign courts. The Court of Appeal for England and Wales has written recently that "the universal definition of 'inviolability' is freedom from any act of interference on the part of the receiving state" (R. (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 3), [2014] EWCA Civ 708, [2014] 1 W.L.R. 2921, at para. 61 (emphasis added)). What is more, several foreign courts appear to have specifically taken it for granted that the inviolability of archives shields international organizations from document production orders (Taiwan v. United States District Court for the Northern District of California, 128 F.3d 712 (9th Cir. 1997); Iraq v. Vinci Constructions (2002), 127 I.L.R. 101 (Brussels C.A.); Owens, Re Application for Judicial Review, [2015] NIQB 29, at paras. 63 and 69 (BAILII)).
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		18 U.S.C. § 3553(f) (2012).	statute	US	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a).	statute	South Africa	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Criminal Law (Sentencing) Act 1988 (S.A.), s. 17.	statute	South Africa	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2).	statute	UK	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.

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2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Penal Code [Brottsbalken] (Swed.), c. 29, s. 5.	statute	Sweden	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
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2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Sentencing Act (N.T.), s. 78DI	lower-level statute	Australia	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103	statute	New Zealand	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		*Sentencing Act 1991* (Vic.), s. 10(1)	statute	Australia	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Lloyd	4/15/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do	R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130	McLachlin C.J.	majority	British Columbia	Constitutional Law	R		Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4).	statute	UK	[36] Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum will constitute cruel and unusual punishment. Residual judicial discretion for exceptional cases is a technique widely used to avoid injustice and constitutional infirmity in other countries: Department of Justice Canada, Research and Statistics Division, Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (2005) (online), at pp. 1, 4 and 35. It allows the legislature to impose severe sentences for offences deemed abhorrent, while avoiding unconstitutionally disproportionate sentences in exceptional cases. The residual judicial discretion is usually confined to exceptional cases and may require the judge to give reasons justifying departing from the mandatory minimum sentence prescribed by the law. It is for the legislature to determine the parameters of the residual judicial discretion. The laws of other countries reveal a variety of approaches: Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(a); Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2); Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4); Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2) and 111(2); Sentencing Act (N.T.), s. 78DI; Sentencing Act 1991 (Vic.), s. 10(1); Sentencing Act 2002 (N.Z.), ss. 86E, 102 and 103; Criminal Law (Sentencing) Act 1988 (S.A.), s. 17; 18 U.S.C. § 3553(f) (2012); Penal Code [Brottsbalken] (Swed.), c. 29, s. 5. There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.
2016	R. v. Borowiec	3/24/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15824/index.do	R. v. Borowiec, 2016 SCC 11, [2016] 1 S.C.R. 80	Cromwell J.	unanimous	Alberta	Criminal law	R		Coroners and Justice Act 2009 (U.K.), c. 25, s. 57.	statute	UK	[25] Section 233 of the Criminal Code originated in the English Infanticide Act, 1922 (U.K.), 12 & 13 Geo. 5, c. 18. In 1938, that legislation was replaced with the Infanticide Act, 1938 (U.K.), 1 & 2 Geo. 6, c. 36, and, in 2010, was amended by the Coroners and Justice Act 2009 (U.K.), c. 25, s. 57.
2016	Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval	3/18/2016	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15788/index.do	Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval, 2016 SCC 8, [2016] 1 S.C.R. 29	Gascon J.	majority	Quebec	Administrative law	C	referred to	Ward v. Shell-Mex, [1952] 1 K.B. 280	lower-level court	UK	[54] The other decisions cited by the appellants in support of their argument that the executive committee's motives are "unknowable" are of no assistance to them. In Duke of Buccleuch v. Metropolitan Board of Works (1872), L.R. 5 H.L. 418, the House of Lords ruled on an action for enforcement of an arbitral award in which one of the parties was trying to summon the arbitrator himself to testify. Similar situations were considered in O'Rourke v. Commissioner for Railways (1890), 15 App. Cas. 371, Ward v. Shell-Mex, [1952] 1 K.B. 280, and Re Knight Lumber Co. (1959), 22 D.L.R. (2d) 92 (B.C.S.C.). All these cases involved adjudicative decisions in which the decision makers' motives were not allowed to be adduced in evidence, not because they were irrelevant, but on the basis of deliberative secrecy.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2015	R. v. Riesberry	12/18/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15682/index.do	R. v. Riesberry, 2015 SCC 65, [2015] 3 S.C.R. 1167	Cromwell J.	unanimous	Ontario	Criminal law	C	referred to	Scott v. Metropolitan Police Commissioner, [1975] A.C. 819	SC	UK (HL)	[23] We should first be clear about what Mr. Riesberry's fraudulent conduct was before turning to the question of whether it caused a risk of deprivation. Fraudulent conduct for the purposes of a fraud prosecution is not limited to deception, such as deception by misrepresentations of fact. Rather, fraud requires proof of "deceit, falsehood or other fraudulent means": s. 380(1). The term "other fraudulent means" encompasses "all other means which can properly be stigmatized as dishonest": R. v. Olan, [1978] 2 S.C.R. 1175, at p. 1180. The House of Lords made the same point in Scott v. Metropolitan Police Commissioner, [1975] A.C. 819, a case approved by the Court in Olan (p. 1181). Fraud, according to Viscount Dilhorne in Scott, may consist of depriving "a person dishonestly of something which is his or of something to which he is or would or might but for the perpetration of the fraud be entitled": p. 839. And as Lord Diplock said, the fraudulent means "need not involve fraudulent misrepresentation such as is needed to constitute the civil tort of deceit": ibid., at p. 841. [25] Mr. Riesberry injected and attempted to inject the racehorses with performance-enhancing substances. The use of such drugs is prohibited and trainers such as Mr. Riesberry are prohibited even from possessing loaded syringes at a racetrack. This conduct constituted "other fraudulent means" because in the highly regulated setting in which he acted, that conduct can "properly be stigmatized as dishonest": Olan, at p. 1180. He carried out these dishonest acts for the purpose of affecting the outcome of two horse races on which members of the public placed bets. His dishonest acts, therefore, were intended to and in one case actually did result in the possibility that a horse that might otherwise have won would not. The conduct therefore caused a risk of deprivation to the betting public: it created the risk of betting on a horse that, but for Mr. Riesberry's dishonest acts, might have won and led to a payout to the persons betting on that horse. To return to Viscount Dilhorne's words in Scott, Mr. Riesberry's dishonest conduct created a risk that bettors would be deprived dishonestly of something which, but for the dishonest act, they might have obtained
2015	M.M. v. United States of America	12/11/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15666/index.do	M.M. v. United States of America, 2015 SCC 62, [2015] 3 S.C.R. 973	Abella J. (dissenting)	dissenting	Quebec	Extradition	C	D	In re D. (Abduction: Rights of Custody), [2006] UKHL 51, [2007] 1 A.C. 619	SC	UK (HL)	[222] In Thomson v. Thomson, [1994] 3 S.C.R. 551, La Forest J. explained that this risk must "be a weighty one", but also acknowledged that "from a child centred perspective, harm is harm": p. 597; and see Pollastro v. Pollastro (1999), 43 O.R. (3d) 485 (C.A.). See also In re D. (Abduction: Rights of Custody), [2007] 1 A.C. 619 (H.L.), where it was similarly observed that "limitations on the duty to return must be restrictively applied", but that there will nevertheless be "circumstances in which a summary return would be so inimical to the interests of the particular child that it would also be contrary to the object of the Convention": para. 51.
2015	M.M. v. United States of America	12/11/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15666/index.do	M.M. v. United States of America, 2015 SCC 62, [2015] 3 S.C.R. 973	Cromwell J.	majority	Quebec	Extradition	C	referred to	H. (H.) v. Deputy Prosecutor of the Italian Republic, [2012] UKSC 25, [2013] 1 A.C. 338	SC	UK (SC)	[153] The international authorities to which we have been referred confirm this view. So, for example, the Supreme Court of the United Kingdom upheld the extradition of parents even in the face of an impact on children that was considered to be "heart-rending": H. (H.) v. Deputy Prosecutor of the Italian Republic, [2012] UKSC 25, [2013] 1 A.C. 338. And this result was reached in the context of a requirement that extradition be consistent with the guaranty of a right to respect of the fugitive's family life in art. 8 of the European Convention on Human Rights, 213 U.N.T.S. 221, which provides that "[e]veryone has the right to respect for his private and family life". Similarly, in H. v. Lord Advocate, [2012] UKSC 24, [2013] 1 A.C. 413, the demands of the interests of criminal justice and of treaty obligations that favoured extradition ultimately outweighed the children's best interests: para. 58. The Supreme Court in these cases also thoroughly reviewed the jurisprudence of the European Court of Human Rights concerning the interaction of art. 8 and extradition. That court has "repeatedly said that it will only be in exceptional circumstances that an applicant's private or family life in a contracting state will outweigh the legitimate aim pursued by his or her extradition": H., at para. 59; see also H. (H.), at paras. 113-14
2015	M.M. v. United States of America	12/11/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15666/index.do	M.M. v. United States of America, 2015 SCC 62, [2015] 3 S.C.R. 973	Cromwell J.	majority	Quebec	Extradition	C	referred to	H. v. Lord Advocate, [2012] UKSC 24, [2013] 1 A.C. 413	SC	UK (SC)	[153] The international authorities to which we have been referred confirm this view. So, for example, the Supreme Court of the United Kingdom upheld the extradition of parents even in the face of an impact on children that was considered to be "heart-rending": H. (H.) v. Deputy Prosecutor of the Italian Republic, [2012] UKSC 25, [2013] 1 A.C. 338. And this result was reached in the context of a requirement that extradition be consistent with the guaranty of a right to respect of the fugitive's family life in art. 8 of the European Convention on Human Rights, 213 U.N.T.S. 221, which provides that "[e]veryone has the right to respect for his private and family life". Similarly, in H. v. Lord Advocate, [2012] UKSC 24, [2013] 1 A.C. 413, the demands of the interests of criminal justice and of treaty obligations that favoured extradition ultimately outweighed the children's best interests: para. 58. The Supreme Court in these cases also thoroughly reviewed the jurisprudence of the European Court of Human Rights concerning the interaction of art. 8 and extradition. That court has "repeatedly said that it will only be in exceptional circumstances that an applicant's private or family life in a contracting state will outweigh the legitimate aim pursued by his or her extradition": H., at para. 59; see also H. (H.), at paras. 113-14
2015	Ontario (Energy Board) v. Ontario Power Generation Inc.	9/25/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15517/index.do	Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 2 S.C.R. 147	Abella J. (dissenting)	dissenting	Ontario	Administrative law Public utilities	C	D	State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 262 U.S. 276 (1923)	SC	US	[136] The methodology adopted by the Board to determine "just and reasonable" payments to Ontario Power Generation draws in part on the regulatory concept of "prudence". Prudence is "a legal basis for adjudging the meeting of utilities' public interest obligations, specifically in regard to rate proceedings": Robert E. Burns et al., The Prudent Investment Test in the 1980s, report NRRI-84-16, The National Regulatory Research Institute, April 1985, at p. 20. The concept emerged in the early 20th century as a judicial response to the "mind-numbing complexity" of other approaches being used by regulators to determine "just and reasonable" amounts, and introduced a legal presumption that a regulated utility has acted reasonably: Verizon Communications, at p. 482. As Justice Brandeis famously explained in 1923: The term prudent investment is not used in a critical sense. There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown. [Emphasis added.] (State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 262 U.S. 276 (1923), at p. 289, fn. 1, per Brandeis J., dissenting)
2015	Ontario (Energy Board) v. Ontario Power Generation Inc.	9/25/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15517/index.do	Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 2 S.C.R. 147	Abella J. (dissenting)	dissenting	Ontario	Administrative law Public utilities	C	D	Verizon Communications Inc. v. Federal Communications Commission, 535 U.S. 467 (2002)	SC	US	[135] Pursuant to s. 78.1(5) of the Ontario Energy Board Act, 1998, upon application from Ontario Power Generation, the Board is required to determine "just and reasonable" payment amounts to the utility. In the utility regulation context, the phrase "just and reasonable" reflects the aim of "navigating the straits" between overcharging a utility's customers and underpaying the utility for the public service it provides: Verizon Communications Inc. v. Federal Communications Commission, 535 U.S. 467 (2002), at p. 481; see also Northwestern Utilities Ltd. v. City of Edmonton, [1929] S.C.R. 186, at pp. 192-93. [136] The methodology adopted by the Board to determine "just and reasonable" payments to Ontario Power Generation draws in part on the regulatory concept of "prudence". Prudence is "a legal basis for adjudging the meeting of utilities' public interest obligations, specifically in regard to rate proceedings": Robert E. Burns et al., The Prudent Investment Test in the 1980s, report NRRI-84-16, The National Regulatory Research Institute, April 1985, at p. 20. The concept emerged in the early 20th century as a judicial response to the "mind-numbing complexity" of other approaches being used by regulators to determine "just and reasonable" amounts, and introduced a legal presumption that a regulated utility has acted reasonably: Verizon Communications, at p. 482. As Justice Brandeis famously explained in 1923: The term prudent investment is not used in a critical sense. There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown. [Emphasis added.] (State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 262 U.S. 276 (1923), at p. 289, fn. 1, per Brandeis J., dissenting)
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2015	Ontario (Energy Board) v. Ontario Power Generation Inc.	9/25/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15517/index.do	Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 2 S.C.R. 147	Rothstein J.	majority	Ontario	Administrative law Public utilities	C	referred to	*Duquesne Light Co. v. Barasch* , 488 U.S. 299 (1989)	C	US	[92] The states differed in their approaches to setting the statutory foundation for utility regulation. Regulators in some states were free to apply the prudent investment test, while other states enacted statutory provisions disallowing compensation in respect of capital investments that were not "used and useful in service to the public": Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), at p. 302. Notably, when asked in Duquesne to consider whether "just and reasonable" payments to utilities required, as a constitutional matter, that the prudent investment test be applied to past-incurred costs, the U.S. Supreme Court held that "[t]he designation of a single theory of ratemaking as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors": p. 316.

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2015	Ontario (Energy Board) v. Ontario Power Generation Inc.	9/25/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15517/index.do	Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 2 S.C.R. 147	Rothstein J.	majority	Ontario	Administrative law Public utilities	C	referred to	U.S. West Communications, Inc. v. Public Service Commission of Utah, 901 P.2d 270 (1995)	lower-level court	US	[93] American courts have also recognized that there may exist some contexts in which certain features of the prudent investment test may be less justifiable. For example, the Supreme Court of Utah considered whether a presumption of reasonableness was justified when reviewing costs passed to a utility by an unregulated affiliate entity, and concluded that it was not appropriate: . . . we do not think an affiliate expense should carry a presumption of reasonableness. While the pressures of a competitive market might allow us to assume, in the absence of a showing to the contrary, that nonaffiliate expenses are reasonable, the same cannot be said of affiliate expenses not incurred in an arm's length transaction. (U.S. West Communications, Inc. v. Public Service Commission of Utah, 901 P.2d 270 (Utah 1995), at p. 274)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Aguinda v. Texaco, Inc., 303 F.3d 470 (2002)	lower-level court	Us	[5] In 1993, the plaintiffs filed suit against Texaco in the United States District Court for the Southern District of New York. In 2001, after lengthy interim proceedings, the District Court dismissed their suit on the grounds of international comity and forum non conveniens. The following year, the United States Court of Appeals for the Second Circuit upheld that judgment, relying in part on a commitment by Texaco to submit to the jurisdiction of the Ecuadorian courts should its motion to dismiss succeed: Aguinda v. Texaco, Inc., 303 F.3d 470 (2d Cir. 2002).
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Chevron Corp. v. Donziger, 768 F.Supp.2d 581 (2011)	lower-level court	Us	[7] Meanwhile, Chevron instituted further U.S. proceedings against the plaintiffs' American lawyer, Steven Donziger, and two of his Ecuadorian clients, seeking equitable relief. Chevron alleged that Mr. Donziger and his team had corrupted the Ecuadorian proceedings by, among other things, ghost-writing the trial judgment and paying Judge Zambrano US$500,000 to release it as his own. In 2011, Judge Kaplan of the United States District Court for the Southern District of New York granted preliminary relief in the form of a global anti-enforcement injunction with respect to the Ecuadorian judgment: Chevron Corp. v. Donziger, 768 F.Supp.2d 581 (S.D.N.Y. 2011). The United States Court of Appeals for the Second Circuit overturned this injunction in 2012, stressing that "[t]he [plaintiffs] hold a judgment from an Ecuadorian court. They may seek to enforce that judgment in any country in the world where Chevron has assets": Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012), at pp. 245-46. In 2014, Judge Kaplan of the District Court held that the Ecuadorian judgment had resulted from fraud committed by Mr. Donziger and others on the Ecuadorian courts: Chevron Corp. v. Donziger, 974 F.Supp.2d 362 (S.D.N.Y. 2014). That decision and the underlying allegations of fraud are not before this Court.
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Chevron Corp. v. Naranjo, 667 F.3d 232 (2012)	lower-level court	Us	[7] Meanwhile, Chevron instituted further U.S. proceedings against the plaintiffs' American lawyer, Steven Donziger, and two of his Ecuadorian clients, seeking equitable relief. Chevron alleged that Mr. Donziger and his team had corrupted the Ecuadorian proceedings by, among other things, ghost-writing the trial judgment and paying Judge Zambrano US$500,000 to release it as his own. In 2011, Judge Kaplan of the United States District Court for the Southern District of New York granted preliminary relief in the form of a global anti-enforcement injunction with respect to the Ecuadorian judgment: Chevron Corp. v. Donziger, 768 F.Supp.2d 581 (S.D.N.Y. 2011). The United States Court of Appeals for the Second Circuit overturned this injunction in 2012, stressing that "[t]he [plaintiffs] hold a judgment from an Ecuadorian court. They may seek to enforce that judgment in any country in the world where Chevron has assets": Chevron Corp. v. Naranjo, 667 F.3d 232 (2d Cir. 2012), at pp. 245-46. In 2014, Judge Kaplan of the District Court held that the Ecuadorian judgment had resulted from fraud committed by Mr. Donziger and others on the Ecuadorian courts: Chevron Corp. v. Donziger, 974 F.Supp.2d 362 (S.D.N.Y. 2014). That decision and the underlying allegations of fraud are not before this Court.
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2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Tasarruf Mevduati Sigorta Fonu v. Demirel, [2007] EWCA Civ 799, [2007] 1 W.L.R. 2508	lower-level court	UK	[59] In Tasarruf Mevduati Sigorta Fonu v. Demirel, [2007] EWCA Civ 799, [2007] 1 W.L.R. 2508, for example, the England and Wales Court of Appeal (Civil Division) held that "a claimant seeking to enforce a foreign judgment by action does not have to show that there are assets in the jurisdiction. To require him to do so would be tantamount to construing the rule as if it were limited in that way": para. 29. The court also held that to be granted permission to serve ex juris (permission that is needed under the applicable English procedural rules), the claimant is required to show "that he has a good arguable case in the action, that is that he has a good arguable case that judgment should be given based upon the foreign judgment": ibid. The court continued, holding that the claimant must "ordinarily show further that he can reasonably expect a benefit from such a judgment": ibid. However, on the facts of the case, it held that service ex juris should be permitted where the defendant did not possess assets in England at the time, but had a "reasonable possibility" of having assets in London "one of these days": para. 40. [60] The High Court of Ireland followed a similar approach in Yukos Capital S.A.R.L. v. OAO Tomskneft VNK, [2014] IEHC 115, in an arbitration context, holding that "the presence of assets within the jurisdiction is not a pre-requisite for the granting of leave to serve out of the jurisdiction on an application to enforce a Convention Award": para. 112 (BAILII). Although the court quoted with approval the passages from Tasarruf to the effect that the applicant must demonstrate that some potential benefit would accrue should the recognition and enforcement action succeed, it nevertheless accepted, with no hesitation, that "the seeking of recognition and enforcement of an award in a country where the losing party may have no assets in order to obtain the imprimatur of a respected court upon the award is acceptable": para. 128.
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	*Yukos Capital S.A.R.L. v. OAO Tomskneft VNK*, [2014] IEHC 115	*SC*	Ireland	[60] The High Court of Ireland followed a similar approach in Yukos Capital S.A.R.L. v. OAO Tomskneft VNK, [2014] IEHC 115, in an arbitration context, holding that "the presence of assets within the jurisdiction is not a pre-requisite for the granting of leave to serve out of the jurisdiction on an application to enforce a Convention Award": para. 112 (BAILII). Although the court quoted with approval the passages from Tasarruf to the effect that the applicant must demonstrate that some potential benefit would accrue should the recognition and enforcement action succeed, it nevertheless accepted, with no hesitation, that "the seeking of recognition and enforcement of an award in a country where the losing party may have no assets in order to obtain the imprimatur of a respected court upon the award is acceptable": para. 128.
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Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co., 986 N.Y.S.2d 454 (2014)	lower-level court	US	[61] The U.S. courts appear to be divided on the prerequisites to recognition and enforcement: see R. A. Brand, "Federal Judicial Center International Litigation Guide: Recognition and Enforcement of Foreign Judgments" (2013), 74 U. Pitt. L. Rev. 491. Some, as exemplified by the decision in Lenchyshyn v. Pelko Electric, Inc., 723 N.Y.S.2d 285 (App. Div. 2001), take a broad approach. In Lenchyshyn, the Supreme Court of New York, Appellate Division, held that personal jurisdiction need not be established over judgment debtors for recognition and enforcement to proceed. In the court's view, "[r]equiring that the judgment debtor have a 'presence' in or some other jurisdictional nexus to the state of enforcement would unduly protect a judgment debtor and enable him easily to escape his just obligations under a foreign country money judgment" (p. 292); moreover, no constitutional obligation exists to satisfy such a requirement (p. 289). The court concluded that "even if defendants do not presently have assets in New York, plaintiffs nevertheless should be granted recognition of the foreign country money judgment . . . and thereby should have the opportunity to pursue all such enforcement steps in futuro, whenever it might appear that defendants are maintaining assets in New York": p. 291. The same court recently reiterated the Lenchyshyn approach in Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co., 986 N.Y.S.2d 454 (App. Div. 2014). Other state and district courts have also adopted its reasoning: Haaksman v. Diamond Offshore (Bermuda), Ltd., 260 S.W.3d 476 (Tex. App. 2008); Pure Fishing, Inc. v. Silver Star Co., 202 F.Supp.2d 905 (N.D. Iowa 2002)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Haaksman v. Diamond Offshore (Bermuda), Ltd., 260 S.W.3d 476 (2008)	lower-level court	US	[61] The U.S. courts appear to be divided on the prerequisites to recognition and enforcement: see R. A. Brand, "Federal Judicial Center International Litigation Guide: Recognition and Enforcement of Foreign Judgments" (2013), 74 U. Pitt. L. Rev. 491. Some, as exemplified by the decision in Lenchyshyn v. Pelko Electric, Inc., 723 N.Y.S.2d 285 (App. Div. 2001), take a broad approach. In Lenchyshyn, the Supreme Court of New York, Appellate Division, held that personal jurisdiction need not be established over judgment debtors for recognition and enforcement to proceed. In the court's view, "[r]equiring that the judgment debtor have a 'presence' in or some other jurisdictional nexus to the state of enforcement would unduly protect a judgment debtor and enable him easily to escape his just obligations under a foreign country money judgment" (p. 292); moreover, no constitutional obligation exists to satisfy such a requirement (p. 289). The court concluded that "even if defendants do not presently have assets in New York, plaintiffs nevertheless should be granted recognition of the foreign country money judgment . . . and thereby should have the opportunity to pursue all such enforcement steps in futuro, whenever it might appear that defendants are maintaining assets in New York": p. 291. The same court recently reiterated the Lenchyshyn approach in Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co., 986 N.Y.S.2d 454 (App. Div. 2014). Other state and district courts have also adopted its reasoning: Haaksman v. Diamond Offshore (Bermuda), Ltd., 260 S.W.3d 476 (Tex. App. 2008); Pure Fishing, Inc. v. Silver Star Co., 202 F.Supp.2d 905 (N.D. Iowa 2002)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Pure Fishing, Inc. v. Silver Star Co., 202 F.Supp.2d 905 (2002)	lower-level court	US	[61] The U.S. courts appear to be divided on the prerequisites to recognition and enforcement: see R. A. Brand, "Federal Judicial Center International Litigation Guide: Recognition and Enforcement of Foreign Judgments" (2013), 74 U. Pitt. L. Rev. 491. Some, as exemplified by the decision in Lenchyshyn v. Pelko Electric, Inc., 723 N.Y.S.2d 285 (App. Div. 2001), take a broad approach. In Lenchyshyn, the Supreme Court of New York, Appellate Division, held that personal jurisdiction need not be established over judgment debtors for recognition and enforcement to proceed. In the court's view, "[r]equiring that the judgment debtor have a 'presence' in or some other jurisdictional nexus to the state of enforcement would unduly protect a judgment debtor and enable him easily to escape his just obligations under a foreign country money judgment" (p. 292); moreover, no constitutional obligation exists to satisfy such a requirement (p. 289). The court concluded that "even if defendants do not presently have assets in New York, plaintiffs nevertheless should be granted recognition of the foreign country money judgment . . . and thereby should have the opportunity to pursue all such enforcement steps in futuro, whenever it might appear that defendants are maintaining assets in New York": p. 291. The same court recently reiterated the Lenchyshyn approach in Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co., 986 N.Y.S.2d 454 (App. Div. 2014). Other state and district courts have also adopted its reasoning: Haaksman v. Diamond Offshore (Bermuda), Ltd., 260 S.W.3d 476 (Tex. App. 2008); Pure Fishing, Inc. v. Silver Star Co., 202 F.Supp.2d 905 (N.D. Iowa 2002)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Electrolines, Inc. v. Prudential Assurance Co., 677 N.W.2d 874 (2004)	lower-level court	US	[62] As the motion judge below correctly pointed out, some U.S. courts have taken a different approach. For instance, the Michigan Court of Appeals stated the following in Electrolines, Inc. v. Prudential Assurance Co., 677 N.W.2d 874 (2004): We hold that where plaintiff failed to identify any property owned by defendants in Michigan, the trial court erred in holding that it was unnecessary for plaintiff to demonstrate that the Michigan court had personal jurisdiction over defendants in this common-law enforcement action. . . . We have not found any authorities indicating that the foundational requirement of demonstrating a trial court's jurisdiction over a person or property is inapplicable in enforcement proceedings. [pp. 880 and 884] Other U.S. courts have adopted an even more extreme position, holding that "attachment of assets of the judgment debtor within the state is not sufficient to provide jurisdiction, and that personal jurisdiction over the judgment debtor is necessary": Brand, at p. 506, citing Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory", 283 F.3d 208 (4th Cir. 2002), cert. denied, 537 U.S. 822 (2002)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	*Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208 (2002), cert. denied, 537 U.S. 822 (2002)	lower-level court	US	[62] As the motion judge below correctly pointed out, some U.S. courts have taken a different approach. For instance, the Michigan Court of Appeals stated the following in Electrolines, Inc. v. Prudential Assurance Co., 677 N.W.2d 874 (2004): We hold that where plaintiff failed to identify any property owned by defendants in Michigan, the trial court erred in holding that it was unnecessary for plaintiff to demonstrate that the Michigan court had personal jurisdiction over defendants in this common-law enforcement action. . . . We have not found any authorities indicating that the foundational requirement of demonstrating a trial court's jurisdiction over a person or property is inapplicable in enforcement proceedings. [pp. 880 and 884] Other U.S. courts have adopted an even more extreme position, holding that "attachment of assets of the judgment debtor within the state is not sufficient to provide jurisdiction, and that personal jurisdiction over the judgment debtor is necessary": Brand, at p. 506, citing Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory", 283 F.3d 208 (4th Cir. 2002), cert. denied, 537 U.S. 822 (2002)
2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Adams v. Cape Industries Plc., [1990] 1 Ch. 433	lower-level court	UK	[85] To establish traditional, presence-based jurisdiction over an out-of-province corporate defendant, it must be shown that the defendant was carrying on business in the forum at the time of the action. Whether a corporation is "carrying on business" in the province is a question of fact: Wilson v. Hull (1995), 174 A.R. 81 (C.A.), at para. 52; Ingersoll Packing Co. v. New York Central and Hudson River R.R. Co. (1918), 42 O.L.R. 330 (S.C. (in chambers)), at p. 337. In Wilson, in the context of statutory registration of a foreign judgment, the Alberta Court of Appeal was asked to assess whether a company was carrying on business in the jurisdiction. It held that to make this determination, the court must inquire into whether the company has "some direct or indirect presence in the state asserting jurisdiction, accompanied by a degree of business activity which is sustained for a period of time": para. 13. These factors are and always have been compelling indicia of corporate presence; as the cases cited in Adams v. Cape Industries Plc., [1990] 1 Ch. 433, at pp. 467-68, per Scott J., demonstrate, the common law has consistently found the maintenance of physical business premises to be a compelling jurisdictional factor. LeBel J. accepted this in Van Breda when he held that "carrying on business requires some form of actual, not only virtual, presence in the jurisdiction, such as maintaining an office there": para. 87

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2015	Chevron Corp. v. Yaiguaje	9/4/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do	Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69	Gascon J.	unanimous	Ontario	Private international law	C	referred to	Reciprocal Enforcement of Judgments (U.K.) Act, R.S.O. 1990, c. R.6.	lower-level court	UK	[13] First, in his view, this Court's leading cases on recognition and enforcement — Morguard Investments Ltd. v. De Savoye, [1990] 3 S.C.R. 1077, and Beals v. Saldanha, 2003 SCC 72, [2003] 3 S.C.R. 416 — contain no suggestion that a real and substantial connection between the foreign judgment debtor and Ontario is needed. Second, he found that there is nothing in Van Breda to suggest that it altered the principles laid down in Morguard and Beals. Third, requiring that rule 17.02(m) be read "within the (un-stated) context of the Ontario court otherwise enjoying some real and substantial connection to the defendant would render the sub-rule meaningless" because the Ontario court will, of course, have no connection with the subject matter of the judgment, given that "it is a foreign judgment which by its very nature has no connection with Ontario": para. 80. Nor will there be an in personam connection between the defendant and Ontario, as "the sub-rule specifically contemplates that a non-Ontario resident will be the defendant in the action": ibid. Fourth, the judge held that there may be legitimate reasons (for instance, the practical reality that assets can exit a jurisdiction quickly) for seeking the recognition and enforcement of a foreign judgment against a non-resident debtor who has no assets in Ontario. To insist that the debtor have assets in the jurisdiction before a judgment creditor can seek recognition and enforcement could harm the creditor's ability to recover the debt. Fifth, the motion judge considered two analogous Ontario statutes — the Reciprocal Enforcement of Judgments (U.K.) Act, R.S.O. 1990, c. R.6, and the International Commercial Arbitration Act, R.S.O. 1990, c. I.9 — and found that neither of these legislative schemes establishes a requirement that the defendant be located or possess assets in Ontario before a creditor can register a foreign judgment or arbitral award. In "an age of global commerce", he added, it would be misguided to have a more restrictive common law approach than a statutory one: para. 82. [71] Second, analogous provisions found in other Ontario statutes do not impose an obligation on the plaintiff to establish that the defendant has assets in the province or some other conceivable connection with the forum. For example, the Ontario International Commercial Arbitration Act, which permits registration of foreign arbitral awards, does not require that the debtor be present or have assets in Ontario. Article 35(1) of the Schedule to that Act provides that "[a]n arbitral award . . . shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36." Article 36(1) lists various grounds for refusing recognition or enforcement of such awards. None of those grounds is based upon the absence of a real and substantial connection between either the underlying dispute or the defendant and Ontario, or upon an absence of assets. Similarly, the Reciprocal Enforcement of Judgments (U.K.) Act, which facilitates the recognition and enforcement of judgments from the United Kingdom, does not permit a debtor to escape enforcement by demonstrating that no real and substantial connection exists between the debtor or the dispute and the forum. Finally, the Reciprocal Enforcement of Judgments Act, R.S.O. 1990, c. R.5, which supplies an expedited mechanism for registering and enforcing the judgments of the other Canadian provinces and territories, contains no such requirement either.
2015	Strickland v. Canada (Attorney General)	7/9/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15438/index.do	Strickland v. Canada (Attorney General), 2015 SCC 37, [2015] 2 S.C.R. 713	Cromwell J.	majority	Federal Court of Appeal	Courts	C	referred to	Hadmor Productions Ltd. v. Hamilton, [1982] 1 All E.R. 1042	SC	UK (HL)	[39] The fact that undertaking judicial review is discretionary means that the Federal Court judge's exercise of that discretion is entitled to deference on appeal. As this Court noted in Matsqui, an appellate court "must defer to the judge's exercise of . . . discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently": para. 39, quoting Lord Diplock in Hadmor Productions Ltd. v. Hamilton, [1982] 1 All E.R. 1042, at p. 1046.
2015	Kahkewistahaw First Nation v. Taypotat	5/28/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15383/index.do	Kahkewistahaw First Nation *v.* Taypotat, 2015 SCC 30, [2015] 2 S.C.R. 548	Abella J.	majority	Federal Court of Appeal	Constitutional law	C	referred to	Griggs v. Duke Power Co., 401 U.S. 424 (1971)	SC	US	[23] There is no question that education requirements for employment could, in certain circumstances, be shown to have a discriminatory impact in violation of s. 15 . In Griggs v. Duke Power Co., 401 U.S. 424 (1971), for example, the United States Supreme Court concluded that it was a violation of Title VII of the Civil Rights Act of 1964 for an employer to require that employees have a high school diploma to work as, among other things, a coal handler or in maintenance at a power plant. The effect of this facially neutral requirement was to disproportionately exclude African Americans from positions in the plant. The court concluded that: . . . practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices. [p. 430] As the court observed, employment requirements that are unrelated to measuring job capability can operate as "built-in headwinds" for minority groups, and will therefore be discriminatory: p. 432. See also British Columbia (Public Service Employee Relations Commission) v. BCGSEU, [1999] 3 S.C.R. 3.
2015	R. v. Kokopenace	5/21/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15373/index.do	R. v. Kokopenace, 2015 SCC 28, [2015] 2 S.C.R. 398	Cromwell J.	dissenting	Ontario	Constitutional law	C	D	Rojas v. Berllaque, [2003] UKPC 76, [2004] 1 W.L.R. 201	SC	UK (PC)	[303] As the Privy Council stated in Rojas v. Berllaque, [2003] UKPC 76, [2004] 1 W.L.R. 201, at para. 14, "a non-discriminatory method of compilation of the jury lists is an essential ingredient of a fair trial by jury". This view was also adopted by the New Zealand Court of Appeal: R. v. Ellis, [2011] NZCA 90, [2011] 4 L.R.C. 515, at paras. 50-60. I recognize that discrimination may occur not only as the result of intended effects of conduct, but also through the unintended effects of conduct. That the effect (although certainly not the intention) of the state conduct led to a substantial under-representation based on a prohibited ground of discrimination in my opinion considerably exacerbates the seriousness of the breach and its impact on confidence in the administration of justice.
2015	R. v. Kokopenace	5/21/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15373/index.do	R. v. Kokopenace, 2015 SCC 28, [2015] 2 S.C.R. 398	Cromwell J.	dissenting	Ontario	Constitutional law	C	D	*R. v. Ellis* , [2011] NZCA 90, [2011] 4 L.R.C. 515	*lower-level court*	New Zealand	[303] As the Privy Council stated in Rojas v. Berllaque, [2003] UKPC 76, [2004] 1 W.L.R. 201, at para. 14, "a non-discriminatory method of compilation of the jury lists is an essential ingredient of a fair trial by jury". This view was also adopted by the New Zealand Court of Appeal: R. v. Ellis, [2011] NZCA 90, [2011] 4 L.R.C. 515, at paras. 50-60. I recognize that discrimination may occur not only as the result of intended effects of conduct, but also through the unintended effects of conduct. That the effect (although certainly not the intention) of the state conduct led to a substantial under-representation based on a prohibited ground of discrimination in my opinion considerably exacerbates the seriousness of the breach and its impact on confidence in the administration of justice.
2015	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)	5/14/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15357/index.do	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), 2015 SCC 25, [2015] 2 S.C.R. 282	Abella J	unanimous	Yukon	Constitutional law Courts	C	referred to	Jones v. National Coal Board, [1957] 2 All E.R. 155	lower-level court	UK	[28] On the other hand, Lamer J. endorsed and applied the following cautionary comments of Lord Denning in Jones v. National Coal Board, [1957] 2 All E.R. 155 (C.A.): Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large . . . . [p. 159] (See also Take and Save Trading CC v. Standard Bank of SA Ltd., 2004 (4) S.A. 1 (S.C.A.), at para. 4.)
2015	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)	5/14/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15357/index.do	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), 2015 SCC 25, [2015] 2 S.C.R. 282	Abella J	unanimous	Yukon	Constitutional law Courts	C	referred to	Take and Save Trading CC v. Standard Bank of SA Ltd., 2004 (4) S.A. 1	SC	South Africa	[28] On the other hand, Lamer J. endorsed and applied the following cautionary comments of Lord Denning in Jones v. National Coal Board, [1957] 2 All E.R. 155 (C.A.): Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large . . . . [p. 159] (See also Take and Save Trading CC v. Standard Bank of SA Ltd., 2004 (4) S.A. 1 (S.C.A.), at para. 4.)
2015	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)	5/14/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15357/index.do	Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), 2015 SCC 25, [2015] 2 S.C.R. 282	Abella J	unanimous	Yukon	Constitutional law Courts	C	referred to	*South African Commercial Catering and Allied Workers Union v. Irvin & Johnson Ltd. (Seafoods Division Fish Processing)* , 2000 (3) S.A. 705	*CC*	South Africa	[35] This recognition was reinforced by Cameron A.J. of the Constitutional Court of South Africa in South African Commercial Catering and Allied Workers Union v. Irvin & Johnson Ltd. (Seafoods Division Fish Processing), 2000 (3) S.A. 705: . . . "absolute neutrality" is something of a chimera in the judicial context. This is because Judges are human. They are unavoidably the product of their own life experiences and the perspective thus derived inevitably and distinctively informs each Judge's performance of his or her judicial duties. But colourless neutrality stands in contrast to judicial impartiality . . . . Impartiality is that quality of open-minded readiness to persuasion — without unfitting adherence to either party or to the Judge's own predilections, preconceptions and personal views — that is the keystone of a civilised system of adjudication. Impartiality requires, in short, "a mind open to persuasion by the evidence and the submissions of counsel"; and, in contrast to neutrality, this is an absolute requirement in every judicial proceeding. [Citations omitted; para. 13.]

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2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	*Armchair Passenger Transport Ltd. v. Helical Bar Plc* , [2003] EWHC 367	*lower-level court*	UK	[42] For example, summarizing the applicable principles in British law, Nelson J. in Armchair Passenger Transport Ltd. v. Helical Bar Plc, [2003] EWHC 367 (Q.B.), underlined that when an expert has an interest or connection with the litigation or a party thereto, exclusion will be warranted if it is determined that the expert is unwilling or unable to carry out his or her primary duty to the court: see also H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at pp. 1158-59. The mere fact of an interest or connection will not disqualify, but it nonetheless may do so in light of the nature and extent of the interest or connection in particular circumstances. As Lord Phillips of Worth Matravers, M.R., put it in a leading case, "[i]t is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence": R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381, at para. 70; see also Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464 (Comm.); Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474 (Ch. D.); Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067 (Ch. D.), at paras. 312-17.
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381	lower-level court	UK	[42] For example, summarizing the applicable principles in British law, Nelson J. in Armchair Passenger Transport Ltd. v. Helical Bar Plc, [2003] EWHC 367 (Q.B.), underlined that when an expert has an interest or connection with the litigation or a party thereto, exclusion will be warranted if it is determined that the expert is unwilling or unable to carry out his or her primary duty to the court: see also H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at pp. 1158-59. The mere fact of an interest or connection will not disqualify, but it nonetheless may do so in light of the nature and extent of the interest or connection in particular circumstances. As Lord Phillips of Worth Matravers, M.R., put it in a leading case, "[i]t is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence": R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381, at para. 70; see also Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464 (Comm.); Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474 (Ch. D.); Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067 (Ch. D.), at paras. 312-17.
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464	lower-level court	UK	[42] For example, summarizing the applicable principles in British law, Nelson J. in Armchair Passenger Transport Ltd. v. Helical Bar Plc, [2003] EWHC 367 (Q.B.), underlined that when an expert has an interest or connection with the litigation or a party thereto, exclusion will be warranted if it is determined that the expert is unwilling or unable to carry out his or her primary duty to the court: see also H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at pp. 1158-59. The mere fact of an interest or connection will not disqualify, but it nonetheless may do so in light of the nature and extent of the interest or connection in particular circumstances. As Lord Phillips of Worth Matravers, M.R., put it in a leading case, "[i]t is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence": R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381, at para. 70; see also Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464 (Comm.); Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474 (Ch. D.); Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067 (Ch. D.), at paras. 312-17.
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474	lower-level court	UK	[42] For example, summarizing the applicable principles in British law, Nelson J. in Armchair Passenger Transport Ltd. v. Helical Bar Plc, [2003] EWHC 367 (Q.B.), underlined that when an expert has an interest or connection with the litigation or a party thereto, exclusion will be warranted if it is determined that the expert is unwilling or unable to carry out his or her primary duty to the court: see also H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at pp. 1158-59. The mere fact of an interest or connection will not disqualify, but it nonetheless may do so in light of the nature and extent of the interest or connection in particular circumstances. As Lord Phillips of Worth Matravers, M.R., put it in a leading case, "[i]t is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence": R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381, at para. 70; see also Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464 (Comm.); Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474 (Ch. D.); Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067 (Ch. D.), at paras. 312-17.
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067	lower-level court	UK	[42] For example, summarizing the applicable principles in British law, Nelson J. in Armchair Passenger Transport Ltd. v. Helical Bar Plc, [2003] EWHC 367 (Q.B.), underlined that when an expert has an interest or connection with the litigation or a party thereto, exclusion will be warranted if it is determined that the expert is unwilling or unable to carry out his or her primary duty to the court: see also H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at pp. 1158-59. The mere fact of an interest or connection will not disqualify, but it nonetheless may do so in light of the nature and extent of the interest or connection in particular circumstances. As Lord Phillips of Worth Matravers, M.R., put it in a leading case, "[i]t is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence": R. (Factortame Ltd.) v. Secretary of State for Transport, [2002] EWCA Civ 932, [2003] Q.B. 381, at para. 70; see also Gallaher International Ltd. v. Tlais Enterprises Ltd., [2007] EWHC 464 (Comm.); Meat Corp. of Namibia Ltd. v. Dawn Meats (U.K.) Ltd., [2011] EWHC 474 (Ch. D.); Matchbet Ltd. v. Openbet Retail Ltd., [2013] EWHC 3067 (Ch. D.), at paras. 312-17.
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	FGT Custodians Pty. Ltd. v. Fagenblat, [2003] VSCA 33	lower-level court	Australia	[43] In Australia, the expert's objectivity and impartiality will generally go to weight, not to admissibility: I. Freckelton and H. Selby, Expert Evidence: Law, Practice, Procedure and Advocacy (5th ed. 2013), at p. 35. As the Court of Appeal of the State of Victoria put it: ". . . to the extent that it is desirable that expert witnesses should be under a duty to assist the Court, that has not been held and should not be held as disqualifying, in itself, an 'interested' witness from being competent to give expert evidence" (FGT Custodians Pty. Ltd. v. Fagenblat, [2003] VSCA 33, at para. 26 (AustLII); see also Freckelton and Selby, at pp. 186-88; Collins Thomson v. Clayton, [2002] NSWSC 366; Kirch Communications Pty Ltd. v. Gene Engineering Pty Ltd., [2002] NSWSC 485; SmithKline Beecham (Australia) Pty Ltd. v. Chipman, [2003] FCA 796, 131 F.C.R. 500).
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Collins Thomson v. Clayton, [2002] NSWSC 366	lower-level court	Australia	[43] In Australia, the expert's objectivity and impartiality will generally go to weight, not to admissibility: I. Freckelton and H. Selby, Expert Evidence: Law, Practice, Procedure and Advocacy (5th ed. 2013), at p. 35. As the Court of Appeal of the State of Victoria put it: ". . . to the extent that it is desirable that expert witnesses should be under a duty to assist the Court, that has not been held and should not be held as disqualifying, in itself, an 'interested' witness from being competent to give expert evidence" (FGT Custodians Pty. Ltd. v. Fagenblat, [2003] VSCA 33, at para. 26 (AustLII); see also Freckelton and Selby, at pp. 186-88; Collins Thomson v. Clayton, [2002] NSWSC 366; Kirch Communications Pty Ltd. v. Gene Engineering Pty Ltd., [2002] NSWSC 485; SmithKline Beecham (Australia) Pty Ltd. v. Chipman, [2003] FCA 796, 131 F.C.R. 500).
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Kirch Communications Pty Ltd. v. Gene Engineering Pty Ltd., [2002] NSWSC 485	lower-level court	Australia	[43] In Australia, the expert's objectivity and impartiality will generally go to weight, not to admissibility: I. Freckelton and H. Selby, Expert Evidence: Law, Practice, Procedure and Advocacy (5th ed. 2013), at p. 35. As the Court of Appeal of the State of Victoria put it: ". . . to the extent that it is desirable that expert witnesses should be under a duty to assist the Court, that has not been held and should not be held as disqualifying, in itself, an 'interested' witness from being competent to give expert evidence" (FGT Custodians Pty. Ltd. v. Fagenblat, [2003] VSCA 33, at para. 26 (AustLII); see also Freckelton and Selby, at pp. 186-88; Collins Thomson v. Clayton, [2002] NSWSC 366; Kirch Communications Pty Ltd. v. Gene Engineering Pty Ltd., [2002] NSWSC 485; SmithKline Beecham (Australia) Pty Ltd. v. Chipman, [2003] FCA 796, 131 F.C.R. 500).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Rodriguez v. Pacificare of Texas, Inc., 980 F.2d 1014 (1993)	lower-level court	US	[44] In the United States, at the federal level, the independence of the expert is a consideration that goes to the weight of the evidence, and a party may testify as an expert in his own case: Rodriguez v. Pacificare of Texas, Inc., 980 F.2d 1014 (5th Cir. 1993), at p. 1019; Tagatz v. Marquette University, 861 F.2d 1040 (7th Cir. 1988); Apple Inc. v. Motorola, Inc., 757 F.3d 1286 (Fed. Cir. 2014), at p. 1321. This also seems to be a fair characterization of the situation in the states (Corpus Juris Secundum, vol. 32 (2008), at p. 325: "The bias or interest of the witness does not affect his or her qualification, but only the weight to be given the testimony.").
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Tagatz v. Marquette University, 861 F.2d 1040 (1988)	lower-level court	US	[44] In the United States, at the federal level, the independence of the expert is a consideration that goes to the weight of the evidence, and a party may testify as an expert in his own case: Rodriguez v. Pacificare of Texas, Inc., 980 F.2d 1014 (5th Cir. 1993), at p. 1019; Tagatz v. Marquette University, 861 F.2d 1040 (7th Cir. 1988); Apple Inc. v. Motorola, Inc., 757 F.3d 1286 (Fed. Cir. 2014), at p. 1321. This also seems to be a fair characterization of the situation in the states (Corpus Juris Secundum, vol. 32 (2008), at p. 325: "The bias or interest of the witness does not affect his or her qualification, but only the weight to be given the testimony.").
2015	White Burgess Langille Inman v. Abbott and Haliburton Co.	4/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do	White Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23, [2015] 2 S.C.R. 182	Cromwell J	unanimous	Nova Scotia	Evidence	C	referred to	Apple Inc. v. Motorola, Inc., 757 F.3d 1286 (2014)	lower-level court	US	[44] In the United States, at the federal level, the independence of the expert is a consideration that goes to the weight of the evidence, and a party may testify as an expert in his own case: Rodriguez v. Pacificare of Texas, Inc., 980 F.2d 1014 (5th Cir. 1993), at p. 1019; Tagatz v. Marquette University, 861 F.2d 1040 (7th Cir. 1988); Apple Inc. v. Motorola, Inc., 757 F.3d 1286 (Fed. Cir. 2014), at p. 1321. This also seems to be a fair characterization of the situation in the states (Corpus Juris Secundum, vol. 32 (2008), at p. 325: "The bias or interest of the witness does not affect his or her qualification, but only the weight to be given the testimony.").
2015	Theratechnologies Inc. v. 121851 Canada Inc.	4/17/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15290/index.do	Theratechnologies inc. v. 121851 Canada inc., 2015 SCC 18, [2015] 2 S.C.R. 106	Abella J.	unanimous	Quebec	Securities	C	referred to	TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976)	SC	US	[55] Finally, even if Thera had issued a press release on May 11, 2010 after it received the FDA's briefing materials, it is not clear what reassurance Thera could have provided at this stage, given that the outcome of the FDA process, as every reasonable investor would have known and as Thera repeatedly made clear, is always uncertain. As the U.S. Supreme Court acknowledged in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976), there are risks of excessive disclosure, which could "simply . . . bury the shareholders in an avalanche of trivial information — a result that is hardly conducive to informed decisionmaking": pp. 448-49, cited in Cornish, at para. 41.
2015	Carey v. Laiken	4/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15289/index.do	Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79	Cromwell J.	unanimous	Ontario	Civil procedure Courts	C	referred to	Re Tyre Manufacturers' Agreement, [1966] 2 All E.R. 849	SC	UK (PC)	[44] The appellant also submits that lawyers should benefit from a heightened fault requirement, but I do not agree. As the Court of Appeal recognized, reliance on legal advice does not shield a party from a finding of contempt: para. 61, citing Re Tyre Manufacturers' Agreement, [1966] 2 All E.R. 849 (R.P.C.), at p. 862; Canada Metal Co. v. C.B.C. (No. 2) (1974), 48 D.L.R. (3d) 641 (Ont. H.C.J.), at p. 661, aff'd (1975), 65 D.L.R. (3d) 231 (Ont. C.A.). Still less should the law permit lawyers to escape a finding of contempt because they have, in effect, relied on their own legal advice.
2015	Carey v. Laiken	4/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15289/index.do	Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79	Cromwell J.	unanimous	Ontario	Civil procedure Courts	C	referred to	Customs and Excise Commissioners v. Barclays Bank plc, [2006] UKHL 28, [2007] 1 A.C. 181	SC	UK (HL)	[45] As for third parties, the appellant points to some authority in the United Kingdom and Australia to the effect that intent to interfere with the administration of justice is a prerequisite for finding a third party in contempt: see, e.g., Customs and Excise Commissioners v. Barclays Bank plc, [2006] UKHL 28, [2007] 1 A.C. 181, at para. 29; Attorney General v. Punch Ltd., [2002] UKHL 50, [2003] 1 A.C. 1046, at para. 87; Z Ltd. v. A-Z, [1982] 1 Q.B. 558 (C.A.), at p. 583; Baker v. Paul, [2013] NSWCA 426, at para. 19. It has also been noted that "[i]t would appear that a higher degree of intention is required to make a non-party liable for contempt": Sharpe, at ¶ 6.210.
2015	Carey v. Laiken	4/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15289/index.do	Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79	Cromwell J.	unanimous	Ontario	Civil procedure Courts	C	referred to	Attorney General v. Punch Ltd., [2002] UKHL 50, [2003] 1 A.C. 1046	SC	UK (HL)	[45] As for third parties, the appellant points to some authority in the United Kingdom and Australia to the effect that intent to interfere with the administration of justice is a prerequisite for finding a third party in contempt: see, e.g., Customs and Excise Commissioners v. Barclays Bank plc, [2006] UKHL 28, [2007] 1 A.C. 181, at para. 29; Attorney General v. Punch Ltd., [2002] UKHL 50, [2003] 1 A.C. 1046, at para. 87; Z Ltd. v. A-Z, [1982] 1 Q.B. 558 (C.A.), at p. 583; Baker v. Paul, [2013] NSWCA 426, at para. 19. It has also been noted that "[i]t would appear that a higher degree of intention is required to make a non-party liable for contempt": Sharpe, at ¶ 6.210.
2015	Carey v. Laiken	4/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15289/index.do	Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79	Cromwell J.	unanimous	Ontario	Civil procedure Courts	C	referred to	Z Ltd. v. A-Z, [1982] 1 Q.B. 558	lower-level court	UK	[45] As for third parties, the appellant points to some authority in the United Kingdom and Australia to the effect that intent to interfere with the administration of justice is a prerequisite for finding a third party in contempt: see, e.g., *Customs and Excise Commissioners v. Barclays Bank plc*, [2006] UKHL 28, [2007] 1 A.C. 181, at para. 29; *Attorney General v. Punch Ltd.*, [2002] UKHL 50, [2003] 1 A.C. 1046, at para. 87; *Z Ltd. v. A-Z*, [1982] 1 Q.B. 558 (C.A.), at p. 583; *Baker v. Paul*, [2013] NSWCA 426, at para. 19. It has also been noted that "[i]t would appear that a higher degree of intention is required to make a non-party liable for contempt": Sharpe, at ¶ 6.210.
2015	Carey v. Laiken	4/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15289/index.do	Carey v. Laiken, 2015 SCC 17, [2015] 2 S.C.R. 79	Cromwell J.	unanimous	Ontario	Civil procedure Courts	C	referred to	Baker v. Paul, [2013] NSWCA 426	lower-level court	Australia	[45] As for third parties, the appellant points to some authority in the United Kingdom and Australia to the effect that intent to interfere with the administration of justice is a prerequisite for finding a third party in contempt: see, e.g., *Customs and Excise Commissioners v. Barclays Bank plc*, [2006] UKHL 28, [2007] 1 A.C. 181, at para. 29; *Attorney General v. Punch Ltd.*, [2002] UKHL 50, [2003] 1 A.C. 1046, at para. 87; *Z Ltd. v. A-Z*, [1982] 1 Q.B. 558 (C.A.), at p. 583; *Baker v. Paul*, [2013] NSWCA 426, at para. 19. It has also been noted that "[i]t would appear that a higher degree of intention is required to make a non-party liable for contempt": Sharpe, at ¶ 6.210.
2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	McLachlin C.J. and Moldaver J.	dissenting	Quebec	Administrative law Constitutional law	C	D	Sindicatul "Păstorul Cel Bun" v. Romania (2014), 58 E.H.R.R. 10	international	ECHR	[98] Foreign jurisprudence supports Loyola's claim to freedom of religion: see Sindicatul "Păstorul Cel Bun" v. Romania (2014), 58 E.H.R.R. 10, at para. 136; Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII; Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 132 S. Ct. 694 (2012); National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).
2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	McLachlin C.J. and Moldaver J.	dissenting	Quebec	Administrative law Constitutional law	C	D	Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII	international	ECHR	[98] Foreign jurisprudence supports Loyola's claim to freedom of religion: see Sindicatul "Păstorul Cel Bun" v. Romania (2014), 58 E.H.R.R. 10, at para. 136; Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII; Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 132 S. Ct. 694 (2012); National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).
2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	McLachlin C.J. and Moldaver J.	dissenting	Quebec	Administrative law Constitutional law	C	D	Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 132 S. Ct. 694 (2012)	SC	US	[98] Foreign jurisprudence supports Loyola's claim to freedom of religion: see Sindicatul "Păstorul Cel Bun" v. Romania (2014), 58 E.H.R.R. 10, at para. 136; Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII; Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 132 S. Ct. 694 (2012); National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).
2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	McLachlin C.J. and Moldaver J.	dissenting	Quebec	Administrative law Constitutional law	C	D	National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979)	SC	US	[98] Foreign jurisprudence supports Loyola's claim to freedom of religion: see Sindicatul "Păstorul Cel Bun" v. Romania (2014), 58 E.H.R.R. 10, at para. 136; Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII; Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 132 S. Ct. 694 (2012); National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

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2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	Abella J.	majority	Quebec	Administrative law Constitutional law	C	referred to	Eur. Court H. R., Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A	international	ECHR	[45] Because it allows communities with different values and practices to peacefully co-exist, a secular state also supports pluralism. The European Court of Human Rights recognized the relationship between religious freedom, secularism and pluralism in Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A, a case about a Jehovah's Witness who had been repeatedly arrested for violating Greece's ban on proselytism. Concluding that the claimant's Article 9 rights to religious freedom had been violated, the court wrote: As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. [p. 17] See also Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII
2015	Loyola High School v. Quebec (Attorney General)	3/19/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do	Loyola High School v. Quebec (Attorney General), 2015 SCC 12, [2015] 1 S.C.R. 613	Abella J.	majority	Quebec	Administrative law Constitutional law	C	referred to	Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII	international	ECHR	[45] Because it allows communities with different values and practices to peacefully co-exist, a secular state also supports pluralism. The European Court of Human Rights recognized the relationship between religious freedom, secularism and pluralism in Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A, a case about a Jehovah's Witness who had been repeatedly arrested for violating Greece's ban on proselytism. Concluding that the claimant's Article 9 rights to religious freedom had been violated, the court wrote: As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. [p. 17] See also Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J.	dissenting	New Brunswick	Labour law	C	D	Universal Cargo Carriers Corp. v. Citati, [1957] 2 All E.R. 70	lower-level court	UK	[173] To exclude this evidence from consideration, as I see it, would be to make the employee's right to claim constructive dismissal depend on whether the employer has succeeded in concealing his or her true state of mind: *Universal Cargo Carriers Corp. v. Citati* , [1957] 2 All E.R. 70 (Q.B.), at p. 91. Happily, the authorities do not support that unattractive position.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Woodar Investment Development Ltd. v. Wimpey Construction UK Ltd., [1980] 1 All E.R. 571	SC	UK (HL)	[164] In my respectful view, the approach followed by the trial judge and affirmed by the Court of Appeal was based on a legal error. This error resulted from failing to recognize that constructive dismissal may be established not only on the basis of an actual important breach, but also by conduct which, in light of all of the circumstances, shows that the employer does not intend to be bound in the future by important terms of the contract of employment. It follows that in assessing whether the employer's conduct constituted a repudiation of the contract of employment, the court must not only consider the importance of any actual breach in isolation, but must also consider the impact of the employer's conduct, in light of the circumstances and viewed objectively, on a reasonable person in the position of the employee. Consideration must be given not only to whether the suspension itself constituted a sufficiently serious breach of contract to constitute repudiation, but whether the suspension, viewed in light of all of the surrounding circumstances, constituted an anticipatory breach in the sense that the employer evinced the intention not to be bound by important terms of the contract in the future. As Lord Scarman put it in Woodar Investment Development Ltd. v. Wimpey Construction UK Ltd., [1980] 1 All E.R. 571 (H.L.), at p. 590, the trial judge and the Court of Appeal in this case were "concentrating too much attention on one act isolated from its surrounding circumstances and failing to pay proper regard to the impact of the party's conduct on the other party". [171] These principles do not mean, however, that the breaching party's motives or subjective intention are irrelevant in all cases or that the other party is always restricted to relying on information of which that party was actually unaware at the relevant time. So, for example, where the employee claims that the employer's course of conduct evinces an intention not to be bound in the future by the contract, the court must evaluate that conduct in light of all of the circumstances. In doing so, while the breaching party's motives as such are irrelevant, they may throw light on the way the alleged repudiatory conduct would be viewed by a reasonable person: see, e.g., Eminence Property Developments Ltd. v. Heaney, [2010] EWCA Civ 1168, [2011] 2 All E.R. (Comm.) 223, at para. 63; see also Woodar, at p. 574, per Lord Wilberforce. Moreover, a party alleging repudiation (in this case Mr. Potter) may rely on the other party's conduct up to the time he accepted the repudiation and sued for constructive dismissal, even if he was unaware of it at that time.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J.	dissenting	New Brunswick	Labour law	C	referred to	Western Excavating (ECC) Ltd. v. Sharp, [1978] 1 All E.R. 713	lower-level court	UK	[155] Thus, an employee is constructively dismissed in two situations: where the employer's conduct is "a significant breach going to the root of the contract of employment" and where the employer's conduct otherwise "shows that the employer no longer intends to be bound by one or more of the essential terms of the contract": Western Excavating (ECC) Ltd. v. Sharp, [1978] 1 All E.R. 713 (C.A.), at p. 717.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Federal Commerce & Navigation Co. v. Molena Alpha Inc., [1979] A.C. 757	SC	UK (HL)	[169] Where the question is simply whether the employer's actual breach of the contract of employment was sufficiently serious to constitute a repudiation of the contract, the test is purely objective and is judged on the basis of what a reasonable person in the position of the other party would conclude. As held in Farber, the question of whether the employer has substantially altered the essential terms of the employee's contract is assessed by asking whether, at the time, a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed: para. 26. It is not necessary for the employer to have intended to force the employee to leave and the employer's motives are not controlling: Farber, at para. 27; Federal Commerce & Navigation Co. v. Molena Alpha Inc., [1979] A.C. 757 (H.L.). The relevant time is the time at which the employee had to decide whether to treat the employer's actions as a repudiation of the contract. As stated in Farber, "what is relevant is what was known by the [employee] at the time of the offer and what ought to have been foreseen by a reasonable person in the same situation. Evidence of events that occurred ex post facto is not relevant unless [those events] could reasonably have been foreseen": para. 42.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Eminence Property Developments Ltd. v. Heaney, [2010] EWCA Civ 1168, [2011] 2 All E.R. (Comm.) 223	lower-level court	UK	[171] These principles do not mean, however, that the breaching party's motives or subjective intention are irrelevant in all cases or that the other party is always restricted to relying on information of which that party was actually unaware at the relevant time. So, for example, where the employee claims that the employer's course of conduct evinces an intention not to be bound in the future by the contract, the court must evaluate that conduct in light of all of the circumstances. In doing so, while the breaching party's motives as such are irrelevant, they may throw light on the way the alleged repudiatory conduct would be viewed by a reasonable person: see, e.g., Eminence Property Developments Ltd. v. Heaney, [2010] EWCA Civ 1168, [2011] 2 All E.R. (Comm.) 223, at para. 63; see also Woodar, at p. 574, per Lord Wilberforce. Moreover, a party alleging repudiation (in this case Mr. Potter) may rely on the other party's conduct up to the time he accepted the repudiation and sued for constructive dismissal, even if he was unaware of it at that time.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Glencore Grain Rotterdam BV v. Lebanese Organisation for International Commerce, [1997] 4 All E.R. 514	lower-level court	UK	[175] This principle was reiterated more recently in Glencore Grain Rotterdam BV v. Lebanese Organisation for International Commerce, [1997] 4 All E.R. 514 (C.A.), at p. 526, where Evans L.J. cited with approval the rule set out in Taylor v. Oakes, Roncoroni, and Co. (1922), 127 L.T. 267 (C.A.), at p. 269, per Greer J.: It is a long established rule of law that a contracting party, who, after he has become entitled to refuse performance of his contractual obligations, gives a wrong reason for his refusal, does not thereby deprive himself of a justification which in fact existed, whether he was aware of it or not. [Emphasis added.] [176] This principle must be qualified in certain situations, such as the case in which the ground advanced is one that, had it been advanced at the time, could have been corrected by the other party: see Glencore. But those sorts of qualifications of the principle are not relevant here. See also Universal Cargo Carriers, at p. 89; Scandinavian Trading Co. A/B v. Zodiac Petroleum S.A., [1981] 1 Lloyd's Rep. 81 (Q.B.), at p. 90.
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Taylor v. Oakes, Roncoroni, and Co. (1922), 127 L.T. 267	lower-level court	UK	[175] This principle was reiterated more recently in Glencore Grain Rotterdam BV v. Lebanese Organisation for International Commerce, [1997] 4 All E.R. 514 (C.A.), at p. 526, where Evans L.J. cited with approval the rule set out in Taylor v. Oakes, Roncoroni, and Co. (1922), 127 L.T. 267 (C.A.), at p. 269, per Greer J.: It is a long established rule of law that a contracting party, who, after he has become entitled to refuse performance of his contractual obligations, gives a wrong reason for his refusal, does not thereby deprive himself of a justification which in fact existed, whether he was aware of it or not. [Emphasis added.]
2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Cromwell J	dissenting	New Brunswick	Labour law	C	D	Scandinavian Trading Co. A/B v. Zodiac Petroleum S.A., [1981] 1 Lloyd's Rep. 81	lower-level court	UK	[176] This principle must be qualified in certain situations, such as the case in which the ground advanced is one that, had it been advanced at the time, could have been corrected by the other party: see Glencore. But those sorts of qualifications of the principle are not relevant here. See also Universal Cargo Carriers, at p. 89; Scandinavian Trading Co. A/B v. Zodiac Petroleum S.A., [1981] 1 Lloyd's Rep. 81 (Q.B.), at p. 90.

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2015	Potter v. New Brunswick Legal Aid Services Commission	3/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14677/index.do	Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10, [2015] 1 S.C.R. 500	Wagner J.	majority	New Brunswick	Labour law	C	referred to	Universal Cargo Carriers Corp. v. Citati, [1957] 2 All E.R. 70	lower-level court	UK	[64] In the instant case, at the first step of the first branch of the constructive dismissal analysis, the trial judge was required to inquire, from an objective viewpoint, into whether the administrative suspension amounted to a breach of contract. To exclude evidence such as the evidence excluded by the trial judge in this case would be to make the employee's right to claim constructive dismissal depend on whether the employer was "artful enough to conceal his state of mind": *Universal Cargo Carriers Corp. v. Citati* , [1957] 2 All E.R. 70 (Q.B.), at p. 91.
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	State v. Scheidell, 227 Wis.2d 285 (1999)	lower-level court	US	[26] There is no principled reason to require that the connection be established by evidence relating directly to the third party where that individual is unknown. Such an articulation of the test — designed, for example, to capture the motive, propensity or opportunity of a known third party to commit the crime — would place an unrealistic burden on the accused. How could an accused establish the motive, propensity or opportunity of an unknown individual? (See, on this point, State v. Scheidell, 227 Wis.2d 285 (1999), at paras. 24-27.) [29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] [38] As noted above, there are two components to the Seaboyer analysis. First, in applying Seaboyer, the trial judge must assess the potential probative value of the evidence. Where the evidence relates to an unknown third party suspect, probative value will depend in part on the strength of the connection or nexus between the two events — that is, the degree of similarity between the indicted crime and the allegedly similar incident. As the Supreme Court of Wisconsin noted in Scheidell, "the greater the similarity, complexity, and distinctiveness of the events, as well as the relative frequency of the event, the stronger the case for admission" (para. 41, citing State v. Sullivan, 216 Wis.2d 768 (1998), at para. 54). [40] However, these significant prejudicial effects must nonetheless be evaluated in accordance with the fundamental principles governing criminal proceedings. In giving constitutional protection to the accused's rights to make full answer and defence and to be presumed innocent until proven guilty, we must accept a certain amount of complexity, length, and distraction from the Crown's case as a necessary concession to the actualization of those rights. (See, for example, Scheidell, at para. 65, per Abrahamson C.J., dissenting in the result.) [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p.
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	United States v. Stevens, 935 F.2d 1380 (1991)	lower-level court	US	[29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] lábjegyzet [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p. 833 (citing Wiley)).
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2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	Wiley v. State, 74 S.W.3d 399 (2002)	lower-level court	US	[29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] lábjegyzet [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p. 833 (citing Wiley)).
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	United States v. McVeigh, 153 F.3d 1166 (1998)	lower-level court	US	[29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] lábjegyzet [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p. 833 (citing Wiley)).
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	Caldwell v. State, 356 S.W.3d 42 (2011)	lower-level court	US	[29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] lábjegyzet [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p. 833 (citing Wiley)).
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	Davis v. State, 413 S.W.3d 816 (2013)	lower-level court	US	[29] This is consistent with the approaches taken by other common law jurisdictions in assessing defence-led evidence of similar acts.[2] lábjegyzet [2] Australian law requires the defence to show "a sufficient similarity between the two acts as to allow the jury to conclude that there is a real possibility that the same person was involved" (J. D. Heydon, Cross on Evidence (9th Aust. 2013), at p. 713). In the United Kingdom, evidence of the bad character of someone other than the defendant is admissible where the similarities give the evidence "substantial probative value" (Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 100(1)(b), (3)(c) and (d); H. M. Malek et al., eds., Phipson on Evidence (18th ed. 2013), at paras. 22-04, 22-24 to 22-27). Similarly, in the United States, some federal and state jurisprudence holds that defence-led evidence of similar acts will be admissible where it is "sufficiently similar to the crime at bar so that it is relevant" (United States v. Stevens, 935 F.2d 1380 (3rd Cir. 1991), at p. 1384; Scheidell, at paras. 39-41; Wiley v. State, 74 S.W.3d 399 (Tex. Crim. App. 2002), at p. 406; United States v. McVeigh, 153 F.3d 1166 (10th Cir. 1998), at p. 1191; Caldwell v. State, 356 S.W.3d 42 (Tex. Ct. App. 2011), at p. 47 (citing Wiley and McVeigh); Davis v. State, 413 S.W.3d 816 (Tex. Ct. App. 2013), at p. 833 (citing Wiley)).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2015	R. v. Grant	3/5/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14676/index.do#_ftnref2	R. v. Grant, 2015 SCC 9, [2015] 1 S.C.R. 475	Karakatsanis J.	unanimous	Manitoba	Criminal law	C	referred to	State v. Sullivan, 216 Wis.2d 768 (1998)	lower-level court	US	[38] As noted above, there are two components to the Seaboyer analysis. First, in applying Seaboyer, the trial judge must assess the potential probative value of the evidence. Where the evidence relates to an unknown third party suspect, probative value will depend in part on the strength of the connection or nexus between the two events — that is, the degree of similarity between the indicted crime and the allegedly similar incident. As the Supreme Court of Wisconsin noted in Scheidell, "the greater the similarity, complexity, and distinctiveness of the events, as well as the relative frequency of the event, the stronger the case for admission" (para. 41, citing State v. Sullivan, 216 Wis.2d 768 (1998), at para. 54).
2015	Carter v. Canada (Attorney General)	2/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do	carter v. canada (attorney general), 2015 SCC 5, [2015] 1 S.C.R. 331	The Court	unanimous	British Columbia	Constitutional law Courts	R		general law		Netherlands	[8] The legislative landscape on the issue of physician-assisted death has changed in the two decades since Rodriguez. In 1993 Sopinka J. noted that no other Western democracy expressly permitted assistance in dying. By 2010, however, eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, Washington, Montana, and Colombia. The process of legalization began in 1994, when Oregon, as a result of a citizens' initiative, altered its laws to permit medical aid in dying for a person suffering from a terminal disease. Colombia followed in 1997, after a decision of the constitutional court. The Dutch Parliament established a regulatory regime for assisted dying in 2002; Belgium quickly adopted a similar regime, with Luxembourg joining in 2009. Together, these regimes have produced a body of evidence about the practical and legal workings of physician-assisted death and the efficacy of safeguards for the vulnerable. ---
2015	Carter v. Canada (Attorney General)	2/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do	carter v. canada (attorney general), 2015 SCC 5, [2015] 1 S.C.R. 331	The Court	unanimous	British Columbia	Constitutional law Courts	R		general law		Belgium	[8] The legislative landscape on the issue of physician-assisted death has changed in the two decades since Rodriguez. In 1993 Sopinka J. noted that no other Western democracy expressly permitted assistance in dying. By 2010, however, eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, Washington, Montana, and Colombia. The process of legalization began in 1994, when Oregon, as a result of a citizens' initiative, altered its laws to permit medical aid in dying for a person suffering from a terminal disease. Colombia followed in 1997, after a decision of the constitutional court. The Dutch Parliament established a regulatory regime for assisted dying in 2002; Belgium quickly adopted a similar regime, with Luxembourg joining in 2009. Together, these regimes have produced a body of evidence about the practical and legal workings of physician-assisted death and the efficacy of safeguards for the vulnerable. --- [112] We are not convinced that Professor Montero's evidence undermines the trial judge's findings of fact. First, the trial judge (rightly, in our view) noted that the permissive regime in Belgium is the product of a very different medico-legal culture. Practices of assisted death were "already prevalent and embedded in the medical culture" prior to legalization (para. 660). The regime simply regulates a common pre-existing practice. In the absence of a comparable history in Canada, the trial judge concluded that it was problematic to draw inferences about the level of physician compliance with legislated safeguards based on the Belgian evidence (para. 680). This distinction is relevant both in assessing the degree of physician compliance and in considering evidence with regards to the potential for a slippery slope. [113] Second, the cases described by Professor Montero were the result of an oversight body exercising discretion in the interpretation of the safeguards and restrictions in the Belgian legislative regime — a discretion the Belgian Parliament has not moved to restrict. These cases offer little insight into how a Canadian regime might operate
2015	Carter v. Canada (Attorney General)	2/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do	carter v. canada (attorney general), 2015 SCC 5, [2015] 1 S.C.R. 331	The Court	unanimous	British Columbia	Constitutional law Courts	R		general law		Luxembourg	[8] The legislative landscape on the issue of physician-assisted death has changed in the two decades since Rodriguez. In 1993 Sopinka J. noted that no other Western democracy expressly permitted assistance in dying. By 2010, however, eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, Washington, Montana, and Colombia. The process of legalization began in 1994, when Oregon, as a result of a citizens' initiative, altered its laws to permit medical aid in dying for a person suffering from a terminal disease. Colombia followed in 1997, after a decision of the constitutional court. The Dutch Parliament established a regulatory regime for assisted dying in 2002; Belgium quickly adopted a similar regime, with Luxembourg joining in 2009. Together, these regimes have produced a body of evidence about the practical and legal workings of physician-assisted death and the efficacy of safeguards for the vulnerable. ---
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2015	Carter v. Canada (Attorney General)	2/6/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do	carter v. canada (attorney general), 2015 SCC 5, [2015] 1 S.C.R. 331	The Court	unanimous	British Columbia	Constitutional law Courts	C	referred to	Washington v. Glucksberg, 521 U.S. 702 (1997)	SC	US	[9] Nevertheless, physician-assisted dying remains a criminal offence in most Western countries, and a number of courts have upheld the prohibition on such assistance in the face of constitutional and human rights challenges: see, e.g., Washington v. Glucksberg, 521 U.S. 702 (1997); Vacco v. Quill, 521 U.S. 793 (1997); Pretty v. United Kingdom, No. 2346/02, ECHR 2002-III; and Fleming v. Ireland, [2013] IESC 19. In a recent decision, a majority of the Supreme Court of the United Kingdom accepted that the absolute prohibition on assisted dying breached the claimants' rights, but found the evidence on safeguards insufficient; the court concluded that Parliament should be given an opportunity to debate and amend the legislation based on the court's provisional views (see R. (on the application of Nicklinson) v. Ministry of Justice, [2014] UKSC 38, [2014] 3 All E.R. 843).
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2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	Demir v. Turkey, No. 34503/97, ECHR 2008-V	international	ECHR	[71] Additionally, there is an emerging international consensus that, if it is to be meaningful, collective bargaining requires a right to strike. The European Court of Human Rights now shares this view. After concluding in Demir v. Turkey [GC], No. 34503/97, ECHR 2008-V, that freedom of association under Article 11 of the European Convention on Human Rights, 213 U.N.T.S. 221, protects a right to collective bargaining, it went on in Enerji Yapi-Yol Sen v. Turquie, No. 68959/01, April 21, 2009 (HUDOC), to conclude that a right to strike is part of what ensures the effective exercise of a right to collective bargaining: The terms of the Convention require that the law should allow trade unions, in any manner not contrary to Article 11, to act in defence of their members' interests. Strike action, which enables a trade union to make its voice heard, constitutes an important aspect in the protection of trade union members' interests . . . The Court also observes that the right to strike is recognised by the International Labour Organisation's (ILO) supervisory bodies as an indissociable corollary of the right of trade union association that is protected by ILO Convention C87 on trade union freedom and the protection of trade union rights (for the Court's consideration of elements of international law other than the Convention, see Demir et Baykara . . .). It recalls that the European Social Charter also recognises the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. (Unofficial translation of Enerji Yapi-Yol Sen, at para. 24, cited in K. D. Ewing and John Hendy, "The Dramatic Implications of Demir and Baykara" (2009-2010), 15 C.L.E.L.J. 165, at pp. 181-82 (text in brackets in Ewing and Hendy); see also National Union of Rail, Maritime and Transport Workers v. United Kingdom, No. 31045/10, April 8, 2014 (HUDOC).)
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	Enerji Yapi-Yol Sen v. Turquie, No. 68959/01, April 21, 2009 (HUDOC)	international	ECHR	[71] Additionally, there is an emerging international consensus that, if it is to be meaningful, collective bargaining requires a right to strike. The European Court of Human Rights now shares this view. After concluding in Demir v. Turkey [GC], No. 34503/97, ECHR 2008-V, that freedom of association under Article 11 of the European Convention on Human Rights, 213 U.N.T.S. 221, protects a right to collective bargaining, it went on in Enerji Yapi-Yol Sen v. Turquie, No. 68959/01, April 21, 2009 (HUDOC), to conclude that a right to strike is part of what ensures the effective exercise of a right to collective bargaining: The terms of the Convention require that the law should allow trade unions, in any manner not contrary to Article 11, to act in defence of their members' interests. Strike action, which enables a trade union to make its voice heard, constitutes an important aspect in the protection of trade union members' interests . . . The Court also observes that the right to strike is recognised by the International Labour Organisation's (ILO) supervisory bodies as an indissociable corollary of the right of trade union association that is protected by ILO Convention C87 on trade union freedom and the protection of trade union rights (for the Court's consideration of elements of international law other than the Convention, see Demir et Baykara . . .). It recalls that the European Social Charter also recognises the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. (Unofficial translation of Enerji Yapi-Yol Sen, at para. 24, cited in K. D. Ewing and John Hendy, "The Dramatic Implications of Demir and Baykara" (2009-2010), 15 C.L.E.L.J. 165, at pp. 181-82 (text in brackets in Ewing and Hendy); see also National Union of Rail, Maritime and Transport Workers v. United Kingdom, No. 31045/10, April 8, 2014 (HUDOC).)
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	National Union of Rail, Maritime and Transport Workers v. United Kingdom, No. 31045/10, April 8, 2014 (HUDOC)	international	ECHR	[71] Additionally, there is an emerging international consensus that, if it is to be meaningful, collective bargaining requires a right to strike. The European Court of Human Rights now shares this view. After concluding in Demir v. Turkey [GC], No. 34503/97, ECHR 2008-V, that freedom of association under Article 11 of the European Convention on Human Rights, 213 U.N.T.S. 221, protects a right to collective bargaining, it went on in Enerji Yapi-Yol Sen v. Turquie, No. 68959/01, April 21, 2009 (HUDOC), to conclude that a right to strike is part of what ensures the effective exercise of a right to collective bargaining: The terms of the Convention require that the law should allow trade unions, in any manner not contrary to Article 11, to act in defence of their members' interests. Strike action, which enables a trade union to make its voice heard, constitutes an important aspect in the protection of trade union members' interests . . . The Court also observes that the right to strike is recognised by the International Labour Organisation's (ILO) supervisory bodies as an indissociable corollary of the right of trade union association that is protected by ILO Convention C87 on trade union freedom and the protection of trade union rights (for the Court's consideration of elements of international law other than the Convention, see Demir et Baykara . . .). It recalls that the European Social Charter also recognises the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. (Unofficial translation of Enerji Yapi-Yol Sen, at para. 24, cited in K. D. Ewing and John Hendy, "The Dramatic Implications of Demir and Baykara" (2009-2010), 15 C.L.E.L.J. 165, at pp. 181-82 (text in brackets in Ewing and Hendy); see also National Union of Rail, Maritime and Transport Workers v. United Kingdom, No. 31045/10, April 8, 2014 (HUDOC).)
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	Attorney-General v. National Labour Court, [1995-6] Isr. L.R. 149	SC	Israel	[73] Israeli courts have also held that freedom of association is a basic right, derived from the right to human dignity. They have interpreted freedom of association to include the right to organize, the right to bargain collectively, and the right to strike: Attorney-General v. National Labour Court, [1995-6] Isr. L.R. 149 (H.C.J.), at p. 162; New Histadrut General Workers' Union v. State of Israel (2006), 25 I.L.L.R. 375, at para. 10; Koach La Ovdim v. Jerusalem Cinematheque (2009), 29 I.L.L.R. 329, at p. 331; Guy Davidov, "Judicial Development of Collective Labour Rights — Contextually" (2009-2010), 15 C.L.E.L.J. 235, at p. 241.
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	New Histadrut General Workers' Union v. State of Israel (2006), 25 I.L.L.R. 375	lower-level court	Israel	[73] Israeli courts have also held that freedom of association is a basic right, derived from the right to human dignity. They have interpreted freedom of association to include the right to organize, the right to bargain collectively, and the right to strike: Attorney-General v. National Labour Court, [1995-6] Isr. L.R. 149 (H.C.J.), at p. 162; New Histadrut General Workers' Union v. State of Israel (2006), 25 I.L.L.R. 375, at para. 10; Koach La Ovdim v. Jerusalem Cinematheque (2009), 29 I.L.L.R. 329, at p. 331; Guy Davidov, "Judicial Development of Collective Labour Rights — Contextually" (2009-2010), 15 C.L.E.L.J. 235, at p. 241.
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	C	referred to	Koach La Ovdim v. Jerusalem Cinematheque (2009), 29 I.L.L.R. 329	lower-level court	Israel	[73] Israeli courts have also held that freedom of association is a basic right, derived from the right to human dignity. They have interpreted freedom of association to include the right to organize, the right to bargain collectively, and the right to strike: Attorney-General v. National Labour Court, [1995-6] Isr. L.R. 149 (H.C.J.), at p. 162; New Histadrut General Workers' Union v. State of Israel (2006), 25 I.L.L.R. 375, at para. 10; Koach La Ovdim v. Jerusalem Cinematheque (2009), 29 I.L.L.R. 329, at p. 331; Guy Davidov, "Judicial Development of Collective Labour Rights — Contextually" (2009-2010), 15 C.L.E.L.J. 235, at p. 241.
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	R		Constitution of France, preamble § 7.	constitution	France	[74] And strikes, as collective action, are protected globally, existing in many countries with labour laws outside the Wagner Act model: J.-M. Servais, at p. 148. Moreover, several countries have explicitly included the right to strike in their constitutions, including France (Constitution of 1946, § 7 of the preamble), Italy (Constitution of 1948, art. 40), Portugal (Constitution of 1976, art. 57), Spain (Constitution of 1978, art. 28(2)), and South Africa (Constitution of 1996, s. 23(2)) (Hepple, at p. 135). The European Social Charter similarly recognizes the importance of the freedom to strike for meaningful collective bargaining (E.T.S. No. 35, 1961(revised E.T.S. No. 163, 1996), Article 6(4)).
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	R		Constitution of Italy, art. 40.	constitution	Italy	[74] And strikes, as collective action, are protected globally, existing in many countries with labour laws outside the Wagner Act model: J.-M. Servais, at p. 148. Moreover, several countries have explicitly included the right to strike in their constitutions, including France (Constitution of 1946, § 7 of the preamble), Italy (Constitution of 1948, art. 40), Portugal (Constitution of 1976, art. 57), Spain (Constitution of 1978, art. 28(2)), and South Africa (Constitution of 1996, s. 23(2)) (Hepple, at p. 135). The European Social Charter similarly recognizes the importance of the freedom to strike for meaningful collective bargaining (E.T.S. No. 35, 1961(revised E.T.S. No. 163, 1996), Article 6(4)).
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	R		Constitution of Portugal, art. 57.	constitution	Portugal	[74] And strikes, as collective action, are protected globally, existing in many countries with labour laws outside the Wagner Act model: J.-M. Servais, at p. 148. Moreover, several countries have explicitly included the right to strike in their constitutions, including France (Constitution of 1946, § 7 of the preamble), Italy (Constitution of 1948, art. 40), Portugal (Constitution of 1976, art. 57), Spain (Constitution of 1978, art. 28(2)), and South Africa (Constitution of 1996, s. 23(2)) (Hepple, at p. 135). The European Social Charter similarly recognizes the importance of the freedom to strike for meaningful collective bargaining (E.T.S. No. 35, 1961(revised E.T.S. No. 163, 1996), Article 6(4)).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	R		Constitution of South Africa, s. 23(2).	constitution	South Africa	[74] And strikes, as collective action, are protected globally, existing in many countries with labour laws outside the Wagner Act model: J.-M. Servais, at p. 148. Moreover, several countries have explicitly included the right to strike in their constitutions, including France (Constitution of 1946, § 7 of the preamble), Italy (Constitution of 1948, art. 40), Portugal (Constitution of 1976, art. 57), Spain (Constitution of 1978, art. 28(2)), and South Africa (Constitution of 1996, s. 23(2)) (Hepple, at p. 135). The European Social Charter similarly recognizes the importance of the freedom to strike for meaningful collective bargaining (E.T.S. No. 35, 1961(revised E.T.S. No. 163, 1996), Article 6(4)).
2015	Saskatchewan Federation of Labour v. Saskatchewan	1/30/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14610/index.do	Saskatchewan Federation of Labour v. Saskatchewan, 2015 SCC 4, [2015] 1 S.C.R. 245	Abella J.	majority	Saskatchewan	Constitutional law	R		Constitution of Spain, art. 28(2).	constitution	Spain	[74] And strikes, as collective action, are protected globally, existing in many countries with labour laws outside the Wagner Act model: J.-M. Servais, at p. 148. Moreover, several countries have explicitly included the right to strike in their constitutions, including France (Constitution of 1946, § 7 of the preamble), Italy (Constitution of 1948, art. 40), Portugal (Constitution of 1976, art. 57), Spain (Constitution of 1978, art. 28(2)), and South Africa (Constitution of 1996, s. 23(2)) (Hepple, at p. 135). The European Social Charter similarly recognizes the importance of the freedom to strike for meaningful collective bargaining (E.T.S. No. 35, 1961(revised E.T.S. No. 163, 1996), Article 6(4)).
2015	Tervita Corp. v. Canada (Commissioner of Competition)	1/22/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14603/index.do	Tervita Corp. v. Canada (Commissioner of Competition), 2015 SCC 3, [2015] 1 S.C.R. 161	Rothstein J.	majority	Federal Court of Appeal	Administrative law	C	referred to	BOC International Ltd. v. Federal Trade Commission, 557 F.2d 24 (1977)	lower-level court	US	[72] In setting lead time as the appropriate length of time to consider, Justice Mainville relied on the American case BOC International Ltd. v. Federal Trade Commission, 557 F.2d 24 (2d Cir. 1977), which considered whether a merger violated s. 7 of the Clayton Act, 15 U.S.C. § 18, under the "actual potential competition" doctrine, the U.S. equivalent of the "prevention" branch of s. 92 of the Act . BOC International turned on whether the evidence was sufficient to meet the requirements under the "actual potential competition" doctrine. The U.S. Federal Trade Commission found that there was a "reasonable probability" that the acquiring firm would have "eventually entered" the U.S. market but for its acquisition of the acquired company (BOC International, at p. 28). [73] The Second Circuit Court of Appeals held that the language "eventual entry" made the overall test based largely on "ephemeral possibilities" (BOC International, at pp. 28-29). An actual potential entrant should be expected to enter in the "near" future, with "near" being defined in relation to the barriers to entry relevant in that particular industry: . . . it seems necessary under Section 7 that the finding of probable entry at least contain some reasonable temporal estimate related to the near future, with "near" defined in terms of the entry barriers and lead time necessary for entry in the particular industry, and that the finding be supported by substantial evidence in the record. (BOC International, at p. 29) [74] Neither Justice Mainville nor BOC International expressly explain why the lead time should establish the length of time the Tribunal can look into the future when assessing whether, absent the merger, there would have been likely independent entry of one of the merging parties. Though Justice Mainville notes that lead time should be treated "as a guidepost and not as a fixed temporal rule" (para. 91), it is important to emphasize that lead time should not be used to justify predictions about the distant future. In some contexts, relevant lead time may be short, and thus a determination of whether market entry is likely within that timeframe may be sufficiently definite to meet the "likely" test. However, in other contexts — for example, those where product development or regulatory approval processes may extend for some years — the lead time may be so lengthy that a determination of the probability of market entry at the far end of that timeframe would be influenced by so many unknown and unknowable contingencies as to render
2015	Mounted Police Association of Ontario v. Canada (Attorney General)	1/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14577/index.do	Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, [2015] 1 S.C.R. 3	McLachlin C.J. and LeBel J.	majority	Ontario	Constitutional law	C	referred to	Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII	international	ECHR	[64] First, the Charter does not exclude collective rights. While it generally speaks of individuals as rights holders, its s. 2 guarantees extend to groups. The right of peaceful assembly is, by definition, a group activity incapable of individual performance. Freedom of expression protects both listeners and speakers: R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477, at para. 28. The right to vote is meaningless in the absence of a social context in which voting can advance self-government: Sauvé v. Canada (Chief Electoral Officer), 2002 SCC 68, [2002] 3 S.C.R. 519, at para. 31. The Court has also found that freedom of religion is not merely a right to hold religious opinions but also an individual right to establish communities of faith (see Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567). And while this Court has not dealt with the issue, there is support for the view that "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection" of freedom of religion (Hutterian Brethren, at para. 131, per Abella J., dissenting, citing Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII (First Section), at para. 118). See also Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).
2015	Mounted Police Association of Ontario v. Canada (Attorney General)	1/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14577/index.do	Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, [2015] 1 S.C.R. 3	McLachlin C.J. and LeBel J.	majority	Ontario	Constitutional law	C	referred to	Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)	SC	US	[64] First, the Charter does not exclude collective rights. While it generally speaks of individuals as rights holders, its s. 2 guarantees extend to groups. The right of peaceful assembly is, by definition, a group activity incapable of individual performance. Freedom of expression protects both listeners and speakers: R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477, at para. 28. The right to vote is meaningless in the absence of a social context in which voting can advance self-government: Sauvé v. Canada (Chief Electoral Officer), 2002 SCC 68, [2002] 3 S.C.R. 519, at para. 31. The Court has also found that freedom of religion is not merely a right to hold religious opinions but also an individual right to establish communities of faith (see Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567). And while this Court has not dealt with the issue, there is support for the view that "the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection" of freedom of religion (Hutterian Brethren, at para. 131, per Abella J., dissenting, citing Metropolitan Church of Bessarabia v. Moldova, No. 45701/99, ECHR 2001-XII (First Section), at para. 118). See also Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).
2015	Mounted Police Association of Ontario v. Canada (Attorney General)	1/16/2015	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14577/index.do	Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, [2015] 1 S.C.R. 3	McLachlin C.J. and LeBel J.	majority	Ontario	Constitutional law	C	referred to	National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937)	SC	US	[68] Just as a ban on employee association impairs freedom of association, so does a labour relations process that substantially interferes with the possibility of having meaningful collective negotiations on workplace matters. Without the right to pursue workplace goals collectively, workers may be left essentially powerless in dealing with their employer or influencing their employment conditions. This idea is not new. As the United States Supreme Court stated in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), at p. 33: Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment . . . [Emphasis added.]
2014	R. v. Fearon	12/11/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14502/index.do	R. v. Fearon, 2014 SCC 77, [2014] S.C.R. 621	Karakatsanis J.	dissenting	Ontario	Constitutional law	C	D	United States v. White, 401 U.S. 745 (1971)	SC	US	[117] This Court has also pronounced on the dangers of putting "its imprimatur" on practices tending to give individuals reason to fear arbitrary or unjustified intrusions upon their privacy. The threat of unreasonable intrusions on privacy (and not only the unreasonable intrusion itself) is enough to undermine the values served by privacy. In R. v. Duarte, [1990] 1 S.C.R. 30, at p. 54, La Forest J. adopted the words of Harlan J., dissenting, in United States v. White, 401 U.S. 745 (1971), at pp. 787-88: Authority is hardly required to support the proposition that words would be measured a good deal more carefully and communication inhibited if one suspected his conversations were being transmitted and transcribed. Were third-party bugging a prevalent practice, it might well smother that spontaneity — reflected in frivolous, impetuous, sacrilegious, and defiant discourse — that liberates daily life. Much off-hand exchange is easily forgotten and one may count on the obscurity of his remarks, protected by the very fact of a limited audience, and the likelihood that the listener will either overlook or forget what is said, as well as the listener's inability to reformulate a conversation without having to contend with a documented record.
2014	R. v. Fearon	12/11/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14502/index.do	R. v. Fearon, 2014 SCC 77, [2014] S.C.R. 621	Cromwell J.	majority	Ontario	Constitutional law	C	referred to	United States v. Santillan, 571 F.Supp.2d 1093 (2008)	lower-level court	US	[48] Beyond the facts of this case, there are other types of situations in which cell phone searches conducted incidental to a lawful arrest will serve important law enforcement objectives, including public safety. Cell phones are used to facilitate criminal activity. For example, cell phones "are the 'bread and butter' of the drug trade and the means by which drugs are marketed on the street": Howell, at para. 39. Prompt access by law enforcement to the contents of a cell phone may serve the purpose of identifying accomplices or locating and preserving evidence that might otherwise be lost or destroyed. Cell phones may also be used to evade or resist law enforcement. An individual may be a "scout" for drug smugglers, using a cell phone to warn criminals that police are in the vicinity or to call for "back up" to help resist law enforcement officers: see, e.g., United States v. Santillan, 571 F.Supp.2d 1093 (D. Ariz. 2008), at pp. 1097-98. In such situations, a review of recent calls or text messages may help to locate the other perpetrators before they can either escape or dispose of the drugs and reveal the need to warn officers of possible impending danger.
2014	R. v. Fearon	12/11/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14502/index.do	R. v. Fearon, 2014 SCC 77, [2014] S.C.R. 621	Cromwell J.	majority	Ontario	Constitutional law	C	referred to	Riley v. California, 134 S. Ct. 2473 (2014)	SC	US	[60] Adopting this categorical approach would mean that, although the police may lawfully seize a cell phone found in the course of a search incident to arrest where there is reason to believe it contains evidence relevant to the offence, the phone may not be searched, at all, without a warrant. The Supreme Court of the United States essentially adopted this approach in Riley v. California, 134 S. Ct. 2473 (2014). I would not follow suit for two reasons.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Interfoto Picture Library Ltd. v. Stiletto Visual Programmes Ltd., [1989] 1 Q.B. 433	lower-level court	UK	[42] Anglo-Canadian common law has developed a number of rules and doctrines that call upon the notion of good faith in contractual dealings; it is a concept that underlies many elements of modern contract law: S. M. Waddams, The Law of Contracts (6th ed. 2010), at para. 550; J. D. McCamus The Law of Contracts (2nd ed. 2012), at pp. 835-38; OLRC, at p. 165; Belobaba, at pp. 75-76; J. F. O'Connor, Good Faith in English Law (1990), at pp. 17-49; J. Steyn, "Contract Law: Fulfilling the Reasonable Expectations of Honest Men" (1997), 113 Law Q. Rev. 433. The approach, not unfairly, has been characterized as developing "piecemeal solutions in response to demonstrated problems": Interfoto Picture Library Ltd. v. Stiletto Visual Programmes Ltd., [1989] 1 Q.B. 433 (C.A.), at p. 439, per Bingham L.J. (as he then was). Thus we see, for example, that good faith notions have been applied to particular types of contracts, particular types of contractual provisions and particular contractual relationships. It also underlies doctrines that explicitly deal with fairness in contracts, such as unconscionability, and plays a role in interpreting and implying contractual terms. The difficulty with this "piecemeal" approach, however, is that it often fails to take a consistent or principled approach to similar problems. A brief review of the current landscape of good faith will show the extent to which this is the case.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Yam Seng Pte Ltd. v. International Trade Corporation Ltd., [2013] EWHC 111, [2013] 1 All E.R. (Comm.) 1321	lower-level court	UK	[57] Developments in the United Kingdom and Australia point to enhanced attention to the notion of good faith, mitigated by reluctance to embrace it as a stand-alone doctrine. Good faith in contract performance has received increasing prominence in English law, despite its "traditional . . . hostility" to the concept: Yam Seng Pte Ltd. v. International Trade Corporation Ltd., [2013] EWHC 111, [2013] 1 All E.R. (Comm.) 1321 (Q.B.), at para. 123, citing E. McKendrick, Contract Law (9th ed. 2011), at pp. 221-22; see also Chitty on Contracts, at para. 1-039. In Yam Seng, Leggatt J. held that a number of specific duties embodying good faith can be implied based on the presumed intentions of the parties according to the traditional approach for implying terms: para. 131. Leggatt J. identified a number of these implied duties, including honesty, fidelity to the parties' bargain, cooperation, and fair dealing: paras. 135-50. Leggatt J. stated that "[a] paradigm example of a general norm which underlies almost all contractual relationships is an expectation of honesty. That expectation is essential to commerce, which depends critically on trust": para. 135; see D. Campbell, "Good Faith and the Ubiquity of the 'Relational' Contract" (2014), 77 Mod. L. Rev. 475. The Court of Appeal considered the Yam Seng decision in Mid Essex Hospital Services NHS Trust v. Compass Group UK and Ireland Ltd., [2013] EWCA Civ 200 (BAILII), where it confirmed that good faith was not a general principle of English law, but that it could be an implied term in certain categories of cases: paras. 105 and 150.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Mid Essex Hospital Services NHS Trust v. Compass Group UK and Ireland Ltd., [2013] EWCA Civ 200 (BAILII)	lower-level court	UK	[57] Developments in the United Kingdom and Australia point to enhanced attention to the notion of good faith, mitigated by reluctance to embrace it as a stand-alone doctrine. Good faith in contract performance has received increasing prominence in English law, despite its "traditional . . . hostility" to the concept: Yam Seng Pte Ltd. v. International Trade Corporation Ltd., [2013] EWHC 111, [2013] 1 All E.R. (Comm.) 1321 (Q.B.), at para. 123, citing E. McKendrick, Contract Law (9th ed. 2011), at pp. 221-22; see also Chitty on Contracts, at para. 1-039. In Yam Seng, Leggatt J. held that a number of specific duties embodying good faith can be implied based on the presumed intentions of the parties according to the traditional approach for implying terms: para. 131. Leggatt J. identified a number of these implied duties, including honesty, fidelity to the parties' bargain, cooperation, and fair dealing: paras. 135-50. Leggatt J. stated that "[a] paradigm example of a general norm which underlies almost all contractual relationships is an expectation of honesty. That expectation is essential to commerce, which depends critically on trust": para. 135; see D. Campbell, "Good Faith and the Ubiquity of the 'Relational' Contract" (2014), 77 Mod. L. Rev. 475. The Court of Appeal considered the Yam Seng decision in Mid Essex Hospital Services NHS Trust v. Compass Group UK and Ireland Ltd., [2013] EWCA Civ 200 (BAILII), where it confirmed that good faith was not a general principle of English law, but that it could be an implied term in certain categories of cases: paras. 105 and 150.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Renard Constructions (ME) Pty Ltd. v. Minister for Public Works (1992), 26 N.S.W.L.R. 234	lower-level court	Australia	[58] Australian courts have also moved towards a greater role for good faith in contract performance: Cheshire and Fifoot's Law of Contract (9th Australian ed. 2008), at paras. 10.43-10.47. The duty of good faith in its modern form was recognized by Priestley J.A. in Renard Constructions (ME) Pty Ltd. v. Minister for Public Works (1992), 26 N.S.W.L.R. 234 (C.A.). There is no generally applicable duty of good faith, but one will be implied into contracts in certain circumstances. The duty of good faith can be implied as a matter of law or as a matter of fact, although the cases are not always clear on the basis on which the term is being implied. Australian courts have taken a broad view of what constitutes good faith: see, e.g., Burger King Corporation v. Hungry Jack's Pty Ltd., [2001] NSWCA 187, 69 N.S.W.L.R. 558. The law of good faith performance in Australia is still developing and remains unsettled: E. Peden, "Good faith in the performance of contract law" (2004), 42 L.S.J. 64, at p. 64. However, it is clear that the duty of good faith requires adherence to standards of honest conduct: A. Mason, "Contract, Good Faith and Equitable Standards in Fair Dealing" (2000), 116 Law Q. Rev. 66, at p. 76; Burger King, at paras. 171 and 189.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Burger King Corporation v. Hungry Jack's Pty Ltd., [2001] NSWCA 187, 69 N.S.W.L.R. 558	lower-level court	Australia	[58] Australian courts have also moved towards a greater role for good faith in contract performance: Cheshire and Fifoot's Law of Contract (9th Australian ed. 2008), at paras. 10.43-10.47. The duty of good faith in its modern form was recognized by Priestley J.A. in Renard Constructions (ME) Pty Ltd. v. Minister for Public Works (1992), 26 N.S.W.L.R. 234 (C.A.). There is no generally applicable duty of good faith, but one will be implied into contracts in certain circumstances. The duty of good faith can be implied as a matter of law or as a matter of fact, although the cases are not always clear on the basis on which the term is being implied. Australian courts have taken a broad view of what constitutes good faith: see, e.g., Burger King Corporation v. Hungry Jack's Pty Ltd., [2001] NSWCA 187, 69 N.S.W.L.R. 558. The law of good faith performance in Australia is still developing and remains unsettled: E. Peden, "Good faith in the performance of contract law" (2004), 42 L.S.J. 64, at p. 64. However, it is clear that the duty of good faith requires adherence to standards of honest conduct: A. Mason, "Contract, Good Faith and Equitable Standards in Fair Dealing" (2000), 116 Law Q. Rev. 66, at p. 76; Burger King, at paras. 171 and 189.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	GEC Marconi Systems Pty Ltd. v. BHP Information Technology Pty Ltd., [2003] FCA 50 (AustLII)	lower-level court	Australia	78] Certainly, any modification of the duty of honest performance would need to be in express terms. A generically worded entire agreement clause such as cl. 11.2 of the Agreement does not indicate any intention of the parties to depart from the basic tenets of honest performance: see GEC Marconi Systems Pty Ltd. v. BHP Information Technology Pty Ltd., [2003] FCA 50 (AustLII), at para. 922, per Finn J.; see also O'Byrne, "Good Faith in Contractual Performance: Recent Developments", at p. 96.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Kirke La Shelle Co. v. Armstrong Co., 263 N.Y. 79 (1933)	lower-level court	US	[85] Experience in Quebec and the United States shows that even very broad conceptions of the duty of good faith have not impeded contractual activity or contractual stability: see, e.g., J. Pineau, "La discrétion judiciaire a-t-elle fait des ravages en matière contractuelle?", in La réforme du Code civil, cinq ans plus tard (1998), 141. It is also worth noting that in both the United States and Quebec, judicial developments preceded legislative action in codifying good faith. In the United States, courts had recognized the existence of a general duty of good faith before the promulgation of the U.C.C.: see, e.g., Kirke La Shelle Co. v. Armstrong Co., 263 N.Y. 79 (1933). Similarly, though there was no express provision of "good faith" in the Civil Code of Lower Canada, the Court implied such a general duty from more specific provisions of the Code: see National Bank of Canada v. Soucisse, [1981] 2 S.C.R. 339; Houle v. Canadian National Bank, [1990] 3 S.C.R. 122; Bank of Montreal v. Bail Ltée, [1992] 2 S.C.R. 554. The duty of good faith was subsequently included in the revisions leading to the enactment of the Civil Code of Québec.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	United Roasters, Inc. v. Colgate-Palmolive Co., 649 F.2d 985 (1981)	lower-level court	US	[87] This distinction explains the result reached by the court in United Roasters, Inc. v. Colgate-Palmolive Co., 649 F.2d 985 (4th Cir. 1981). The terminating party had decided in advance of the required notice period that it was going to terminate the contract. The court held that no disclosure of this intention was required other than what was stipulated in the notice requirement. The court stated: . . . there is very little to be said in favor of a rule of law that good faith requires one possessing a right of termination to inform the other party promptly of any decision to exercise the right. A tenant under a month-to-month lease may decide in January to vacate the premises at the end of September. It is hardly to be suggested that good faith requires the tenant to inform the landlord of his decision soon after January. Though the landlord may have found earlier notice convenient, formal exercise of the right of termination in August will do. [pp. 989-90] United Roasters makes it clear that there is no unilateral duty to disclose information relevant to termination. But the situation is quite different, as I see it, when it comes to actively misleading or deceiving the other contracting party in relation to performance of the contract.
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	Shell Oil Co. v. Marinello, 294 A.2d 253 (1972), aff'd 307 A.2d 598 (1973)	lower-level court	US	[91] I note as well that, even in jurisdictions that embrace a broader role for the duty of good faith, plaintiffs have met with only mixed success in alleging bad faith failure to renew a contract. Some cases have treated non-renewal as equivalent to termination and thus subject to a duty of good faith: Shell Oil Co. v. Marinello, 294 A.2d 253 (N.J. Super. Ct. 1972), aff'd 307 A.2d 598 (N.J. 1973); Atlantic Richfield Co. v. Razumic, 390 A.2d 736 (Pa. 1978), at pp. 741-42. Other courts have seen non-renewal as fundamentally different, especially where the express terms of the contract contemplate the expiry of contractual obligations and leave no room for any sort of duty to renew: J.H. Westerbeke Corp. v. Onan Corp., 580 F.Supp. 1173 (D. Mass. 1984), at p. 1184; Pitney-Bowes, Inc. v. Mestre, 517 F.Supp. 52 (S.D. Fla. 1981), cert. denied, 464 U.S. 893 (1983).
2014	Bhasin v. Hrynew	11/13/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14438/index.do	Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494	Cromwell J.	unanimous	Alberta	Contract	C	referred to	J.H. Westerbeke Corp. v. Onan Corp., 580 F.Supp. 1173 (1984)	lower-level court	US	[91] I note as well that, even in jurisdictions that embrace a broader role for the duty of good faith, plaintiffs have met with only mixed success in alleging bad faith failure to renew a contract. Some cases have treated non-renewal as equivalent to termination and thus subject to a duty of good faith: Shell Oil Co. v. Marinello, 294 A.2d 253 (N.J. Super. Ct. 1972), aff'd 307 A.2d 598 (N.J. 1973); Atlantic Richfield Co. v. Razumic, 390 A.2d 736 (Pa. 1978), at pp. 741-42. Other courts have seen non-renewal as fundamentally different, especially where the express terms of the contract contemplate the expiry of contractual obligations and leave no room for any sort of duty to renew: J.H. Westerbeke Corp. v. Onan Corp., 580 F.Supp. 1173 (D. Mass. 1984), at p. 1184; Pitney-Bowes, Inc. v. Mestre, 517 F.Supp. 52 (S.D. Fla. 1981), cert. denied, 464 U.S. 893 (1983).
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Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09	international	ECJ	[117] Turning to the interpretation adopted in other jurisdictions of Article 1F(b), it is widely accepted that the original purpose of Article 1F(b) was to deny refugee status to fugitives, namely, those individuals who had avoided prosecution for serious non-political crimes committed abroad. This was based on the premise that enabling those individuals to obtain refugee status would compromise the integrity of the international system of refugee protection. The European Court of Justice, in a decision about the interpretation of Article 12(2)(b) and (c) of the Directive 2004/83/EC of the Council of the European Union which incorporates Article 1F(b) and (c) into E.U. legislation, has recognized that one of the purposes of exclusion under those provisions is to prevent the status of being a refugee "from enabling those who have committed certain serious crimes to escape criminal liability" (Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09, at para. 104). See also Australia (SRYYY v. Minister for Immigration and Multicultural and Indigenous Affairs, [2005] FCAFC 42, 220 A.L.R. 394); New Zealand (Attorney-General (Minister of Immigration) v. Tamil X, [2010] NZSC 107, [2011] 1 N.Z.L.R. 721, at para. 82 (Tamil X)); the United Kingdom (AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382 (IAC) (AH)); and France (Office français de protection des réfugiés et apatrides v. Hykaj, No. 320910, May 4, 2011). --- [120] The European Court of Justice concluded that it would be inconsistent with the purposes of exclusion "to make exclusion from refugee status conditional upon the existence of a present danger to the host Member State" (Bundesrepublik Deutschland v. B., at para. 104). The court held that the dangerousness of the individual is not considered under Article 12(2) of the European directive (incorporating Article 1F), but under the Articles of the directive which incorporate Article 33(2) of the Refugee Convention (para. 101). Notably, this case said nothing about whether — or the extent to which — Article 1F(b) deals with non-fugitives. Nor did it conclude that it automatically excludes anyone who has ever committed a serious crime.
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382	lower-level court	UK	[117] Turning to the interpretation adopted in other jurisdictions of Article 1F(b), it is widely accepted that the original purpose of Article 1F(b) was to deny refugee status to fugitives, namely, those individuals who had avoided prosecution for serious non-political crimes committed abroad. This was based on the premise that enabling those individuals to obtain refugee status would compromise the integrity of the international system of refugee protection. The European Court of Justice, in a decision about the interpretation of Article 12(2)(b) and (c) of the Directive 2004/83/EC of the Council of the European Union which incorporates Article 1F(b) and (c) into E.U. legislation, has recognized that one of the purposes of exclusion under those provisions is to prevent the status of being a refugee "from enabling those who have committed certain serious crimes to escape criminal liability" (Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09, at para. 104). See also Australia (SRYYY v. Minister for Immigration and Multicultural and Indigenous Affairs, [2005] FCAFC 42, 220 A.L.R. 394); New Zealand (Attorney-General (Minister of Immigration) v. Tamil X, [2010] NZSC 107, [2011] 1 N.Z.L.R. 721, at para. 82 (Tamil X)); the United Kingdom (AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382 (IAC) (AH)); and France (Office français de protection des réfugiés et apatrides v. Hykaj, No. 320910, May 4, 2011)
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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	Minister for Immigration and Multicultural Affairs v. Singh, [2002] HCA 7, 209 C.L.R. 533	SC	Australia	[119] Australian courts have concluded that Article 1F(b) is additionally intended to protect the country of refuge from individuals who are considered dangerous as a result of committing past crimes (Dhayakpa v. Minister of Immigration and Ethnic Affairs (1995), 62 F.C.R. 556, at para. 29; Minister for Immigration and Multicultural Affairs v. Singh, [2002] HCA 7, 209 C.L.R. 533, at paras. 15 and 95-96), as has New Zealand (Tamil X, at para. 82). Other jurisdictions, however, like this Court in Pushpanathan, have expressly rejected the proposition that exclusion of dangerous individuals is the underlying purpose of Article 1F(b), even if its application may incidentally have that effect in some cases.
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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479, May 18, 2009	lower-level court	Belgium	[121] And still other jurisdictions have found that rehabilitation, the seriousness of the crime, and other factors relating to the individual circumstance of the claimant are relevant. In Belgium, in a case about a refugee claimant who had committed and completed sentences for past crimes abroad, the Conseil du contentieux des étrangers concluded that Article 1F(b) applied to exclude the individual from the Refugee Convention on the basis of the individual's lack of remorse for very grave criminal conduct (X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011). The Conseil du contentieux des étrangers observed that the decision to exclude the individual at issue had been reached on grounds which included an express reference to the "Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees" (Background Note) (online), prepared by the UNHCR in 2003, that the completion of a sentence for a crime may be considered a relevant form of expiation, and that other factors such as the gravity of the offence and the claimant's age and remorsefulness must also be considered. But in cases involving truly heinous crimes, exclusion under Article 1F(b) will be mandated even where the claimant has completed a sentence for a crime committed and demonstrated remorse (XXX v. État belge, No. 199.079, A. 192.074/XI-16.797, Conseil d'État (Section du contentieux administratif), December 18, 2009; X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479 (Conseil du contentieux des étrangers), May 18, 2009).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011	lower-level court	Belgium	[121] And still other jurisdictions have found that rehabilitation, the seriousness of the crime, and other factors relating to the individual circumstance of the claimant are relevant. In Belgium, in a case about a refugee claimant who had committed and completed sentences for past crimes abroad, the Conseil du contentieux des étrangers concluded that Article 1F(b) applied to exclude the individual from the Refugee Convention on the basis of the individual's lack of remorse for very grave criminal conduct (X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011). The Conseil du contentieux des étrangers observed that the decision to exclude the individual at issue had been reached on grounds which included an express reference to the "Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees" (Background Note) (online), prepared by the UNHCR in 2003, that the completion of a sentence for a crime may be considered a relevant form of expiation, and that other factors such as the gravity of the offence and the claimant's age and remorsefulness must also be considered. But in cases involving truly heinous crimes, exclusion under Article 1F(b) will be mandated even where the claimant has completed a sentence for a crime committed and demonstrated remorse (XXX v. État belge, No. 199.079, A. 192.074/XI-16.797, Conseil d'État (Section du contentieux administratif), December 18, 2009; X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479 (Conseil du contentieux des étrangers), May 18, 2009).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	Office français de protection des réfugiés et apatrides v. Hykaj, No. 320910, May 4, 2011	administrative law decision	France	[117] Turning to the interpretation adopted in other jurisdictions of Article 1F(b), it is widely accepted that the original purpose of Article 1F(b) was to deny refugee status to fugitives, namely, those individuals who had avoided prosecution for serious non-political crimes committed abroad. This was based on the premise that enabling those individuals to obtain refugee status would compromise the integrity of the international system of refugee protection. The European Court of Justice, in a decision about the interpretation of Article 12(2)(b) and (c) of the Directive 2004/83/EC of the Council of the European Union which incorporates Article 1F(b) and (c) into E.U. legislation, has recognized that one of the purposes of exclusion under those provisions is to prevent the status of being a refugee "from enabling those who have committed certain serious crimes to escape criminal liability" (Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09, at para. 104). See also Australia (SRYYY v. Minister for Immigration and Multicultural and Indigenous Affairs, [2005] FCAFC 42, 220 A.L.R. 394); New Zealand (Attorney-General (Minister of Immigration) v. Tamil X, [2010] NZSC 107, [2011] 1 N.Z.L.R. 721, at para. 82 (Tamil X)); the United Kingdom (AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382 (IAC) (AH)); and France (Office français de protection des réfugiés et apatrides v. Hykaj, No. 320910, May 4, 2011)
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	Al-Sirri v. Secretary of State for the Home Department, [2012] UKSC 54, [2013] 1 A.C. 745	SC	UK (SC)	[92] In light of the human rights purposes of the Refugee Convention and the dramatic consequences of exclusion from the status of a refugee, Article 1F requires a particularly cautious interpretation: Ezokola v. Canada (Citizenship and Immigration), [2013] 2 S.C.R. 678, at paras. 31-36; Pushpanathan, at para. 57; see also Al-Sirri v. Secretary of State for the Home Department, [2012] UKSC 54, [2013] 1 A.C. 745, at paras. 12 and 16; United Nations High Commissioner for Refugees (UNHCR), "Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees", HCR/GIP/03/05, September 4, 2003 (online) (UNHCR Guidelines), at para. 2. --- [123] But recently, a more generous approach has been taken to the interpretation of Article 1F "because of the serious consequences of excluding a person who has a well-founded fear of persecution from the protection of the Refugee Convention" (Al-Sirri, at paras. 12 and 16; R. (JS (Sri Lanka)) v. Secretary of State for the Home Department, [2010] UKSC 15, [2010] 3 All E.R. 881).

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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	XXX v. État belge, No. 199.079, A. 192.074/XI-16.797, December 18, 2009	lower-level court	Belgium	[121] And still other jurisdictions have found that rehabilitation, the seriousness of the crime, and other factors relating to the individual circumstance of the claimant are relevant. In Belgium, in a case about a refugee claimant who had committed and completed sentences for past crimes abroad, the Conseil du contentieux des étrangers concluded that Article 1F(b) applied to exclude the individual from the Refugee Convention on the basis of the individual's lack of remorse for very grave criminal conduct (X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011). The Conseil du contentieux des étrangers observed that the decision to exclude the individual at issue had been reached on grounds which included an express reference to the "Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees" (Background Note) (online), prepared by the UNHCR in 2003, that the completion of a sentence for a crime may be considered a relevant form of expiation, and that other factors such as the gravity of the offence and the claimant's age and remorsefulness must also be considered. But in cases involving truly heinous crimes, exclusion under Article 1F(b) will be mandated even where the claimant has completed a sentence for a crime committed and demonstrated remorse (XXX v. État belge, No. 199.079, A. 192.074/XI-16.797, Conseil d'État (Section du contentieux administratif), December 18, 2009; X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479 (Conseil du contentieux des étrangers), May 18, 2009).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	KK (Turkey) v. Secretary of State for the Home Department, [2004] UKIAT 00101	lower-level court	UK	[122] In the United Kingdom, earlier decisions of the Immigration Appeal Tribunal took a literal approach to the words of Article 1F(b) and rejected an interpretation in which expiation (understood as "punishment, pardon, or amnesty" or "remorse or change of heart") is relevant to determining whether past criminal conduct is a basis for exclusion under Article 1F(b): KK (Turkey) v. Secretary of State for the Home Department, [2004] UKIAT 00101, at para. 92; Secretary of State for the Home Department v. AA (Palestine), [2005] UKIAT 00104, at paras. 59-62. Instead, the Tribunal considered it should apply the words of Article 1F(b) "exactly as they are written" (KK, at para. 92).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	Secretary of State for the Home Department v. AA (Palestine), [2005] UKIAT 00104	lower-level court	UK	[122] In the United Kingdom, earlier decisions of the Immigration Appeal Tribunal took a literal approach to the words of Article 1F(b) and rejected an interpretation in which expiation (understood as "punishment, pardon, or amnesty" or "remorse or change of heart") is relevant to determining whether past criminal conduct is a basis for exclusion under Article 1F(b): KK (Turkey) v. Secretary of State for the Home Department, [2004] UKIAT 00101, at para. 92; Secretary of State for the Home Department v. AA (Palestine), [2005] UKIAT 00104, at paras. 59-62. Instead, the Tribunal considered it should apply the words of Article 1F(b) "exactly as they are written" (KK, at para. 92).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	Abella J.	dissenting	Federal Court of Appeal	Immigration	C	D	R. (JS (Sri Lanka)) v. Secretary of State for the Home Department, [2010] UKSC 15, [2010] 3 All E.R. 881	SC	UK	[123] But recently, a more generous approach has been taken to the interpretation of Article 1F "because of the serious consequences of excluding a person who has a well-founded fear of persecution from the protection of the Refugee Convention" (Al-Sirri, at paras. 12 and 16; R. (JS (Sri Lanka)) v. Secretary of State for the Home Department, [2010] UKSC 15, [2010] 3 All E.R. 881).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	Januzi v. Secretary of State for the Home Department, [2006] UKHL 5, [2006] 2 A.C. 426	SC	UK (HL)	16] The point of departure for interpreting a provision of a treaty is the plain meaning of the text. As the House of Lords put it in Januzi v. Secretary of State for the Home Department, [2006] UKHL 5, [2006] 2 A.C. 426, at para. 4: ". . . the starting point of the construction exercise must be the text of the Convention itself . . ., because it expresses what the parties to it have agreed. The parties to an international convention are not to be treated as having agreed something they did not agree, unless it is clear by necessary implication from the text . . .".
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	R. (European Roma Rights Centre) v. Immigration Officer at Prague Airport, [2004] UKHL 55, [2005] 2 A.C. 1	SC	UK (HL)	[29] The problem with this approach is that it risks upsetting the balance between humane treatment of victims of oppression and the other interests of signatory countries, which they did not renounce simply by together making certain provisions to aid victims of oppression. The Refugee Convention is not itself an abstract principle, but an agreement among sovereign states in certain specified terms, negotiated by them in consideration of the entirety of their interests. In R. (European Roma Rights Centre) v. Immigration Officer at Prague Airport, [2004] UKHL 55, [2005] 2 A.C. 1, the U.K. House of Lords stated that the Refugee Convention "represent[s] a compromise between competing interests, in this case between the need to ensure humane treatment of the victims of oppression on the one hand and the wish of sovereign states to maintain control over those seeking entry to their territory on the other" (para. 15).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	B (Area of Freedom, Security and Justice) (2008), BVerwG 10 C 48.07, OVG 8 A 2632/06.A	lower-level court	Germany	[40] In any event, the Travaux préparatoires support the Minister's interpretation rather than Mr. Febles' reading of Article 1F(b). In the case B (Area of Freedom, Security and Justice) (2008), BVerwG 10 C 48.07, OVG 8 A 2632/06.A, both the German Federal Administrative Court and the European Court of Justice, Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09, reviewed the Travaux préparatoires and concluded that the aim of the drafters was to protect the dignity of refugee status by excluding serious criminals from such status. The Court of Appeal in this case similarly concluded that "it is clear from the Travaux Préparatoires that the drafters did not intend to limit the exclusion provision to fugitives from justice" (2012 FCA 324, 442 N.R. 290, at para. 62). ---- [54] In B (Area of Freedom, Security and Justice), both the German Federal Administrative Court and the European Court of Justice held that current dangerousness is not relevant to the application of Article 1F(b). While the claimants in B (Area of Freedom, Security and Justice) were fugitives, both courts went on to discuss the general purpose and scope of both Articles 1F(b) and 1F(c) and suggested that the exclusions apply to anyone who has ever committed the acts referenced in those provisions. After examining the Travaux préparatoires of the Refugee Convention, the German Federal Administrative Court held that the dominant purpose of Article 1F(b) is to "protect refugee status from abuse, by keeping it from being granted to undeserving applicants" and to "prevent refugee status from being discredited by including criminals in the group of recognised refugees" (paras. 29-30). The European Court of Justice stated that Article 1F(b) operates as "a penalty for acts committed in the past" (para. 103) and was "introduced with the aim of excluding from refugee status persons who are deemed to be undeserving of the protection which that status entails" (para. 104). In other words, Article 1F(b) is aimed at excluding from refugee status persons who have committed a serious crime, regardless of what may have happened since. [55] I cannot agree with Justice Abella when she says that B (Area of Freedom, Security and Justice) "said nothing about whether — or the extent to which — Article 1F(b) deals with non-fugitives" (para. 120). To the contrary, the European Court of Justice, at paras. 100-105, made it clear that Articles 1F(b) and 1F(c) operate in the same way: to preserve the dignity of refugee status by excluding anyone who has ever committed the acts listed in those provisions. Indeed, even the appellant properly concedes that "a number of the propositions [in the European Court's reasoning] seem to suggest
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09	international	ECJ	[40] In any event, the Travaux préparatoires support the Minister's interpretation rather than Mr. Febles' reading of Article 1F(b). In the case B (Area of Freedom, Security and Justice) (2008), BVerwG 10 C 48.07, OVG 8 A 2632/06.A, both the German Federal Administrative Court and the European Court of Justice, Bundesrepublik Deutschland v. B., [2010] EUECJ C-57/09, reviewed the Travaux préparatoires and concluded that the aim of the drafters was to protect the dignity of refugee status by excluding serious criminals from such status. The Court of Appeal in this case similarly concluded that "it is clear from the Travaux Préparatoires that the drafters did not intend to limit the exclusion provision to fugitives from justice" (2012 FCA 324, 442 N.R. 290, at para. 62).
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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382	lower-level court	UK	[50] In T. v. Secretary of State for the Home Department, [1996] 2 All E.R. 865, the U.K. House of Lords discussed the purpose of Article 1F generally and indicated that the purpose of Article 1F(b) was not limited to exclusion of fugitives. Rather, Article 1F(b) recognizes that there are those "whose criminal habits ma[ke] it unreasonable for them to be forced on to a host nation against its will" (p. 875). More recently, the U.K. Upper Tribunal (Immigration and Asylum Chamber) confirmed that Article 1F(b) is not confined to fugitives in AH (Algeria) v. Secretary of State for the Home Department, [2013] UKUT 00382 (IAC) (para. 97).

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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	Dhayakpa v. Minister of Immigration and Ethnic Affairs (1995), 62 F.C.R. 556	lower-level court	Australia	[51] Similar reasoning has been adopted in Australia. In Dhayakpa v. Minister of Immigration and Ethnic Affairs (1995), 62 F.C.R. 556, French J. of the Australian Federal Court stated that "[t]he exemption in Article 1F(b) . . . is protective of the order and safety of the receiving State" (para. 29). Dhayakpa was subsequently affirmed in Ovcharuk v. Minister for Immigration and Multicultural Affairs (1998), 88 F.C.R. 173, where the Australian Federal Court specifically declined to follow this Court's dicta in Ward and Pushpanathan that Article 1F(b) applied only to fugitives (pp. 6 and 13).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	Ovcharuk v. Minister for Immigration and Multicultural Affairs (1998), 88 F.C.R. 173	lower-level court	Australia	[51] Similar reasoning has been adopted in Australia. In Dhayakpa v. Minister of Immigration and Ethnic Affairs (1995), 62 F.C.R. 556, French J. of the Australian Federal Court stated that "[t]he exemption in Article 1F(b) . . . is protective of the order and safety of the receiving State" (para. 29). Dhayakpa was subsequently affirmed in Ovcharuk v. Minister for Immigration and Multicultural Affairs (1998), 88 F.C.R. 173, where the Australian Federal Court specifically declined to follow this Court's dicta in Ward and Pushpanathan that Article 1F(b) applied only to fugitives (pp. 6 and 13).
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2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	Attorney-General (Minister of Immigration) v. Tamil X, [2010] NZSC 107, [2011] 1 N.Z.L.R. 721	SC	New Zealand	[53] In Attorney-General (Minister of Immigration) v. Tamil X, [2010] NZSC 107, [2011] 1 N.Z.L.R. 721, the Supreme Court of New Zealand stated that two purposes underlie Article 1F(b): (1) to prevent fugitives from avoiding punishment for their crimes; and (2) to protect the security of states. The court made clear that the language of Article 1F(b) "cannot . . . be read as confining exclusion to those who are fugitives from justice" (para. 82).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479, May 18, 2009	lower-level court	Belgium	[56] Two courts, however, have taken a narrow view of Article 1F(b). In Belgium, the Conseil du contentieux des étrangers has held that factors such as expiation, remorse, or even subsequent acts of charity are relevant to whether a claimant is deserving of refugee protection in a given case (see X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479, May 18, 2009, and X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011).
2014	Febles v. Canada (Citizenship and Immigration)	10/30/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14419/index.do	Febles v. Canada (Citizenship and Immigration), 2014 SCC 68, [2014] 3 S.C.R. 431	McLachlin C.J.	majority	Federal Court of Appeal	Immigration	C	referred to	X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011	lower-level court	Belgium	[56] Two courts, however, have taken a narrow view of Article 1F(b). In Belgium, the Conseil du contentieux des étrangers has held that factors such as expiation, remorse, or even subsequent acts of charity are relevant to whether a claimant is deserving of refugee protection in a given case (see X v. Commissaire général aux réfugiés et aux apatrides, No. 27.479, May 18, 2009, and X v. Commissaire général aux réfugiés et aux apatrides, No. 69656, November 8, 2011).
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2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521	SC	UK (SC)	[169] I am aware of the jurisprudential division about the scope of the Treaty. Some courts, as in Walker v. Eastern Air Lines, Inc., 785 F.Supp. 1168 (S.D.N.Y. 1992), and Beaudet v. British Airways, PLC, 853 F.Supp. 1062 (N.D. Ill. 1994), have assumed limits on the range of actions covered. Others, as in Sidhu v. British Airways Plc., [1997] A.C. 430 (H.L.), Tseng, King v. American Airlines, Inc., 284 F.3d 352 (2d Cir. 2002), In re Deep Vein Thrombosis and Air Travel Group Litigation, [2005] UKHL 72, [2006] 1 A.C. 495, and Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521, have attributed it significantly wider coverage. But it seems to me that it would be an aberrant rule of treaty interpretation, and one which is hard to see as being consistent with the "good faith" required by Article 31 of the Vienna Convention, to conclude that a treaty which is silent as to its effect on domestic legislation protecting fundamental, let alone constitutional rights, can be construed as silencing those rights.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999)	SC	US	[149] First, the U.S. Supreme Court examined this variation in language in El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999). Writing for eight of the members of the court, Ginsburg J. concluded that a shift from the words "[i]n the cases covered by" to the words "[i]n the carriage of passengers and baggage" does not change, but "merely clarifies" the scope of exclusivity of the provision (p. 175).
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	Sidhu v. British Airways Plc., [1997] A.C. 430	SC	UK (HL)	[169] I am aware of the jurisprudential division about the scope of the Treaty. Some courts, as in Walker v. Eastern Air Lines, Inc., 785 F.Supp. 1168 (S.D.N.Y. 1992), and Beaudet v. British Airways, PLC, 853 F.Supp. 1062 (N.D. Ill. 1994), have assumed limits on the range of actions covered. Others, as in Sidhu v. British Airways Plc., [1997] A.C. 430 (H.L.), Tseng, King v. American Airlines, Inc., 284 F.3d 352 (2d Cir. 2002), In re Deep Vein Thrombosis and Air Travel Group Litigation, [2005] UKHL 72, [2006] 1 A.C. 495, and Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521, have attributed it significantly wider coverage. But it seems to me that it would be an aberrant rule of treaty interpretation, and one which is hard to see as being consistent with the "good faith" required by Article 31 of the Vienna Convention, to conclude that a treaty which is silent as to its effect on domestic legislation protecting fundamental, let alone constitutional rights, can be construed as silencing those rights.
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2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	Walker v. Eastern Air Lines, Inc., 785 F.Supp. 1168 (1992)	lower-level court	US	[169] I am aware of the jurisprudential division about the scope of the Treaty. Some courts, as in Walker v. Eastern Air Lines, Inc., 785 F.Supp. 1168 (S.D.N.Y. 1992), and Beaudet v. British Airways, PLC, 853 F.Supp. 1062 (N.D. Ill. 1994), have assumed limits on the range of actions covered. Others, as in Sidhu v. British Airways Plc., [1997] A.C. 430 (H.L.), Tseng, King v. American Airlines, Inc., 284 F.3d 352 (2d Cir. 2002), In re Deep Vein Thrombosis and Air Travel Group Litigation, [2005] UKHL 72, [2006] 1 A.C. 495, and Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521, have attributed it significantly wider coverage. But it seems to me that it would be an aberrant rule of treaty interpretation, and one which is hard to see as being consistent with the "good faith" required by Article 31 of the Vienna Convention, to conclude that a treaty which is silent as to its effect on domestic legislation protecting fundamental, let alone constitutional rights, can be construed as silencing those rights.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	Beaudet v. British Airways, PLC, 853 F.Supp. 1062 (1994)	lower-level court	US	[169] I am aware of the jurisprudential division about the scope of the Treaty. Some courts, as in Walker v. Eastern Air Lines, Inc., 785 F.Supp. 1168 (S.D.N.Y. 1992), and Beaudet v. British Airways, PLC, 853 F.Supp. 1062 (N.D. Ill. 1994), have assumed limits on the range of actions covered. Others, as in Sidhu v. British Airways Plc., [1997] A.C. 430 (H.L.), Tseng, King v. American Airlines, Inc., 284 F.3d 352 (2d Cir. 2002), In re Deep Vein Thrombosis and Air Travel Group Litigation, [2005] UKHL 72, [2006] 1 A.C. 495, and Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521, have attributed it significantly wider coverage. But it seems to me that it would be an aberrant rule of treaty interpretation, and one which is hard to see as being consistent with the "good faith" required by Article 31 of the Vienna Convention, to conclude that a treaty which is silent as to its effect on domestic legislation protecting fundamental, let alone constitutional rights, can be construed as silencing those rights.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Abella J	dissenting	Federal Court of Appeal	Statutes	C	D	Eastern Airlines, Inc. v. Floyd, 499 U.S. 530 (1991)	SC	US	[175] The majority concludes that the Thibodeaus' claim for damages relates to the circumstances contemplated by Article 17(1) because they suffered the breach of their language rights "aboard the aircraft" (para. 86). The language of Article 17(1) makes it clear that the provision does not apply to all events that take place on board an aircraft or in the course of the operations of embarking or disembarking. Rather, Article 17(1) imposes the requirements that (1) there must have been an accident, (2) which caused (3) death or bodily injury, (4) while the passenger was on board the aircraft or was in the course of embarking or disembarking (Dempsey and Milde, at p. 124; Eastern Airlines, Inc. v. Floyd, 499 U.S. 530 (1991), at pp. 535-36).
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521	SC	UK (SC)	[31] The Montreal Convention was adopted in 1999 in Montréal and applies to all international carriage by aircraft of persons, baggage or cargo. It was the successor to the Convention for the Unification of Certain Rules Relating to International Carriage by Air, 137 L.N.T.S. 11 (the "Warsaw Convention") and its purpose was "to modernize and consolidate the Warsaw Convention and related instruments": preamble of the Montreal Convention. To understand the purposes of the Montreal Convention, we therefore must go back to its predecessor, the Warsaw Convention, signed at Warsaw on October 12, 1929, as set out at Sch. I of the Carriage by Air Act (as amended at The Hague in 1955, as set out at Sch. III). The purposes of the Warsaw Convention and of the Montreal Convention were the same and decisions and commentary respecting the Warsaw Convention are therefore helpful in understanding those purposes: Stott v. Thomas Cook Tour Operators Ltd., [2014] UKSC 15, [2014] 2 W.L.R. 521, at paras. 24-25; P. S. Dempsey, Aviation Liability Law (2nd ed. 2013), at p. 304; P. S. Dempsey and M. Milde, International Air Carrier Liability: The Montreal Convention of 1999 (2005), at p. 7.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999)	SC	US	[44] To further the goal of uniformity, the Warsaw Convention provided for three areas of air carrier liability: personal injuries in Article 17; loss, destruction and damage to baggage or cargo in Article 18; and damage occasioned by delay in Article 19. It also set out the conditions exempting air carriers from liability (Article 20), the monetary limits of liability (Article 22) and, to keep the scheme in balance, the circumstances in which air carriers may not limit liability (Articles 23 and 25). The intention was to exempt carriers from the differing liability regimes under the law of the various states: see, e.g., El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155 (1999), at pp. 169-71, per Ginsburg J. [53] This understanding of the exclusivity principle was reiterated by the House of Lords in In re Deep Vein Thrombosis and Air Travel Group Litigation, [2005] UKHL 72, [2006] 1 A.C. 495, at para. 3: It is to the passenger's disadvantage, however, that even clear causative negligence on the part of the carrier will not entitle the passenger to a remedy if the article 17 conditions cannot be satisfied. It has been authoritatively established that if a remedy for the injury is not available under the Convention, it is not available at all: see Sidhu v British Airways plc [1997] AC 430 and El Al Israel Airlines Ltd v Tsui Yuan Tseng (1999) 525 US 155. [Emphasis added.] [54] In Tseng, the Supreme Court of the United States agreed with the House of Lords' affirmation of the exclusivity principle in Sidhu and adopted the interpretation of the Warsaw Convention which was supported by the United States government. The plaintiff was subjected to an intrusive security search at John F. Kennedy International Airport in New York before she boarded an El Al Israel Airlines flight to Tel Aviv. She sought damages for psychic or psychosomatic injuries, but agreed that she did not suffer any "bodily injury". The airline and the U.S. government submitted that the words "[i]n the cases covered by Article 17", found at Article 24 of the Warsaw Convention, "refer[red] generically to all personal injury cases stemming from occurrences on board an aircraft or in embarking or disembarking": p. 168. The United States Supreme Court further agreed with the proposition that "[s]o read, Article 24 [of the Warsaw Convention] would preclude a passenger from asserting any air transit personal injury claims under local law, including claims that failed to satisfy Article 17's liability conditions": ibid.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Morris v. KLM Royal Dutch Airlines, [2002] UKHL 7, [2002] 2 A.C. 628	SC	UK (HL)	[50] The highest courts of state parties to the Montreal Convention have affirmed the exclusivity principle: S. Radošević, "CJEU's Decision in Nelson and Others in Light of the Exclusivity of the Montreal Convention" (2013), 38 Air & Space L. 95, at p. 99. In light of the Montreal Convention's objective of achieving international uniformity, we should pay close attention to the international jurisprudence and be especially reluctant to depart from any strong international consensus that has developed in relation to its interpretation: see Tseng, at p. 175; Morris v. KLM Royal Dutch Airlines, [2002] UKHL 7, [2002] 2 A.C. 628, at paras. 5 and 7; see also Plourde v. Service aérien FBO inc. (Skyservice), 2007 QCCA 739 (CanLII), at paras. 53-55, leave to appeal refused, [2007] 3 S.C.R. xiii; Sakka (Litigation Guardian of) v. Air France, 2011 ONSC 1995, 18 C.P.C. (7th) 150, at para. 28; and Chassot, at p. 34.

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2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Ong v. Malaysian Airline System Bhd, [2008] 3 H.K.L.R.D. 153	lower-level court	Hong Kong	[56] This understanding of the exclusivity principle in the Warsaw Convention was also affirmed by the Court of Appeal of Hong Kong in Ong v. Malaysian Airline System Bhd, [2008] 3 H.K.L.R.D. 153, the High Court of Ireland in Hennessey v. Aer Lingus Ltd., [2012] IEHC 124 (BAILII), the Court of Appeal of New Zealand in Emery Air Freight Corp. v. Nerine Nurseries Ltd., [1997] 3 N.Z.L.R. 723, the Singapore Court of Appeal in Seagate Technology International v. Changi International Airport Services Pte. Ltd., [1997] SGCA 22, [1997] 2 S.L.R.(R.) 57, and the High Court of South Africa in Potgieter v. British Airways Plc, [2005] ZAWCHC 5 (SAFLII). In Canada, courts have adopted the same view: see Gal v. Northern Mountain Helicopters Inc., 1999 BCCA 486, 128 B.C.A.C. 290, and Sakka, at para. 30. A similar understanding of the exclusivity principle under the Montreal Convention was affirmed by the supreme court of Germany in Az. X ZR 99/10, March 15, 2011 (online), the Supreme Court of the United Kingdom in Stott, at para. 31, and the High Court of Ireland in McAuley v. Aer Lingus Ltd., [2011] IEHC 89 (online), at paras. 6.3-6.6; in Canada, see O'Mara v. Air Canada, 2013 ONSC 2931, 115 O.R. (3d) 673, and Walton v. MyTravel Canada Holdings Inc., 2006 SKQB 231, 280 Sask. R. 1.
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2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Az. X ZR 99/10 (2011) (online: http://openjur.de/u/163948.html)	SC	Germany	[56] This understanding of the exclusivity principle in the Warsaw Convention was also affirmed by the Court of Appeal of Hong Kong in Ong v. Malaysian Airline System Bhd, [2008] 3 H.K.L.R.D. 153, the High Court of Ireland in Hennessey v. Aer Lingus Ltd., [2012] IEHC 124 (BAILII), the Court of Appeal of New Zealand in Emery Air Freight Corp. v. Nerine Nurseries Ltd., [1997] 3 N.Z.L.R. 723, the Singapore Court of Appeal in Seagate Technology International v. Changi International Airport Services Pte. Ltd., [1997] SGCA 22, [1997] 2 S.L.R.(R.) 57, and the High Court of South Africa in Potgieter v. British Airways Plc, [2005] ZAWCHC 5 (SAFLII). In Canada, courts have adopted the same view: see Gal v. Northern Mountain Helicopters Inc., 1999 BCCA 486, 128 B.C.A.C. 290, and Sakka, at para. 30. A similar understanding of the exclusivity principle under the Montreal Convention was affirmed by the supreme court of Germany in Az. X ZR 99/10, March 15, 2011 (online), the Supreme Court of the United Kingdom in Stott, at para. 31, and the High Court of Ireland in McAuley v. Aer Lingus Ltd., [2011] IEHC 89 (online), at paras. 6.3-6.6; in Canada, see O'Mara v. Air Canada, 2013 ONSC 2931, 115 O.R. (3d) 673, and Walton v. MyTravel Canada Holdings Inc., 2006 SKQB 231, 280 Sask. R. 1.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	McAuley v. Aer Lingus Ltd., [2011] IEHC 89 (online: http://www.courts.ie/Judgments.nsf/0/5DDF253DE6C0E09F8025787E0053C421)	SC	Ireland	[56] This understanding of the exclusivity principle in the Warsaw Convention was also affirmed by the Court of Appeal of Hong Kong in Ong v. Malaysian Airline System Bhd, [2008] 3 H.K.L.R.D. 153, the High Court of Ireland in Hennessey v. Aer Lingus Ltd., [2012] IEHC 124 (BAILII), the Court of Appeal of New Zealand in Emery Air Freight Corp. v. Nerine Nurseries Ltd., [1997] 3 N.Z.L.R. 723, the Singapore Court of Appeal in Seagate Technology International v. Changi International Airport Services Pte. Ltd., [1997] SGCA 22, [1997] 2 S.L.R.(R.) 57, and the High Court of South Africa in Potgieter v. British Airways Plc, [2005] ZAWCHC 5 (SAFLII). In Canada, courts have adopted the same view: see Gal v. Northern Mountain Helicopters Inc., 1999 BCCA 486, 128 B.C.A.C. 290, and Sakka, at para. 30. A similar understanding of the exclusivity principle under the Montreal Convention was affirmed by the supreme court of Germany in Az. X ZR 99/10, March 15, 2011 (online), the Supreme Court of the United Kingdom in Stott, at para. 31, and the High Court of Ireland in McAuley v. Aer Lingus Ltd., [2011] IEHC 89 (online), at paras. 6.3-6.6; in Canada, see O'Mara v. Air Canada, 2013 ONSC 2931, 115 O.R. (3d) 673, and Walton v. MyTravel Canada Holdings Inc., 2006 SKQB 231, 280 Sask. R. 1.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	King v. American Airlines, Inc., 284 F.3d 352 (2002)	lower-level court	US	[67] In King v. American Airlines, Inc., 284 F.3d 352 (2d Cir. 2002), Mr. and Ms. King claimed damages before the United States District Court for the Northern District of New York, alleging that they had been racially discriminated against in violation of their equal rights under the law, as protected by 42 U.S.C. § 1981. The Kings also relied on the Federal Aviation Act, 49 U.S.C. § 41310(a), and various other state and federal laws. They contended that American Airlines "bumped them from an overbooked flight because of their race": p. 355. The U.S. Federal Court of Appeals, Second Circuit, had to decide whether the Warsaw Convention applied to the Kings' damages claim. If it did, then this claim would be excluded, as it had been filed outside the two-year limitation period provided at Article 29 of the Warsaw Convention.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Gibbs v. American Airlines, Inc., 191 F.Supp.2d 144 (2002)	lower-level court	US	[70] Similarly, in Gibbs v. American Airlines, Inc., 191 F.Supp.2d 144 (D.D.C. 2002), Dr. Gibbs brought a claim against American Airlines under 42 U.S.C. § 1981, alleging that the air carrier "refused to perform its contract to transport him . . . on the basis of his race": pp. 146-47. Dr. Gibbs argued that "Congress did not intend the [Warsaw] Convention to impede civil rights claims rooted in the [American] Constitution, such as Section 1981 claims": p. 148. Kennedy J. of the United States District Court, District of Columbia, however rejected this argument and held that the "negative consequences that the Tseng Court found would flow from '[c]onstruing the [Warsaw] Convention . . . to allow passengers to pursue claims under local law when the [Warsaw] Convention does not permit recovery' are no less likely with statutory discrimination claims than with common law claims": ibid., citing Tseng, at p. 171. As Kennedy J. explained, "the primary purpose of the [Warsaw] Convention is to prevent variations in liability according to local law" and, as such, this purpose "does not distinguish between types of local law, only between local and international law": p. 149. To that extent, "[f]ederal discrimination statutes clearly fall into the former category": ibid. On the application of the Warsaw Convention to civil rights claims, see also Turturro v. Continental Airlines, 128 F.Supp.2d 170 (S.D.N.Y. 2001), and Brandt v. American Airlines, 2000 WL 288393 (N.D. Cal.).
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Turturro v. Continental Airlines, 128 F.Supp.2d 170 (2001)	lower-level court	US	[68] Circuit Judge Sotomayor (as she then was) for the court concluded that the claim fell within the substantive scope of Article 17 of the Warsaw Convention, which exhaustively covers claims for injuries suffered while "in the course of [one of] the operations of embarking": pp. 359-60. The Kings, however, submitted that civil rights claims based on federal statutes would fall outside the intended exclusivity regime of the Warsaw Convention: p. 360. Sotomayor J. rejected this argument: As Tseng makes clear, the scope of the Convention is not dependent on the legal theory pled nor on the nature of the harm suffered. See Tseng, 525 U.S. at 171, 119 S.Ct. 662 (rejecting a construction of the Convention that would look to the type of harm suffered, because it would "encourage artful pleading by plaintiffs seeking to opt out of the Convention's liability scheme when local law promised recovery in excess of that prescribed by the treaty") . . . . Notably, every court that has addressed the issue of whether discrimination claims are preempted by the Warsaw Convention post-Tseng has reached a similar conclusion. . . . . . . It is not for the courts to rewrite the terms of a treaty between sovereign nations. Cf. Turturro, 128 F.Supp.2d at 181 ("[T]he Convention massively curtails damage awards for victims of horrible acts [of] terrorism; the fact that the Convention also abridges recovery for . . . discrimination should not surprise anyone."). [Emphasis added; pp. 361-62.] [70] Similarly, in Gibbs v. American Airlines, Inc., 191 F.Supp.2d 144 (D.D.C. 2002), Dr. Gibbs brought a claim against American Airlines under 42 U.S.C. § 1981, alleging that the air carrier "refused to perform its contract to transport him . . . on the basis of his race": pp. 146-47. Dr. Gibbs argued that "Congress did not intend the [Warsaw] Convention to impede civil rights claims rooted in the [American] Constitution, such as Section 1981 claims": p. 148. Kennedy J. of the United States District Court, District of Columbia, however rejected this argument and held that the "negative consequences that the Tseng Court found would flow from '[c]onstruing the [Warsaw] Convention . . . to allow passengers to pursue claims under local law when the [Warsaw] Convention does not permit recovery' are no less likely with statutory discrimination claims than with common law claims": ibid., citing Tseng, at p. 171. As Kennedy J. explained, "the primary purpose of the [Warsaw] Convention is to prevent variations in liability according to local law" and, as such, this purpose "does not distinguish between types of local law, only between local and international law": p. 149. To that extent, "[f]ederal discrimination statutes clearly fall into the former category": ibid. On the application of the Warsaw Convention to civil rights claims, see also Turturro v. Continental Airlines, 128 F.Supp.2d 170 (S.D.N.Y. 2001), and Brandt v. American Airlines, 2000 WL
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Brandt v. American Airlines, 2000 WL 288393	lower-level court	US	[70] Similarly, in Gibbs v. American Airlines, Inc., 191 F.Supp.2d 144 (D.D.C. 2002), Dr. Gibbs brought a claim against American Airlines under 42 U.S.C. § 1981, alleging that the air carrier "refused to perform its contract to transport him . . . on the basis of his race": pp. 146-47. Dr. Gibbs argued that "Congress did not intend the [Warsaw] Convention to impede civil rights claims rooted in the [American] Constitution, such as Section 1981 claims": p. 148. Kennedy J. of the United States District Court, District of Columbia, however rejected this argument and held that the "negative consequences that the Tseng Court found would flow from '[c]onstruing the [Warsaw] Convention . . . to allow passengers to pursue claims under local law when the [Warsaw] Convention does not permit recovery' are no less likely with statutory discrimination claims than with common law claims": ibid., citing Tseng, at p. 171. As Kennedy J. explained, "the primary purpose of the [Warsaw] Convention is to prevent variations in liability according to local law" and, as such, this purpose "does not distinguish between types of local law, only between local and international law": p. 149. To that extent, "[f]ederal discrimination statutes clearly fall into the former category": ibid. On the application of the Warsaw Convention to civil rights claims, see also Turturro v. Continental Airlines, 128 F.Supp.2d 170 (S.D.N.Y. 2001), and Brandt v. American Airlines, 2000 WL 288393 (N.D. Cal.).
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	International Air Transport Association v. Department for Transport, C-344/04, [2006] E.C.R. I-403	international	ECJ	[80] The Thibodeaus further submit that the substantive scope of the Montreal Convention does not extend to barring claims for "standardized damages" and that their claims are of that nature. This argument relies on jurisprudence from the European Court of Justice, in particular International Air Transport Association v. Department for Transport, C-344/04, [2006] E.C.R. I-403 (Grand Chamber) ("IATA"), which was followed by the Fourth Chamber of the European Court of Justice in Wallentin-Hermann v. Alitalia, C-549/07, [2008] E.C.R. I-11061, at para. 32, and Sturgeon v. Condor Flugdienst GmbH, Joined Cases C-402/07 and C-432/07, [2009] E.C.R. I-10923, at para. 65, and reaffirmed by the Grand Chamber in Nelson v. Deutsche Lufthansa AG, Joined Cases C-581/10 and C-629/10, [2013] 1 C.M.L.R. 42 (p. 1191), at paras. 46-60. In the IATA case, for example, the question was whether a European Community regulation dealing with air passengers' rights in the event of delay was inconsistent with the Montreal Convention. The regulation required airlines to provide assistance to delayed passengers ranging from free meals and refreshments to free hotel accommodation. The court concluded that passenger delay gives rise to two distinct types of damage, only one of which is governed by the Montreal Convention. The first, which in the court's view is not addressed by the Montreal Convention, is "damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned": para. 43. This, in the court's view, was the sort of measure contained in the regulation. The second, which is subject to the Montreal Convention, is "individual damage . . . redress for which requires a case-by-case assessment of the extent of the damage caused": ibid.

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2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Wallentin-Hermann v. Alitalia, C-549/07, [2008] E.C.R. I-11061	international	ECJ	[80] The Thibodeaus further submit that the substantive scope of the Montreal Convention does not extend to barring claims for "standardized damages" and that their claims are of that nature. This argument relies on jurisprudence from the European Court of Justice, in particular International Air Transport Association v. Department for Transport, C-344/04, [2006] E.C.R. I-403 (Grand Chamber) ("IATA"), which was followed by the Fourth Chamber of the European Court of Justice in Wallentin-Hermann v. Alitalia, C-549/07, [2008] E.C.R. I-11061, at para. 32, and Sturgeon v. Condor Flugdienst GmbH, Joined Cases C-402/07 and C-432/07, [2009] E.C.R. I-10923, at para. 65, and reaffirmed by the Grand Chamber in Nelson v. Deutsche Lufthansa AG, Joined Cases C-581/10 and C-629/10, [2013] 1 C.M.L.R. 42 (p. 1191), at paras. 46-60. In the IATA case, for example, the question was whether a European Community regulation dealing with air passengers' rights in the event of delay was inconsistent with the Montreal Convention. The regulation required airlines to provide assistance to delayed passengers ranging from free meals and refreshments to free hotel accommodation. The court concluded that passenger delay gives rise to two distinct types of damage, only one of which is governed by the Montreal Convention. The first, which in the court's view is not addressed by the Montreal Convention, is "damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned": para. 43. This, in the court's view, was the sort of measure contained in the regulation. The second, which is subject to the Montreal Convention, is "individual damage . . . redress for which requires a case-by-case assessment of the extent of the damage caused": ibid.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Sturgeon v. Condor Flugdienst GmbH, C-402/07 and C-432/07, [2009] E.C.R. I-10923	international	ECJ	[80] The Thibodeaus further submit that the substantive scope of the Montreal Convention does not extend to barring claims for "standardized damages" and that their claims are of that nature. This argument relies on jurisprudence from the European Court of Justice, in particular International Air Transport Association v. Department for Transport, C-344/04, [2006] E.C.R. I-403 (Grand Chamber) ("IATA"), which was followed by the Fourth Chamber of the European Court of Justice in Wallentin-Hermann v. Alitalia, C-549/07, [2008] E.C.R. I-11061, at para. 32, and Sturgeon v. Condor Flugdienst GmbH, Joined Cases C-402/07 and C-432/07, [2009] E.C.R. I-10923, at para. 65, and reaffirmed by the Grand Chamber in Nelson v. Deutsche Lufthansa AG, Joined Cases C-581/10 and C-629/10, [2013] 1 C.M.L.R. 42 (p. 1191), at paras. 46-60. In the IATA case, for example, the question was whether a European Community regulation dealing with air passengers' rights in the event of delay was inconsistent with the Montreal Convention. The regulation required airlines to provide assistance to delayed passengers ranging from free meals and refreshments to free hotel accommodation. The court concluded that passenger delay gives rise to two distinct types of damage, only one of which is governed by the Montreal Convention. The first, which in the court's view is not addressed by the Montreal Convention, is "damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned": para. 43. This, in the court's view, was the sort of measure contained in the regulation. The second, which is subject to the Montreal Convention, is "individual damage . . . redress for which requires a case-by-case assessment of the extent of the damage caused": ibid.
2014	Thibodeau v. Air Canada	10/28/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14418/index.do	Thibodeau v. Air Canada, 2014 SCC 67, [2014] 3 S.C.R. 340	Cromwell J	majority	Federal Court of Appeal	Statutes	C	referred to	Nelson v. Deutsche Lufthansa AG, C-581/10 and C-629/10, [2013] 1 C.M.L.R. 42 (p. 1191)	international	ECJ	[50] The highest courts of state parties to the Montreal Convention have affirmed the exclusivity principle: S. Radošević, "CJEU's Decision in Nelson and Others in Light of the Exclusivity of the Montreal Convention" (2013), 38 Air & Space L. 95, at p. 99. In light of the Montreal Convention's objective of achieving international uniformity, we should pay close attention to the international jurisprudence and be especially reluctant to depart from any strong international consensus that has developed in relation to its interpretation: see Tseng, at p. 175; Morris v. KLM Royal Dutch Airlines, [2002] UKHL 7, [2002] 2 A.C. 628, at paras. 5 and 7; see also Plourde v. Service aérien FBO inc. (Skyservice), 2007 QCCA 739 (CanLII), at paras. 53-55, leave to appeal refused, [2007] 3 S.C.R. xiii; Sakka (Litigation Guardian of) v. Air France, 2011 ONSC 1995, 18 C.P.C. (7th) 150, at para. 28; and Chassot, at p. 34. [80] The Thibodeaus further submit that the substantive scope of the Montreal Convention does not extend to barring claims for "standardized damages" and that their claims are of that nature. This argument relies on jurisprudence from the European Court of Justice, in particular International Air Transport Association v. Department for Transport, C-344/04, [2006] E.C.R. I-403 (Grand Chamber) ("IATA"), which was followed by the Fourth Chamber of the European Court of Justice in Wallentin-Hermann v. Alitalia, C-549/07, [2008] E.C.R. I-11061, at para. 32, and Sturgeon v. Condor Flugdienst GmbH, Joined Cases C-402/07 and C-432/07, [2009] E.C.R. I-10923, at para. 65, and reaffirmed by the Grand Chamber in Nelson v. Deutsche Lufthansa AG, Joined Cases C-581/10 and C-629/10, [2013] 1 C.M.L.R. 42 (p. 1191), at paras. 46-60. In the IATA case, for example, the question was whether a European Community regulation dealing with air passengers' rights in the event of delay was inconsistent with the Montreal Convention. The regulation required airlines to provide assistance to delayed passengers ranging from free meals and refreshments to free hotel accommodation. The court concluded that passenger delay gives rise to two distinct types of damage, only one of which is governed by the Montreal Convention. The first, which in the court's view is not addressed by the Montreal Convention, is "damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned": para. 43. This, in the court's view, was the sort of measure contained in the regulation. The second, which is subject to the Montreal Convention, is "individual damage . . . redress for which requires a case-by-case assessment of the extent of the damage caused": ibid.
2014	Imperial Oil v. Jacques	10/17/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14399/index.do	Imperial Oil v. Jacques, 2014 SCC 66, [2014] 3 S.C.R. 287	Abella J.	dissenting	Quebec	Evidence	C	referred to	National Broadcasting Co. v. United States Department of Justice, 735 F.2d 51 (1984)	lower-level court	US	[105] It is noteworthy too that in other jurisdictions, intercepted private communications can never be disclosed as part of civil litigation between private parties: National Broadcasting Co. v. United States Department of Justice, 735 F.2d 51 (2nd Cir. 1984); In re Motion to Unseal Electronic Surveillance Evidence, 990 F.2d 1015 (8th Cir. 1993); C. S. Fishman and A. T. McKenna, Wiretapping & Eavesdropping: Surveillance in the Internet Age (3rd ed. (loose-leaf)), vol. 4, at § 41:69; Regulation of Investigatory Powers Act 2000 (U.K.), 2000, c. 23, ss. 17 and 18.
2014	Imperial Oil v. Jacques	10/17/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14399/index.do	Imperial Oil v. Jacques, 2014 SCC 66, [2014] 3 S.C.R. 287	Abella J.	dissenting	Quebec	Evidence	C	referred to	In re Motion to Unseal Electronic Surveillance Evidence, 990 F.2d 1015 (1993)	lower-level court	US	[105] It is noteworthy too that in other jurisdictions, intercepted private communications can never be disclosed as part of civil litigation between private parties: National Broadcasting Co. v. United States Department of Justice, 735 F.2d 51 (2nd Cir. 1984); In re Motion to Unseal Electronic Surveillance Evidence, 990 F.2d 1015 (8th Cir. 1993); C. S. Fishman and A. T. McKenna, Wiretapping & Eavesdropping: Surveillance in the Internet Age (3rd ed. (loose-leaf)), vol. 4, at § 41:69; Regulation of Investigatory Powers Act 2000 (U.K.), 2000, c. 23, ss. 17 and 18.
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J.	dissenting	Quebec	Constitutional law	C	referred to	Jones v. United Kingdom, Nos. 34356/06 and 40528/06, ECHR 2014	international	ECHR	[206] The evolutionary nature of the law of immunity for torture was recognized most recently in Jones v. United Kingdom, Nos. 34356/06 and 40528/06, ECHR 2014. Four individuals had started civil proceedings in the United Kingdom against the Ministry of Interior of the Kingdom of Saudi Arabia and against individual state officials, acting as agents of Saudi Arabia, for alleged incidents of torture. [209] I have some difficulty, therefore, understanding why the treatment of immunity for civil claims should be different from that for criminal proceedings. As Judge Kalaydjieva said in her dissenting opinion in Jones v. United Kingdom: Like Lord Justice Mance [at the Court of Appeal] I find it difficult to "accept that general differences between criminal and civil law justif[y] a distinction in the application of immunity in the two contexts", especially in view of developments in this field, not least following the findings of the House of Lords in the case of Pinochet (No. 3) that there would be "no immunity from criminal prosecution in respect of an individual officer who had committed torture abroad in an official context." I also find it "not easy to see why civil proceedings against an alleged torturer could be said to involve a greater interference in the internal affairs of a foreign State than criminal proceedings against the same person" and also "incongruous that if an alleged torturer was within the jurisdiction of the forum State, he would be prosecuted pursuant to Article 5(2) of the Convention against Torture and no immunity could be claimed, but the victim of the alleged torture would be unable to pursue any civil claim". [pp. 62-63] [211] Accordingly, while it can be said that customary international law permits states to recognize immunity for foreign officials, as evidenced in Jones v. United Kingdom, it also does not preclude a state from denying immunity for acts of torture, as exemplified in Pinochet No. 3 and Samantar II.
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J	dissenting	Quebec	Constitutional law	C	D	Jones v. Ministry of the Interior of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270	SC	UK (HL)	[220] The House of Lords said in Jones v. Ministry of the Interior of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270, that "[n]o one has ever objected to that statement of understanding by the United States" (para. 57). But Germany had indicated in 1996 that the United States' "understanding" was a non-binding declaration: On 26 February 1996, the Government of Germany notified the Secretary-General that with respect to the . . . understandings under II (2) and (3) made by the United States of America upon ratification "it is the understanding of the Government of the Federal Republic of Germany that [these understandings] do not touch upon the obligations of the United States of America as State Party to the Convention." (Emphasis added; United Nations Treaty Collection, Status of Convention Against Torture (online), at fn 26.)

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2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J.	dissenting	Quebec	Constitutional law	C	D	Sosa v. Alvarez-Machain, 542 U.S. 692 (2004)	SC	US	[223] The views of state parties to the Convention Against Torture confirm Larocque's observation. The governments of Australia, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland submitted their views on Article 14 in an amicus brief to the Supreme Court of the United States in the case Sosa v. Alvarez-Machain, 542 U.S. 692 (2004), by expressing that the TVPA "was passed by Congress to implement, in part, the Convention Against Torture and Other Cruel, [Inhuman] or Degrading Treatment or Punishment, which had been ratified by the United States" (p. 21). [230] I am therefore in agreement with Breyer J.'s concurring opinion in Sosa v. Alvarez-Machain that assuming civil jurisdiction over torture committed abroad will not impair the objectives sought to be protected by comity: Today international law will sometimes similarly reflect not only substantive agreement as to certain universally condemned behavior but also procedural agreement that universal jurisdiction exists to prosecute a subset of that behavior. . . . That subset includes torture, genocide, crimes against humanity, and war crimes. . . . The fact that this procedural consensus exists suggests that recognition of universal jurisdiction in respect to a limited set of norms is consistent with principles of international comity. That is, allowing every nation's courts to adjudicate foreign conduct involving foreign parties in such cases will not significantly threaten the practical harmony that comity principles seek to protect. That consensus concerns criminal jurisdiction, but consensus as to universal criminal jurisdiction itself suggests that universal tort jurisdiction would be no more threatening. [Citations omitted; pp. 762-63.]
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J.	dissenting	Quebec	Constitutional law	C	D	Yousuf v. Samantar, 699 F.3d 763 (2012)	lower-level court	US	[201] In the context of civil proceedings, American courts have concluded that acts in violation of jus cogens cannot constitute official sovereign acts. In Yousuf v. Samantar, 699 F.3d 763 (2012) (appeal pending) ("Samantar II"), the Court of Appeal for the Fourth Circuit considered whether Mohamed Ali Samantar, a former high-level government official from Somalia who was a resident in the United States, could benefit from immunity for alleged acts of torture, arbitrary detention and extrajudicial killing committed in Somalia. Traxler C.J. concluded that under international law, "officials from other countries are not entitled to foreign official immunity for jus cogens violations, even if the acts were performed in the defendant's official capacity" (p. 777). Because jus cogens violations are not legitimate state acts, the performance of such an act does not qualify as an "official act" justifying immunity ratione materiae.
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J	dissenting	Quebec	Constitutional law	C	D	R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [2000] 1 A.C. 147	SC	UK (HL)	[173] State practice is evolving over whether torture can qualify as official state conduct. The evolution emerges from the following conundrum: how can torture be an official function for the purpose of immunity under international law when international law itself universally prohibits torture (see R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [2000] 1 A.C. 147 (H.L.) ("Pinochet No. 3")). It seems to me that the legal fluidity created by this question and the challenges it imposes for the integrity of international law leave this Court with a choice about whether to extend immunity to foreign officials for such acts. [203] At the International Court of Justice ("I.C.J."), in Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p.3, Judges Higgins, Kooijmans and Buergenthal referred to the growing acceptance in the academic literature, state practice and international jurisprudence that jus cogens violations do not constitute "official acts" for the purpose of immunity ratione materiae: It is now increasingly claimed in the literature (see for example, Andrea Bianchi, "Denying State Immunity to Violators of Human Rights", 46 Austrian Journal of Public and International Law (1994), pp. 227-228) that serious international crimes cannot be regarded as official acts because they are neither normal State functions nor functions that a State alone (in contrast to an individual) can perform (Goff, J. (as he then was) and Lord Wilberforce articulated this test in the case of 1o Congreso del Partido (1978) QB 500 at 528 and (1983) AC 244 at 268, respectively). This view is underscored by the increasing realization that State-related motives are not the proper test for determining what constitutes public State acts. The same view is gradually also finding expression in State practice, as evidenced in judicial decisions and opinions. (For an early example, see the judgment of the Israel Supreme Court in the Eichmann case; Supreme Court, 29 May 1962, 36 International Law Reports, p. 312.) See also the speeches of Lords Hutton and Phillips of Worth Matravers in R. v. Bartle and the Commissioner of Police for the Metropolis and Others, ex parte Pinochet ("Pinochet III"); and of Lords Steyn and Nicholls of Birkenhead in "Pinochet I", as well as the judgment of the Court of Appeal of Amsterdam in the Bouterse case (Gerechtshof Amsterdam, 20 November 2000, para. 4.2.) [para. 85] [209] I have some difficulty, therefore, understanding why the treatment of immunity for civil claims should be different from that for criminal proceedings. As Judge Kalaydjieva said in her dissenting opinion in Jones v. United Kingdom: Like Lord Justice Mance [at the Court of Appeal] I find it difficult to "accept that general differences between criminal and civil law justif[y] a distinction in the application of immunity in the two contexts", especially in view of developments in this field, not least following the findings of the House of Lords in the case of Pinochet (No. 3) that there would be "no immunity from criminal prosecution in respect of an individual officer who had committed torture abroad in an official context." I also find it "not easy to see why civil proceedings against an alleged torturer could be said to involve a greater interference in the internal affairs of a foreign State than criminal proceedings against the same person" and also "incongruous that if an alleged torturer was within the jurisdiction of the forum State, he would be prosecuted pursuant to Article 5(2) of the Convention against Torture and no immunity could be claimed, but the victim of the alleged torture would be unable to pursue any civil claim". [pp. 62-63] [211] Accordingly, while it can be said that customary international law permits states to recognize immunity for foreign officials, as evidenced in Jones v. United Kingdom, it also does not preclude a state from denying immunity for acts of torture, as exemplified in Pinochet No. 3 and Samantar II.
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J	dissenting	Quebec	Constitutional law	C	D	Xuncax v. Gramajo, 886 F.Supp. 162 (1995)	lower-level court	US	[207] The European Court of Human Rights extensively reviewed the international jurisprudence, noting that state practice on the question of immunity ratione materiae for incidents of torture was "in a state of flux" (para. 30). It recognized the existence of "some emerging support in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials" because torture was not lawfully within the scope of official authority (para. 213; see, e.g., Samantar II as well as Xuncax v. Gramajo, 886 F.Supp. 162 (D. Mass. 1995), and Cabiri v. Assasie-Gyimah, 921 F.Supp. 1189 (S.D.N.Y. 1996)). Nevertheless, it was of the view that there was not yet sufficient international support for denying immunity to individual defendants against a civil claim based on torture.
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	Abella J	dissenting	Quebec	Constitutional law	C	D	Cabiri v. Assasie-Gyimah, 921 F.Supp. 1189 (1996)	lower-level court	US	[207] The European Court of Human Rights extensively reviewed the international jurisprudence, noting that state practice on the question of immunity ratione materiae for incidents of torture was "in a state of flux" (para. 30). It recognized the existence of "some emerging support in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials" because torture was not lawfully within the scope of official authority (para. 213; see, e.g., Samantar II as well as Xuncax v. Gramajo, 886 F.Supp. 162 (D. Mass. 1995), and Cabiri v. Assasie-Gyimah, 921 F.Supp. 1189 (S.D.N.Y. 1996)). Nevertheless, it was of the view that there was not yet sufficient international support for denying immunity to individual defendants against a civil claim based on torture.
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2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	C	referred to	Al-Adsani v. United Kingdom (2001), 34 E.H.R.R. 273	international	ECHR	[37] Two other justifications for state immunity are comity and reciprocity (Forcese, at p. 135; Al-Adsani v. United Kingdom (2001), 34 E.H.R.R. 273, at para. 54). Just as foreign states do not want to have their executive, legislative or public actions called into judgment in Canadian courts, so too Canada would prefer to avoid having to defend its actions and policies before foreign courts. [48] There are a number of multilateral instruments which explicitly prohibit torture (see Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), art. 5 ; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452 (XXX), U.N. Doc. A/3452/XXX, December 9, 1975, art. 3; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, art. 3; International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 7; and generally the United Nations CAT). International jurisprudence also recognizes the prohibition of torture as a non-derogable norm (see Ranganathan, at pp. 381-82). For instance, the House of Lords in the case of Jones v. Ministry of the Interior of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270, concluded that "there is no doubt that the prohibition on torture" is a peremptory norm (para. 43; see also Al-Adsani v. United Kingdom, at para. 61; Prosecutor v. Anto Furund'ija, Case No. IT-95-17/1-T, December 10, 1998 (International Criminal Tribunal for the former Yugoslavia), aff'd Case No. IT-95-17/1-A, July 21, 2000). [102] Further, my colleague Justice Abella concludes that states are moving towards the proposition that government officials are not immune from civil suits for torture. Her reasons point to the equivocal state of the customary international law of immunity for violations of jus cogens norms as an indication that public officials may be sued in our domestic courts for torture committed aboard (para. 174). But customary international law is, by its very nature, unequivocal. It is not binding law if it is equivocal. In the absence of consistent state practice one way or another, and of opinio juris as to the binding effect of a state practice, no rule of customary international law is established. The "state of flux" of international law pertaining to official immunities for jus cogens violations is such that it may not be used to interpret domestic legislation or the common law in the same manner that courts might employ customary international law (see, for example, Hape, at para. 39). As a result, the presumption of conformity cannot be considered in construing the terms of the SIA (discussed in Hape, at paras. 53-54). With respect, international jurisprudence is at best "equivocal" concerning this area of the law. There is still very strong support for the conclusion that immunity from civil suits extends to public officials engaging in acts of torture, and it is therefore not possible to conclude that either a consistent state practice or opinio juris to the contrary effect exists (Jones v. Ministry of the Interior of Saudi Arabia; Jones v. United Kingdom; Germany v. Italy; Democratic Republic of Congo v. Belgium; Al-Adsani v. United Kingdom).
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	C	referred to	Jones v. United Kingdom, Nos. 34356/06 and 40528/06, ECHR 2014	international	ECHR	[38] State immunity plays a large role in international relations and has emerged as a general rule of customary international law (Jones v. United Kingdom, Nos. 34356/06 and 40528/06, ECHR 2014, at para. 89; Fox and Webb, at p. 2). To be considered customary international law, a rule must be supported by state practice as well as opinio juris, an understanding on the part of states that the rule is obligatory as a matter of international law: Hape, at para. 46; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, at para. 207. The I.C.J. has confirmed that the principle of state immunity meets both of these requirements (Germany v. Italy, at paras. 55-56). Given the presence of both state practice and opinio juris, it is now settled and unequivocal that immunity is more than a courtesy; it has a firm place in the international legal landscape (Fox and Webb, at p. 2). [50] I note in passing that, unlike my colleague Justice Abella, I cannot interpret art. 14 of the CAT as requiring Canada to implement a universal civil jurisdiction for acts of torture. The Travaux Préparatoires leading to the signing of the CAT do not clearly suggest a purposeful abandonment by party states of the territoriality restriction which at one point was contained in the draft language of art. 14. Indeed, the change in the language which led to the removal of the territoriality restriction appears to have been prompted by a suggestion made by the United States which sought to harmonize art. 14 with the definition of torture contained at art. 1 by broadening its language (U.N. Commission on Human Rights, Summary prepared by the Secretary-General in accordance with Commission resolution 18 (XXXIV), U.N. Doc. E/CN.4/1314, December 19, 1978, at para. 45). The European Court of Human Rights reached the same conclusion recently, albeit for different reasons (Jones v. United Kingdom, at para. 208). [86] This contextual interpretation, dictated by common sense, is further supported by the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) (not yet in force), which defines "State" as including "representatives of the State acting in that capacity" (art. 2(1)(b)(iv)). It is also supported by international jurisprudence, reflecting a growing consensus on this issue in a number of jurisdictions: see Jones v. United Kingdom, at paras. 96 and 202; Prosecutor v. Blaškić (1997), 110 I.L.R. 607, at p. 707; Jones v. Ministry of the Interior of Saudi Arabia, at paras. 30 and 65-69. [87] Excluding public officials from the meaning of government would completely thwart the purposes of the SIA . I agree with the following statement of the European Court of Human Rights: Since an act cannot be carried out by a State itself but only by individuals acting on the State's behalf, where immunity can be invoked by the State then the starting point must be that immunity . . . applies to the acts of State officials. If it were otherwise, State immunity could always be circumvented by suing named officials. (Jones v. United Kingdom, at para. 202) [102] Further, my colleague Justice Abella concludes that states are moving towards the proposition that government officials are not immune from civil suits for torture. Her reasons point to the equivocal state of the customary international law of immunity for violations of jus cogens norms as an indication that public officials may be sued in our domestic courts for torture committed aboard (para. 174). But customary international law is, by its very nature, unequivocal. It is not binding law if it is equivocal. In the absence of consistent state practice one way or another, and of opinio juris as to the binding effect of a state practice, no rule of customary international law is established. The "state of flux" of international law pertaining to official immunities for jus cogens violations is such that it may not be used to interpret domestic legislation or the common law in the same manner that courts might employ customary international law (see, for example, Hape, at para. 39). As a result, the presumption of conformity cannot be considered in construing the terms of the SIA (discussed in Hape, at paras. 53-54). With respect, international jurisprudence is at best "equivocal" concerning this area of the law. There is still very strong support for the conclusion that immunity from civil suits
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	C	referred to	Jones v. Ministry of the Interior of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270	SC	UK (HL)	[48] There are a number of multilateral instruments which explicitly prohibit torture (see Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), art. 5 ; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452 (XXX), U.N. Doc. A/3452/XXX, December 9, 1975, art. 3; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, art. 3; International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 7; and generally the United Nations CAT). International jurisprudence also recognizes the prohibition of torture as a non-derogable norm (see Ranganathan, at pp. 381-82). For instance, the House of Lords in the case of Jones v. Ministry of the Interior of Saudi Arabia, [2006] UKHL 26, [2007] 1 A.C. 270, concluded that "there is no doubt that the prohibition on torture" is a peremptory norm (para. 43; see also Al-Adsani v. United Kingdom, at para. 61; Prosecutor v. Anto Furund'ija, Case No. IT-95-17/1-T, December 10, 1998 (International Criminal Tribunal for the former Yugoslavia), aff'd Case No. IT-95-17/1-A, July 21, 2000). [86] This contextual interpretation, dictated by common sense, is further supported by the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) (not yet in force), which defines "State" as including "representatives of the State acting in that capacity" (art. 2(1)(b)(iv)). It is also supported by international jurisprudence, reflecting a growing consensus on this issue in a number of jurisdictions: see Jones v. United Kingdom, at paras. 96 and 202; Prosecutor v. Blaškić (1997), 110 I.L.R. 607, at p. 707; Jones v. Ministry of the Interior of Saudi Arabia, at paras. 30 and 65-69. [90] Even if the appellants were correct in their contention, a matter of which I am not convinced, their argument is premised on a misunderstanding of the purposes of state immunity. Avoiding both the enforcement of an award of damages against a state and the state's indemnification of its agents are but two of the many purposes served by state immunity. In practice, suing a government official in his or her personal capacity for acts done while in government has many of the same effects as suing the state, effects that the SIA seeks to avoid. Allowing civil claims against individual public officials would in effect require our courts to scrutinize other states' decision making as carried out by their public officials. The foreign state would suffer very similar reputational consequences, could be forced to defend itself in Canada, and could still potentially suffer the same costs than if it were found liable itself (if, for example, the individual defendants attempted to obtain indemnification from the state domestically). In Jones v. Ministry of the Interior of Saudi Arabia, Lord Bingham reached the same conclusion while considering a slightly different argument: It is, however, clear that a civil action against individual torturers based on acts of official torture does indirectly implead the state since their acts are attributable to it. Were these claims against the individual defendants to proceed and be upheld, the interests of the Kingdom [of Saudi Arabia] would be obviously affected, even though it is not a named party. [para. 31] [96] Unsurprisingly, the very definition of torture contained in the CAT requires that it be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (art. 1). For clarity, and to address my colleague Justice Abella's concern, it is the official nature of the conduct which gives rise to torture, and not the opposite. In this sense, I am of the view that torture is an official act in the circumstances of the present case. Support for this conclusion can be found in the reasoning of Lord Bingham and Lord Hoffmann in the case of Jones v. Ministry of the Interior of Saudi Arabia, upheld as sound by the European Court of Human Rights. I agree with Lord Bingham that, by definition, torture is necessarily an official act of the state. He wrote: It is, I think, difficult to accept that torture cannot be a governmental or official act, since under article 1 of the Torture Convention torture must, to qualify as such, be inflicted by or with the connivance of a public official or other person acting in an official capacity. [para. 19] Lord Hoffmann noted that if certain governmental acts are "official enough" to come under the CAT, they are also "official enough" to attract immunity (para. 83). [102] Further, my colleague Justice Abella concludes that states are moving towards the proposition that government officials are not immune from civil suits for torture. Her reasons point to the equivocal state of the customary international law of immunity for violations of jus

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2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	C	referred to	Persinger v. Islamic Republic of Iran, 729 F.2d 835 (1984)	lower-level court	US	[71] Further, interpreting s. 6 (a) as requiring solely the injury or death to have occurred in Canada would lead to absurd results. It would mean that two individuals could suffer the exact same treatment in a foreign country, but the ability to bring a civil suit would be determined solely on the jurisdiction where each individual's injuries manifest themselves. Bork J. of the United States Court of Appeals for the District of Columbia considered a provision analogous to s. 6 in the case of Persinger v. Islamic Republic of Iran, 729 F.2d 835 (1984), and addressed this absurdity. Section 1605(a)(5) of the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. ("FSIA"), § 1605(a)(5), reads: A foreign state shall not be immune from the jurisdiction of courts of the United States . . . in [cases where money] . . . damages are sought against a foreign state for personal injury or death, . . . occurring in the United States and caused by the tortious act or omission of that foreign state . . . . In determining that parents of a hostage held in Tehran could not sue Iran in American courts for emotional and mental distress suffered by them in the United States, Bork J. wrote: Indeed, [the proposed interpretation] would have the result that had one hostage died in Tehran and another been released and died in the United States, both deaths being due to injuries inflicted while they were held hostage, the district court would have jurisdiction over the second suit but not over the first. Such results would deprive the statute of any policy coherence. [p. 843] Indeed, this kind of distinction would be arbitrary and irrational, and cannot have been the intention of Parliament (R. Sullivan, Sullivan on the Construction of Statutes (5th ed. 2008), at pp. 210-12).
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	C	referred to	Samantar v. Yousuf, 560 U.S. 305 (2010)	SC	US	[91] The appellants also rely on the U.S. Supreme Court decision in Samantar v. Yousuf, 560 U.S. 305 (2010) ("Samantar"), to argue that the SIA does not apply to public officials. In Samantar, victims of torture in Somalia sought damages from Mohamed Ali Samantar, the former Prime Minister of Somalia. The question before the U.S. Supreme Court was whether the FSIA provided immunity to an individual sued for actions taken in his official capacity. The court interpreted the FSIA, and concluded that the definition of "foreign state" does not include an official acting on behalf of the foreign state. Thus, the court held that foreign official immunity is governed by the common law. [92] Samantar is distinguishable from the present case. The decision in Samantar hinged on the specific language found at § 1603 of the FSIA. A number of differences between Canadian and U.S. legislation render Samantar inapplicable to the case at hand. First, as the amicus points out, the FSIA does not contain a definition of "foreign state" which includes "government", the precise word our Court is tasked with interpreting in the instant case. Second, in the FSIA, when Congress intended to refer to officials, it did so expressly. The express mention of officials in some parts of the FSIA but not in the definition of "foreign state" indicates that Congress did not intend to include officials in the broader definition of "foreign state" under § 1603. Unlike the FSIA, express reference to officials can be found nowhere in the SIA . Therefore, the statutory interpretation argument of "implied exclusion", which was helpful to the U.S. Supreme Court in Samantar, cannot be made in our case (see generally Sullivan, at p. 244).
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2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	R		Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. § 1603, 1605(a)(5).	statute	US	[71] Further, interpreting s. 6 (a) as requiring solely the injury or death to have occurred in Canada would lead to absurd results. It would mean that two individuals could suffer the exact same treatment in a foreign country, but the ability to bring a civil suit would be determined solely on the jurisdiction where each individual's injuries manifest themselves. Bork J. of the United States Court of Appeals for the District of Columbia considered a provision analogous to s. 6 in the case of Persinger v. Islamic Republic of Iran, 729 F.2d 835 (1984), and addressed this absurdity. Section 1605(a)(5) of the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. ("FSIA"), § 1605(a)(5), reads: A foreign state shall not be immune from the jurisdiction of courts of the United States . . . in [cases where money] . . . damages are sought against a foreign state for personal injury or death, . . . occurring in the United States and caused by the tortious act or omission of that foreign state . . . . In determining that parents of a hostage held in Tehran could not sue Iran in American courts for emotional and mental distress suffered by them in the United States, Bork J. wrote: Indeed, [the proposed interpretation] would have the result that had one hostage died in Tehran and another been released and died in the United States, both deaths being due to injuries inflicted while they were held hostage, the district court would have jurisdiction over the second suit but not over the first. Such results would deprive the statute of any policy coherence. [p. 843] Indeed, this kind of distinction would be arbitrary and irrational, and cannot have been the intention of Parliament (R. Sullivan, Sullivan on the Construction of Statutes (5th ed. 2008), at pp. 219-13).
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	R		State Immunity Act 1978 (U.K.), 1978, c. 33, s. 16(4)	statute	UK	[104] Whether or not these distinctions are convincing as a matter of policy is of secondary importance. The fact of the matter is that Canada has expressly created an exception to immunity for criminal proceedings, and has stopped short of doing so for civil suits involving jus cogens violations (SIA, s. 18 ; a similar exception also exists in the United Kingdom's State Immunity Act 1978, 1978, c. 33, s. 16(4)). Much like the I.C.J., I am convinced that the fact that universal criminal jurisdiction exists has no bearing in the present case (Germany v. Italy, at para. 87). The two types of proceeding are seen as fundamentally different by a majority of actors in the international community (Jones v. Ministry of the Interior of Saudi Arabia, at paras. 20 and 32).
2014	Kazemi Estate v. Islamic Republic of Iran	10/10/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14384/index.do	Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62, [2014] 3 S.C.R. 176	LeBel J	majority	Quebec	Constitutional law	R		Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73, 28 U.S.C. § 1350.	statute	US	[106] While the Fourth Circuit United States Court of Appeals has recently decided that torture cannot be qualified as an official act for the purposes of immunity (Yousuf v. Samantar, 699 F.3d 763 (2012) ("Samantar II") (appeal pending)), that case is of little weight in light of conflicting jurisprudence from other Circuits and the pending appeal of that decision to the Supreme Court of the United States (Matar v. Dichter, 563 F.3d 9 (2nd Cir. 2009); Belhas v. Ya'alon, 515 F.3d 1279 (D.C. Cir. 2008); Ye v. Zemin, 383 F.3d 620 (7th Cir. 2004)). Moreover, Samantar II was decided in the context of a very different legislative and governmental backdrop. The court in that case expressly stated that Congress's enactment of the Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73, 28 U.S.C. § 1350, was "instructive" in reaching its determination (p. 774). The court also gave "substantial weight" to the Statement of Interest issued by the State Department suggesting that the court should deny the foreign defendant immunity (p. 773). Essentially, the court relied heavily on governmental intentions when deciding to deny immunity. [107] In the case at hand, Canada has no equivalent to the Torture Victim Protection Act of 1991 that would create a cause of action for torture committed abroad, nor have we been presented with a statement of any sort from the government suggesting that Mr. Mortazavi and Mr. Bakhshi should be denied immunity. Parliament has given no indication whatsoever that the courts are to deem torture an "unofficial act" and that a universal civil jurisdiction has been created allowing foreign officials to be sued in our courts. Creating this kind of jurisdiction would have a potentially considerable impact on Canada's international relations. This decision is to be made by Parliament and the courts
2014	Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)	10/2/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14375/index.do	Trial Lawyers Association of British Columbia v. British Columbia (Attorney General), 2014 SCC 59, [2014] 3 S.C.R. 31	Cromwell J	concurring in the result	British Columbia	Constitutional law	C	referred to	R. v. Lord Chancellor, Ex parte Witham, [1998] Q.B. 575	lower-level court	UK	[71] First, the Attorney General concedes that there is a common law right of reasonable access to civil justice: R.F., at para. 10. I agree. Courts in Canada and the United Kingdom have recognized the existence of this right: Polewsky v. Home Hardware Stores Ltd. (2003), 66 O.R. (3d) 600 (S.C.J.), at para. 60; Fabrikant v. Canada, 2014 FCA 89, 459 N.R. 163, at para. 7; Toronto-Dominion Bank v. Beaton, 2012 ABQB 125, 534 A.R. 132, at paras. 17-20; in the United Kingdom, see R. v. Lord Chancellor, Ex parte Witham, [1998] Q.B. 575, at p. 585; R. v. Secretary of State for the Home Department, ex p. Saleem, [2000] 4 All E.R. 814 (C.A.), at p. 820.
2014	Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)	10/2/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14375/index.do	Trial Lawyers Association of British Columbia v. British Columbia (Attorney General), 2014 SCC 59, [2014] 3 S.C.R. 31	Cromwell J	concurring in the result	British Columbia	Constitutional law	C	referred to	R. v. Secretary of State for the Home Department, ex p. Saleem, [2000] 4 All E.R. 814	lower-level court	UK	[71] First, the Attorney General concedes that there is a common law right of reasonable access to civil justice: R.F., at para. 10. I agree. Courts in Canada and the United Kingdom have recognized the existence of this right: Polewsky v. Home Hardware Stores Ltd. (2003), 66 O.R. (3d) 600 (S.C.J.), at para. 60; Fabrikant v. Canada, 2014 FCA 89, 459 N.R. 163, at para. 7; Toronto-Dominion Bank v. Beaton, 2012 ABQB 125, 534 A.R. 132, at paras. 17-20; in the United Kingdom, see R. v. Lord Chancellor, Ex parte Witham, [1998] Q.B. 575, at p. 585; R. v. Secretary of State for the Home Department, ex p. Saleem, [2000] 4 All E.R. 814 (C.A.), at p. 820.
2014	R. v. Mian	9/12/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14351/index.do	R. v. Mian, 2014 SCC 54, [2014] 2 S.C.R. 689	Rothstein J.	unanimous	Alberta	Constitutional law Criminal law	C	referred to	Greenlaw v. United States, 554 U.S. 237 (2008)	SC	US	[38] Our adversarial system of determining legal disputes is a procedural system "involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker" (Black's Law Dictionary (9th ed. 2009), sub verbo "adversary system"). An important component of this system is the principle of party presentation, under which courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" (Greenlaw v. United States, 554 U.S. 237 (2008), at p. 243, per Ginsburg J.).
2014	R. v. Mian	9/12/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14351/index.do	R. v. Mian, 2014 SCC 54, [2014] 2 S.C.R. 689	Rothstein J.	unanimous	Alberta	Constitutional law Criminal law	C	referred to	Jones v. National Coal Board, [1957] 2 All E.R. 155	lower-level court	UK	[40] On the other hand, courts also have the role of ensuring that justice is done. As Lord Denning explained in the context of trial judges in the United Kingdom: ". . . a judge is not a mere umpire to answer the question 'How's that?' His object above all is to find out the truth, and to do justice according to law . . ." (Jones v. National Coal Board, [1957] 2 All E.R. 155 (C.A.), at p. 159 (emphasis added)). This proposition is no less true of appellate judges. Meaningful appellate review assesses the correctness of a lower court decision, both on errors of law and palpable overriding errors of fact (see R. v. Sheppard, 2002 SCC 26, [2002] 1 S.C.R. 869, at paras. 25 and 28; and Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 1 and 4). I accept the submission of the intervener the Attorney General of Alberta that "for 'justice in fact to be done,' judges must sometimes 'intervene in the adversarial debate'" (I.F., at para. 16, citing Brouillard, at p. 44).
2014	Sattva Capital Corp. v. Creston Moly Corp.	8/1/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14302/index.do	Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53, [2014] 2 S.C.R. 633	Rothstein J.	unanimous	British Columbia	Arbitration	C	referred to	Thorner v. Major, [2009] UKHL 18, [2009] 3 All E.R. 945		UK (HL)	[44] This historical rationale no longer applies. Nevertheless, courts in the United Kingdom continue to treat the interpretation of a written contract as always being a question of law (Thorner v. Major, [2009] UKHL 18, [2009] 3 All E.R. 945, at paras. 58 and 82-83; and Lewison, at pp. 173-77). They do this despite the fact that U.K. courts consider the surrounding circumstances, a concept addressed further below, when interpreting a written contract (Prenn v. Simmonds, [1971] 3 All E.R. 237 (H.L.); and Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570 (H.L.)).
2014	Sattva Capital Corp. v. Creston Moly Corp.	8/1/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14302/index.do	Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53, [2014] 2 S.C.R. 633	Rothstein J.	unanimous	British Columbia	Arbitration	C	referred to	Prenn v. Simmonds, [1971] 3 All E.R. 237		UK (England)	[44] This historical rationale no longer applies. Nevertheless, courts in the United Kingdom continue to treat the interpretation of a written contract as always being a question of law (Thorner v. Major, [2009] UKHL 18, [2009] 3 All E.R. 945, at paras. 58 and 82-83; and Lewison, at pp. 173-77). They do this despite the fact that U.K. courts consider the surrounding circumstances, a concept addressed further below, when interpreting a written contract (Prenn v. Simmonds, [1971] 3 All E.R. 237 (H.L.); and Reardon Smith Line Ltd. v. Hansen-Tangen, [1976] 3 All E.R. 570 (H.L.)).

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2014	Sattva Capital Corp. v. Creston Moly Corp.	8/1/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14302/index.do	Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53, [2014] 2 S.C.R. 633	Rothstein J.	unanimous	British Columbia	Arbitration	C	referred to	Investors Compensation Scheme Ltd. v. West Bromwich Building Society, [1998] 1 All E.R. 98	SC	UK (HL)	[48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see Moore Realty Inc. v. Manitoba Motor League, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, per Hamilton J.A.; see also Hall, at p. 22; and McCamus, at pp. 749-50). As stated by Lord Hoffmann in Investors Compensation Scheme Ltd. v. West Bromwich Building Society, [1998] 1 All E.R. 98 (H.L.): The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115] [58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (King, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (Investors Compensation Scheme, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact
2014	Tsilhqot'in Nation v. British Columbia	6/26/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do	Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256	McLachlin C.J.	unanimous	British Columbia	Aboriginal law	C	referred to	Western Australia v. Ward (2002), 213 C.L.R. 1	SC	Australia	[31] Should the three elements of the Delgamuukw test be considered independently, or as related aspects of a single concept? The High Court of Australia has expressed the view that there is little merit in considering aspects of occupancy separately. In Western Australia v. Ward (2002), 213 C.L.R. 1, the court stated as follows, at para 89: The expression "possession, occupation, use and enjoyment . . . to the exclusion of all others" is a composite expression directed to describing a particular measure of control over access to land. To break the expression into its constituent elements is apt to mislead. In particular, to speak of "possession" of the land, as distinct from possession to the exclusion of all others, invites attention to the common law content of the concept of possession and whatever notions of control over access might be thought to be attached to it, rather than to the relevant task, which is to identify how rights and interests possessed under traditional law and custom can properly find expression in common law terms
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	C	referred to	P. C. v. Wells, 538 U.S. 440 (2003)	SC	US	[26] While the specific indicia used in other jurisdictions may vary from those adopted by Canadian authorities, the consistent animating themes are control and dependency. For example, in Clackamas Gastroenterology Associates, P. C. v. Wells, 538 U.S. 440 (2003), a case that required the U.S. Supreme Court to define who is an employee under the Americans with Disabilities Act of 1990 (104 Stat. 327, as amended, 42 U.S.C. § 12101 et seq.), the court relied on the following control/dependency factors: "Whether the organization can hire or fire the individual or set the rules and regulations of the individual's work "Whether and, if so, to what extent the organization supervises the individual's work "Whether the individual reports to someone higher in the organization "Whether and, if so, to what extent the individual is able to influence the organization "Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	C	referred to	Largie v. TCBA Watson Rice, LLP, 2013 U.S. Dist. LEXIS 117688	lower-level court	US	[34] American courts have generally found that partnerships are not employment relationships under anti-discrimination legislation since even in a large partnership, partners are typically able to influence the running of the partnership to a significant extent: Largie v. TCBA Watson Rice, LLP, 2013 U.S. Dist. LEXIS 117688 (D.N.J.); Bowers v. Ophthalmology Group, LLP, 2012 U.S. Dist. LEXIS 118761 (W.D. Ky.), rev'd on other grounds 733 F.3d 647 (6th Cir. 2013); Kirleis v. Dickie, McCamey & Chilcote, P.C., 2009 U.S. Dist. LEXIS 100326 (W.D. Pa.), at [*82]. In Clackamas, however, the U.S. Supreme Court specifically left open the possibility that nominal "partners" could still be considered employees in exceptional circumstances based on an assessment of the substance of the relationship (p. 446; see also Equal Employment Opportunity Commission v. Sidley Austin Brown & Wood, 315 F.3d 696 (7th Cir. 2002), at pp. 702-7).
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	C	referred to	Bowers v. Ophthalmology Group, LLP, 2012 U.S. Dist. LEXIS 118761, rev'd 733 F.3d 647 (2013)	lower-level court	US	[34] American courts have generally found that partnerships are not employment relationships under anti-discrimination legislation since even in a large partnership, partners are typically able to influence the running of the partnership to a significant extent: Largie v. TCBA Watson Rice, LLP, 2013 U.S. Dist. LEXIS 117688 (D.N.J.); Bowers v. Ophthalmology Group, LLP, 2012 U.S. Dist. LEXIS 118761 (W.D. Ky.), rev'd on other grounds 733 F.3d 647 (6th Cir. 2013); Kirleis v. Dickie, McCamey & Chilcote, P.C., 2009 U.S. Dist. LEXIS 100326 (W.D. Pa.), at [*82]. In Clackamas, however, the U.S. Supreme Court specifically left open the possibility that nominal "partners" could still be considered employees in exceptional circumstances based on an assessment of the substance of the relationship (p. 446; see also Equal Employment Opportunity Commission v. Sidley Austin Brown & Wood, 315 F.3d 696 (7th Cir. 2002), at pp. 702-7).
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2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Disability Discrimination Act 1992 (Cth.), No. 135, s. 18	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Age Discrimination Act 2004 (Cth.), No. 68, s. 21	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E	lower-level regulation	Australia	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.	statute	New Zealand	[37] Partnership is also designated as a separate category from employer/employee relationships in anti-discrimination legislation in Australia and New Zealand: Sex Discrimination Act 1984 (Cth.), No. 4, s. 17; Disability Discrimination Act 1992 (Cth.), No. 135, s. 18; Age Discrimination Act 2004 (Cth.), No. 68, s. 21; Anti-Discrimination Act 1977 (N.S.W.), No. 48, ss. 10A, 27A and 49G; Anti-Discrimination Act 1991 (Qld.), No. 85, ss. 16 to 18; Equal Opportunity Act 1984 (S.A.), ss. 33, 55 and 70; Equal Opportunity Act 2010 (Vic.), No.16, ss. 30 and 31; Equal Opportunity Act 1984 (W.A.), ss. 14, 40 and 66E; Human Rights Act 1993 (N.Z.), 1993, No. 82, s. 36.
2014	McCormick v. Fasken Martineau DuMoulin LLP	5/22/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13663/index.do	McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39, [2014] 2 S.C.R. 108	Abella J.	unanimous	British Columbia	Constitutional law	R		Equality Act 2010 (U.K.), 2010, c. 15, s. 44.	statute	UK	[36] This does not mean human rights legislation cannot apply to partnerships, it means that an express statutory provision is usually required, as is found in s. 44 of the U.K. Equality Act 2010, 2010, c. 15. The Explanatory Note to that provision states that a separate provision protecting partners from discrimination was necessary because their relationship with their partnership is not one of employment: Because partners are mainly governed by their partnership agreements, rather than by employment contracts, separate provisions are needed to provide protection from discrimination, harassment and victimisation for partners in ordinary and limited partnerships. [para. 158]
2014	Canada (Citizenship and Immigration) v. Harkat	5/14/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13643/index.do	Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37, [2014] 2 S.C.R. 33	Abella and Cromwell JJ.	dissenting	Federal Court of Appeal	Constitutional law Evidence Immigration	C	D	Central Intelligence Agency v. Sims, 471 U.S. 159 (1985)	SC	US	[121] The common law's protection of informer privilege is based on the common sense recognition that engaging in a case-by-case balancing of interests would frustrate the rationale of informer privilege by discouraging the cooperation of informants. As the U.S. Supreme Court explained in a related context, leaving disclosure to individual judges would cause national security sources to "close up like a clam": Central Intelligence Agency v. Sims, 471 U.S. 159 (1985), at p. 175.
2014	Canada (Citizenship and Immigration) v. Harkat	5/14/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13643/index.do	Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37, [2014] 2 S.C.R. 33	McLachlin C.J.	majority	Federal Court of Appeal	Constitutional law Evidence Immigration	C	referred to	Bank Mellat v. H. M. Treasury, [2013] UKSC 38, [2013] 4 All E.R. 495	SC	UK (SC)	[24] The open court principle is "a hallmark of a democratic society and applies to all judicial proceedings": Vancouver Sun (Re), 2004 SCC 43, [2004] 2 S.C.R. 332, at para. 23; see also D. M. Paciocco, "When Open Courts Meet Closed Government" (2005), 29 S.C.L.R. (2d) 385, at pp. 391-95; Canadian Broadcasting Corp. v. New Brunswick (Attorney General), [1996] 3 S.C.R. 480, at para. 20. "National security does not negate the open court principle": C. Forcese, National Security Law: Canadian Practice in International Perspective (2008), at p. 402. The Supreme Court of the United Kingdom recently commented unfavourably on a hearing that it held behind closed doors at the request of the government, which had raised national security concerns: Bank Mellat v. H. M. Treasury, [2013] UKSC 38, [2013] 4 All E.R. 495, at para. 60, per Lord Neuberger P.S.C. It noted that closed evidence is factual in nature, whereas the points debated before appellate courts are essentially legal: ibid. Consequently, the Supreme Court found that closed hearings before it would rarely, if ever, be necessary for the proper disposition of an appeal.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2014	Canada (Citizenship and Immigration) v. Harkat	5/14/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13643/index.do	Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37, [2014] 2 S.C.R. 33	McLachlin C.J.	majority	Federal Court of Appeal	Constitutional law Evidence Immigration	C	referred to	Secretary of State for the Home Department v. A.F. (No. 3), [2009] UKHL 28, [2009] 3 All E.R. 643	SC	UK (HL)	[56] Under the IRPA scheme, a named person is "reasonably informed" if he has personally received sufficient disclosure to be able to give meaningful instructions to his public counsel and meaningful guidance and information to his special advocates which will allow them to challenge the information and evidence relied upon by the Minister in the closed hearings. Indeed, the named person's ability to answer the Minister's case hinges on the effectiveness of the special advocates, which in turn depends on the special advocates being provided with meaningful guidance and information. As the House of Lords of the United Kingdom put it in referring to disclosure under the British special advocates regime, the named person must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. . . . Where . . . the open material consists purely of general assertions and the case . . . is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be. (Secretary of State for the Home Department v. A.F. (No. 3), [2009] UKHL 28, [2009] 3 All E.R. 643, at para. 59, per Lord Phillips of Worth Matravers) I would add that the named person need not only be given sufficient information about the allegations against him, but also about the evidence on the record.
2014	John Doe v. Ontario (Finance)	5/9/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13633/index.do	John Doe v. Ontario (Finance), 2014 SCC 36, [2014] 2 S.C.R. 3	Rothstein J.	unanimous	Ontario	Access to information	R		Freedom of Information Act, 5 U.S.C. § 552 (1970).	statute	US	[39] Further, at the time the report was written, the U.S. federal Freedom of Information Act, 5 U.S.C. § 552 (1970), was the main enacted freedom of information statute available for consideration. The Williams Commission Report discusses the American experience at length in its section on the advice or recommendations exemption. It only briefly mentions the Canadian Parliament's bill that was a precursor to the federal Access to Information Act . It is significant that s. 13(1) does not resemble any U.S. provision considered by the Williams Commission Report (pp. 290 and 292-93). Instead, it is substantively similar to the advice or recommendations provision in both the earlier federal bill and the federal Act enacted after the report was published (Access to Information Act, s. 21(1) (b)). Accordingly, in my respectful view, the report cannot be assumed to accurately reflect the legislative intent with respect to the scope of "advice" in s. 13(1) of the FIPPA. APPENDIX Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 1. [Purposes] The purposes of this Act are, (a) to provide a right of access to information under the control of institutions in accordance with the principles that, (i) information should be available to the public, (ii) necessary exemptions from the right of access should be limited and specific, and (iii) decisions on the disclosure of government information should be reviewed independently of government; and (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.
2014	Dionne v. Commission scolaire des Patriotes	5/1/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13620/index.do	Dionne v. Commission scolaire des Patriotes, 2014 SCC 33, [2014] 1 S.C.R. 765	Abella J.	majority	Quebec	Labour law	C	referred to	AT & T Corp. v. Hulteen, 129 S. Ct. 1962 (2009)	SC	US	[28] Underlying the health and safety protections for pregnant women is an effort to prevent the discriminatory exclusion of women from the workplace based on pregnancy (see Karen Messing et al., "Equality and Difference in the Workplace: Physical Job Demands, Occupational Illnesses, and Sex Differences" (2000), 12 NWSA Journal 21, at p. 36; see also Gilles Trudeau, "Aspects constitutionnels du travail salarié", in Katherine Lippel and Guylaine Vallée, eds., Rapports individuels et collectifs du travail (loose-leaf), 1/1, at pp. 1/14 and 1/15). To confront the discriminatory assumptions which had historically attributed an incapacity to work to women who were pregnant, the scheme protects not only their right to work, but to work in a safe environment, by deeming them to be as available to work as a non-pregnant worker (Commission des écoles catholiques de Québec v. Gobeil, [1999] R.J.Q. 1883 (C.A.), at p. 1893, per Robert J.A.; see also AT & T Corp. v. Hulteen, 129 S. Ct. 1962 (2009), at p. 1978, per Ginsburg J., dissenting). As Plante and Malenfant note, the prime objective of reassignment and Preventive Withdrawal is "to protect the health of the pregnant worker and that of her unborn child by eliminating dangers in the workplace, thereby allowing her to continue working" (p. 965 (emphasis added); see also Lippel, at pp. 269-70). If no reassignment alternative in the workplace is possible, she is entitled to withdraw from work.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Thomas Cook Group Ltd. v. Air Malta Co., [1997] 2 Lloyd's Rep. 399.	lower-level court	UK	[86] The definition of wilful misconduct formulated by the English Queen's Bench Division (Commercial Court) in Thomas Cook Group Ltd. v. Air Malta Co., [1997] 2 Lloyd's Rep. 399, is also relevant. Cresswell J. said the following: What does amount to wilful misconduct? A person wilfully misconducts himself if he knows and appreciates that it is misconduct on his part in the circumstances to do or to fail or omit to do something and yet (a) intentionally does or fails or omits to do it or (b) persists in the act, failure or omission regardless of the consequences or (c) acts with reckless carelessness, not caring what the results of his carelessness may be. (A person acts with reckless carelessness if, aware of a risk that goods in his care may be lost or damaged, he deliberately goes ahead and takes the risk, when it is unreasonable in all the circumstances for him to do so.) [Emphasis added; p. 408.] What I understand from the third possibility, the one that most closely resembles the situation in the case at bar, is that misconduct is wilful if at the time the person commits the act, he or she is "aware of a risk that goods in his care may be lost or damaged". In short, it is necessary to prove subjective knowledge of the loss at the time of the misconduct.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Horabin v. British Overseas Airways Corp., [1952] 2 Lloyd's Rep. 450	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as wilful only if the person liable for it intended it to happen. (See Forder v. Great Western Railway Co., [1905] 2 K.B. 532; Horabin v. British Overseas Airways Corp., [1952] 2 Lloyd's Rep. 450 (Q.B.D.); Kenyon Son v. Baxter, Hoare & Co., [1971] 1 Lloyd's Rep. 232 (Q.B.D.); Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes"), [1976] 2 Lloyd's Rep. 171 (C.A.); Rustenburg Platinum Mines Ltd. v. South African Airways, [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); Sidney G. Jones Ltd. v. Martin Bencher Ltd., [1986] 1 Lloyd's Rep. 54 (Q.B.D.); National Oilwell (UK) Ltd. v. Davy Offshore Ltd., [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); National Semiconductors (UK) Ltd. v. UPS Ltd., [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd., [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Kenyon Son v. Baxter, Hoare & Co., [1971] 1 Lloyd's Rep. 232	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)

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2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes"), [1976] 2 Lloyd's Rep. 171	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Rustenburg Platinum Mines Ltd. v. South African Airways, [1977] 1 Lloyd's Rep. 564	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Sidney G. Jones Ltd. v. Martin Bencher Ltd., [1986] 1 Lloyd's Rep. 54	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	National Oilwell (UK) Ltd. v. Davy Offshore Ltd., [1993] 2 Lloyd's Rep. 582	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	National Semiconductors (UK) Ltd. v. UPS Ltd., [1996] 2 Lloyd's Rep. 212	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	C	D	Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd., [1997] 2 Lloyd's Rep. 369	lower-level court	UK	[87] In my opinion, this proposition is consistent with the English cases, according to which misconduct will be characterized as *wilful* only if the person liable for it intended it to happen. (See *Forder v. Great Western Railway Co.* , [1905] 2 K.B. 532; *Horabin v. British Overseas Airways Corp.* , [1952] 2 Lloyd's Rep. 450 (Q.B.D.); *Kenyon Son v. Baxter, Hoare & Co.* , [1971] 1 Lloyd's Rep. 232 (Q.B.D.); *Compania Maritima San Basilio S.A. v. The Oceanus Mutual Underwriting Association (Bermuda) Ltd. (The "Eurysthenes")* , [1976] 2 Lloyd's Rep. 171 (C.A.); *Rustenburg Platinum Mines Ltd. v. South African Airways* , [1977] 1 Lloyd's Rep. 564 (Q.B.D. (Com. Ct.)); *Sidney G. Jones Ltd. v. Martin Bencher Ltd.* , [1986] 1 Lloyd's Rep. 54 (Q.B.D.); *National Oilwell (UK) Ltd. v. Davy Offshore Ltd.* , [1993] 2 Lloyd's Rep. 582 (Q.B.D. (Com. Ct.)); *National Semiconductors (UK) Ltd. v. UPS Ltd.* , [1996] 2 Lloyd's Rep. 212 (Q.B.D. (Com. Ct.)); *Laceys Footwear (Wholesale) Ltd. v. Bowler International Freight Ltd.* , [1997] 2 Lloyd's Rep. 369 (C.A.).)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Wagner J.	dissenting	Federal Court of Appeal	Maritime law	R		Marine Insurance Act, 1906 (U.K.), 6 Edw. 7, c. 41, s. 55(2)(a).	statute	UK	[100] The travaux préparatoires of the Convention, which, according to art. 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37, constitute a supplementary means of interpretation, reveal that the drafters were seeking at the time to tie the right to limit liability to the legal rules governing insurance coverage in the event of wilful misconduct. I note in this regard that the travaux préparatoires referred to s. 55(2)(a) of the Marine Insurance Act, 1906 (U.K.), 6 Edw. 7, c. 41, the forerunner of s. 53 of the Act : The words "recklessly and with knowledge that such loss would probably occur" come very near to the English legal term "wilful misconduct", which normally is the degree of blame required if the insurance cover shall be forfeited (Marine Insurance Act (1906) Sect. 55(2)a). The proposed text, therefore, implies that there will be right of limitation where the insurance cover is intact. Making the limitation unbreakable to this extent should make possible a significant raise of the limits of liability. [Emphasis added.] (Comité Maritime International, The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996 (2000), at p. 122)
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	Margolle v. Delta Maritime Co. (The "Saint Jacques II" and "Gudermes"), [2002] EWHC 2452, [2003] 1 Lloyd's Rep. 203	lower-level court	UK	[24] I turn first to the Convention's purpose. The contracting states to the Convention intended the fault requirement to be a high one — the limitation on liability was designed to be difficult to break: Margolle v. Delta Maritime Co. (The "Saint Jacques II" and Gudermes"), [2002] EWHC 2452, [2003] 1 Lloyd's Rep. 203, at para. 16; Schiffahrtsgesellschaft MS "Merkur Sky" m.b.H. & Co. K.G. v. MS Leerort Nth Schiffahrts G.m.b.H. & Co. K.G. (The "Leerort"), [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep. 291, at para. 18. The Convention has been described as a "trade-off": "As a quid pro quo for the increase of the [limitation] fund, the article providing for the breaking of limitation became tighter, so that it is almost impossible for the claimants to break the right to limit": A. Mandaraka-Sheppard, Modern Maritime Law and Risk Management (2nd ed. 2007), at p. 865. Meeting the threshold fault requirement requires a high degree of subjective blameworthiness: Nugent, at p. 229 (interpreting the similarly worded Warsaw Convention, 137 L.N.T.S. 11, as amended by the Hague Protocol, 478 U.N.T.S. 371). The fault standard set by art. 4 has been described as "a virtually unbreakable right to limit liability" (P. Griggs, R. Williams and J. Farr, Limitation of Liability for Maritime Claims (4th ed. 2005), at p. 3) and as "an almost indisputable right to limit . . . liability": The "Bowbelle", [1990] 1 Lloyd's Rep. 532 (Q.B.D.), at p. 535; see also D. Damar, Wilful Misconduct in International Transport Law (2011), at p. 168; R. P. Grime, "Implementation of the 1976 limitation convention" (1988), 12 Marine Pol'y 306, at p. 313; P. Heerey, "Limitation of Maritime Claims" (1994), 10 MLAANZ Journal 1, at p. 3; T. Ogg, "IMO's International Safety Management Code (The ISM Code)" (1996), 1 I.J.O.S.L. 143, at p. 149; J. F. Wilson, Carriage of Goods by Sea (7th ed. 2010), at p. 288; E. Gold, A. Chircop and H. Kindred, Maritime Law (2003), at p. 728. It is worth noting that the contracting states considered, but expressly rejected, the inclusion of "gross negligence" as a sufficient level of fault to break the liability limit: Comité Maritime International, The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996 (2000), Article 4. Conduct barring limitation, at pp. 122-23

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	Schiffahrtsgesellschaft MS "Merkur Sky" m.b.H. & Co. K.G. v. MS Leerort Nth Schiffahrts G.m.b.H. & Co. K.G. (The "Leerort"), [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep. 291	lower-level court	UK	[24] I turn first to the Convention's purpose. The contracting states to the Convention intended the fault requirement to be a high one — the limitation on liability was designed to be difficult to break: Margolle v. Delta Maritime Co. (The "Saint Jacques II" and Gudermes"), [2002] EWHC 2452, [2003] 1 Lloyd's Rep. 203, at para. 16; Schiffahrtsgesellschaft MS "Merkur Sky" m.b.H. & Co. K.G. v. MS Leerort Nth Schiffahrts G.m.b.H. & Co. K.G. (The "Leerort"), [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep. 291, at para. 18. The Convention has been described as a "trade-off": "As a quid pro quo for the increase of the [limitation] fund, the article providing for the breaking of limitation became tighter, so that it is almost impossible for the claimants to break the right to limit": A. Mandaraka-Sheppard, Modern Maritime Law and Risk Management (2nd ed. 2007), at p. 865. Meeting the threshold fault requirement requires a high degree of subjective blameworthiness: Nugent, at p. 229 (interpreting the similarly worded Warsaw Convention, 137 L.N.T.S. 11, as amended by the Hague Protocol, 478 U.N.T.S. 371). The fault standard set by art. 4 has been described as "a virtually unbreakable right to limit liability" (P. Griggs, R. Williams and J. Farr, Limitation of Liability for Maritime Claims (4th ed. 2005), at p. 3) and as "an almost indisputable right to limit . . . liability": The "Bowbelle", [1990] 1 Lloyd's Rep. 532 (Q.B.D.), at p. 535; see also D. Damar, Wilful Misconduct in International Transport Law (2011), at p. 168; R. P. Grime, "Implementation of the 1976 limitation convention" (1988), 12 Marine Pol'y 306, at p. 313; P. Heerey, "Limitation of Maritime Claims" (1994), 10 MLAANZ Journal 1, at p. 3; T. Ogg, "IMO's International Safety Management Code (The ISM Code)" (1996), 1 I.J.O.S.L. 143, at p. 149; J. F. Wilson, Carriage of Goods by Sea (7th ed. 2010), at p. 288; E. Gold, A. Chircop and H. Kindred, Maritime Law (2003), at p. 728. It is worth noting that the contracting states considered, but expressly rejected, the inclusion of "gross negligence" as a sufficient level of fault to break the liability limit: Comité Maritime International, The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996 (2000), Article 4. Conduct barring limitation, at pp. 123-32.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	The "Bowbelle", [1990] 1 Lloyd's Rep. 532	lower-level court	UK	[24] I turn first to the Convention's purpose. The contracting states to the Convention intended the fault requirement to be a high one — the limitation on liability was designed to be difficult to break: Margolle v. Delta Maritime Co. (The "Saint Jacques II" and Gudermes"), [2002] EWHC 2452, [2003] 1 Lloyd's Rep. 203, at para. 16; Schiffahrtsgesellschaft MS "Merkur Sky" m.b.H. & Co. K.G. v. MS Leerort Nth Schiffahrts G.m.b.H. & Co. K.G. (The "Leerort"), [2001] EWCA Civ 1055, [2001] 2 Lloyd's Rep. 291, at para. 18. The Convention has been described as a "trade-off": "As a quid pro quo for the increase of the [limitation] fund, the article providing for the breaking of limitation became tighter, so that it is almost impossible for the claimants to break the right to limit": A. Mandaraka-Sheppard, Modern Maritime Law and Risk Management (2nd ed. 2007), at p. 865. Meeting the threshold fault requirement requires a high degree of subjective blameworthiness: Nugent, at p. 229 (interpreting the similarly worded Warsaw Convention, 137 L.N.T.S. 11, as amended by the Hague Protocol, 478 U.N.T.S. 371). The fault standard set by art. 4 has been described as "a virtually unbreakable right to limit liability" (P. Griggs, R. Williams and J. Farr, Limitation of Liability for Maritime Claims (4th ed. 2005), at p. 3) and as "an almost indisputable right to limit . . . liability": The "Bowbelle", [1990] 1 Lloyd's Rep. 532 (Q.B.D.), at p. 535; see also D. Damar, Wilful Misconduct in International Transport Law (2011), at p. 168; R. P. Grime, "Implementation of the 1976 limitation convention" (1988), 12 Marine Pol'y 306, at p. 313; P. Heerey, "Limitation of Maritime Claims" (1994), 10 MLAANZ Journal 1, at p. 3; T. Ogg, "IMO's International Safety Management Code (The ISM Code)" (1996), 1 I.J.O.S.L. 143, at p. 149; J. F. Wilson, Carriage of Goods by Sea (7th ed. 2010), at p. 288; E. Gold, A. Chircop and H. Kindred, Maritime Law (2003), at p. 728. It is worth noting that the contracting states considered, but expressly rejected, the inclusion of "gross negligence" as a sufficient level of fault to break the liability limit: Comité Maritime International, The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996 (2000), Article 4. Conduct barring limitation, at pp. 123-32.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	Daina Shipping Co. v. Te Runanga O Ngati Awa, [2013] NZHC 500, [2013] 2 N.Z.L.R. 799	SC	New Zealand	[29] How specifically must the loss have been intended? There is some ambiguity in the authorities with respect to this question. Some authorities take the view that knowledge of the type of damage that occurs is required: see, e.g., Nugent, p. 229, per Auld L.J., interpreting the similar, but not identical language in art. 25 of the Warsaw Convention, as given effect by the Carriage by Air Act, 1961 (U.K.), 9 & 10 Eliz. 2, c. 27. However, this authority may be of limited assistance given that under the Warsaw Convention, what is required is foresight that "damage" would probably result, rather than as under the Convention, foresight that "such loss" would probably result: see The "Saint Jacques II", at para. 16. Other cases have required knowledge of the very loss that actually occurred: see, e.g., Daina Shipping Co. v. Te Runanga O Ngati Awa, [2013] NZHC 500, [2013] 2 N.Z.L.R. 799, at para. 42, distinguishing the Federal Court of Appeal decision in this case, at para. 45. This appears to be the dominant view in the English courts. The leading case is The "Leerort" in which Lord Phillips of Worth Matravers M.R. (as he then was) stated that foresight of "the very loss that actually occurs, not merely of the type of loss that occurs" is required: para. 13; see also MSC Mediterranean Shipping Co. S.A. v. Delumar BVBA (The "MSC Rosa M"), [2000] 2 Lloyd's Rep. 399 (Q.B.D.), and The "Saint Jacques II". This view also has the support of leading commentators: see Griggs, Williams and Farr, at p. 36; Damar, at p. 173; S. Hodges and C. Hill, Principles of Maritime Law (2001), at pp. 593-94.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	MSC Mediterranean Shipping Co. S.A. v. Delumar BVBA (The "MSC Rosa M"), [2000] 2 Lloyd's Rep. 399;	lower-level court	UK	[29] How specifically must the loss have been intended? There is some ambiguity in the authorities with respect to this question. Some authorities take the view that knowledge of the type of damage that occurs is required: see, e.g., Nugent, p. 229, per Auld L.J., interpreting the similar, but not identical language in art. 25 of the Warsaw Convention, as given effect by the Carriage by Air Act, 1961 (U.K.), 9 & 10 Eliz. 2, c. 27. However, this authority may be of limited assistance given that under the Warsaw Convention, what is required is foresight that "damage" would probably result, rather than as under the Convention, foresight that "such loss" would probably result: see The "Saint Jacques II", at para. 16. Other cases have required knowledge of the very loss that actually occurred: see, e.g., Daina Shipping Co. v. Te Runanga O Ngati Awa, [2013] NZHC 500, [2013] 2 N.Z.L.R. 799, at para. 42, distinguishing the Federal Court of Appeal decision in this case, at para. 45. This appears to be the dominant view in the English courts. The leading case is The "Leerort" in which Lord Phillips of Worth Matravers M.R. (as he then was) stated that foresight of "the very loss that actually occurs, not merely of the type of loss that occurs" is required: para. 13; see also MSC Mediterranean Shipping Co. S.A. v. Delumar BVBA (The "MSC Rosa M"), [2000] 2 Lloyd's Rep. 399 (Q.B.D.), and The "Saint Jacques II". This view also has the support of leading commentators: see Griggs, Williams and Farr, at p. 36; Damar, at p. 173; S. Hodges and C. Hill, Principles of Maritime Law (2001), at pp. 593-94.
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	C	referred to	Thomas Cook Group Ltd. v. Air Malta Co., [1997] 2 Lloyd's Rep. 399.	lower-level court	UK	[60] The appellants also rely on the judgment of Cresswell J. in Thomas Cook Group Ltd. v. Air Malta Co., [1997] 2 Lloyd's Rep. 399 (Q.B.D.), dealing with the limitation in the unamended Warsaw Convention which excluded limitation of liability for damage caused by the wilful misconduct of the carrier: art. 25(1). Cresswell J. reviewed the English jurisprudence in detail and set out six propositions concerning the meaning of wilful misconduct. He began by dealing with the word "misconduct" and holding that the inquiry is as to whether the conduct is so far outside the range of conduct expected of a person in the circumstances as to be properly regarded a misconduct: p. 407. He then turned to the sort of misconduct that could be considered wilful. Among the sorts of conduct to which he refers is this: A person wilfully misconducts himself if he knows and appreciates that it is misconduct on his part in the circumstances to do or to fail or omit to do something and yet . . . acts with reckless carelessness, not caring what the results of his carelessness may be. (A person acts with reckless carelessness if, aware of a risk that goods in his care may be lost or damaged, he deliberately goes ahead and takes the risk, when it is unreasonable in all the circumstances for him to do so.) [p. 408]
2014	Peracomo Inc. v. TELUS Communications Co.	4/23/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13612/index.do	Peracomo Inc. v. TELUS Communications Co., 2014 SCC 29, [2014] 1 S.C.R. 621	Cromwell J.	majority	Federal Court of Appeal	Maritime law	R		Carriage by Air Act, 1961 (U.K.), 9 & 10 Eliz. 2, c. 27.	statute	UK	[29] How specifically must the loss have been intended? There is some ambiguity in the authorities with respect to this question. Some authorities take the view that knowledge of the type of damage that occurs is required: see, e.g., Nugent, p. 229, per Auld L.J., interpreting the similar, but not identical language in art. 25 of the Warsaw Convention, as given effect by the Carriage by Air Act, 1961 (U.K.), 9 & 10 Eliz. 2, c. 27. However, this authority may be of limited assistance given that under the Warsaw Convention, what is required is foresight that "damage" would probably result, rather than as under the Convention, foresight that "such loss" would probably result: see The "Saint Jacques II", at para. 16. Other cases have required knowledge of the very loss that actually occurred: see, e.g., Daina Shipping Co. v. Te Runanga O Ngati Awa, [2013] NZHC 500, [2013] 2 N.Z.L.R. 799, at para. 42, distinguishing the Federal Court of Appeal decision in this case, at para. 45. This appears to be the dominant view in the English courts. The leading case is The "Leerort" in which Lord Phillips of Worth Matravers M.R. (as he then was) stated that foresight of "the very loss that actually occurs, not merely of the type of loss that occurs" is required: para. 13; see also MSC Mediterranean Shipping Co. S.A. v. Delumar BVBA (The "MSC Rosa M"), [2000] 2 Lloyd's Rep. 399 (Q.B.D.), and The "Saint Jacques II". This view also has the support of leading commentators: see Griggs, Williams and Farr, at p. 36; Damar, at p. 173; S. Hodges and C. Hill, Principles of Maritime Law (2001), at pp. 593-94.
2014	Mission Institution v. Khela	3/27/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do	Mission Institution v. Khela, 2014 SCC 24, [2014] 1 S.C.R. 502	LeBel J.	unanimous	British Columbia	Administrative law Courts	C	referred to	Jones v. Cunningham, 371 U.S. 236 (1962)	SC	US	[54] This Court has recognized in its decisions that habeas corpus should develop over time to ensure that the law remains consistent with the remedy's underlying goals: no one should be deprived of their liberty without lawful authority. The significance of habeas corpus to those who have been deprived of their liberty means that it must be developed in a meaningful way (Miller, at pp. 640-41). In May, the Court quoted with approval the statement by Black J. of the United States Supreme Court that habeas corpus is "not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty" (May, at para. 21; Jones v. Cunningham, 371 U.S. 236 (1962), at p. 243; see also the preface to R. J. Sharpe's The Law of Habeas Corpus (2nd ed. 1989)). This remedy is crucial to those whose residual liberty has been taken from them by the state, and this alone suffices to ensure that it is rarely subject to restrictions.

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2014	Mission Institution v. Khela	3/27/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do	Mission Institution v. Khela, 2014 SCC 24, [2014] 1 S.C.R. 502	LeBel J.	unanimous	British Columbia	Administrative law Courts	C	referred to	R. v. Secretary of State for the Home Department, ex parte Cheblak, [1991] 2 All E.R. 319	lower-level court	UK	[68] It is true that there is a line of United Kingdom cases that suggests that a decision is unlawful only if it is outside the decision maker's jurisdiction. In R. v. Secretary of State for the Home Department, ex parte Cheblak, [1991] 2 All E.R. 319, for example, Lord Donaldson of the Court of Appeal stated: A writ of habeas corpus will issue where someone is detained without any authority or the purported authority is beyond the powers of the person authorising the detention and so is unlawful. The remedy of judicial review is available where the decision or action sought to be impugned is within the powers of the person taking it but, due to procedural error, a misappreciation of the law, a failure to take account of relevant matters, a taking account of irrelevant matters or the fundamental unreasonableness of the decision or action, it should never have been taken. In such a case the decision or action is lawful, unless and until it is set aside by a court of competent jurisdiction. [Emphasis in original; pp. 322-23.] Lord Donaldson subsequently clarified this statement in R. v. Secretary of State for the Home Department, Ex parte Muboyayi, [1992] 1 Q.B. 244 (C.A.), holding that a claim for habeas corpus should be denied because there was no challenge to jurisdiction, but only to a prior underlying administrative decision. This is a quite different challenge and, unless and until it succeeds, there are no grounds for impugning the legality of his detention. [p. 255] In other words, a decision cannot be unlawful for reasons other than jurisdiction unless it is deemed unlawful by a "proper" reviewing court (Farbey, Sharpe and Atrill, at p. 58). [69] These decisions do not reflect the state of the law in Canada. First, if the Cheblak/Muboyayi line of cases were accepted in Canada, it would result in the bifurcated jurisdiction this Court explicitly rejected both in the Miller trilogy and in May (May, at para. 72; Miller, at pp. 624-26). Second, the conclusion that jurisdictional error alone is determinative of "lawfulness" contradicts a higher line of authority from the United Kingdom (see, for example, R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192 (H.L.); R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74 (H.L.); for further criticism of the Cheblak/Muboyayi line of cases see H. W. R. Wade, "Habeas Corpus and Judicial Review" (1997), 113
2014	Mission Institution v. Khela	3/27/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do	Mission Institution v. Khela, 2014 SCC 24, [2014] 1 S.C.R. 502	LeBel J.	unanimous	British Columbia	Administrative law Courts	C	referred to	R. v. Secretary of State for the Home Department, Ex parte Muboyayi, [1992] 1 Q.B. 244	lower-level court	UK	[68] It is true that there is a line of United Kingdom cases that suggests that a decision is unlawful only if it is outside the decision maker's jurisdiction. In R. v. Secretary of State for the Home Department, ex parte Cheblak, [1991] 2 All E.R. 319, for example, Lord Donaldson of the Court of Appeal stated: A writ of habeas corpus will issue where someone is detained without any authority or the purported authority is beyond the powers of the person authorising the detention and so is unlawful. The remedy of judicial review is available where the decision or action sought to be impugned is within the powers of the person taking it but, due to procedural error, a misappreciation of the law, a failure to take account of relevant matters, a taking account of irrelevant matters or the fundamental unreasonableness of the decision or action, it should never have been taken. In such a case the decision or action is lawful, unless and until it is set aside by a court of competent jurisdiction. [Emphasis in original; pp. 322-23.] Lord Donaldson subsequently clarified this statement in R. v. Secretary of State for the Home Department, Ex parte Muboyayi, [1992] 1 Q.B. 244 (C.A.), holding that a claim for habeas corpus should be denied because there was no challenge to jurisdiction, but only to a prior underlying administrative decision. This is a quite different challenge and, unless and until it succeeds, there are no grounds for impugning the legality of his detention. [p. 255] In other words, a decision cannot be unlawful for reasons other than jurisdiction unless it is deemed unlawful by a "proper" reviewing court (Farbey, Sharpe and Atrill, at p. 58). [69] These decisions do not reflect the state of the law in Canada. First, if the Cheblak/Muboyayi line of cases were accepted in Canada, it would result in the bifurcated jurisdiction this Court explicitly rejected both in the Miller trilogy and in May (May, at para. 72; Miller, at pp. 624-26). Second, the conclusion that jurisdictional error alone is determinative of "lawfulness" contradicts a higher line of authority from the United Kingdom (see, for example, R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192 (H.L.); R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74 (H.L.); for further criticism of the Cheblak/Muboyayi line of cases see H. W. R. Wade, "Habeas Corpus and Judicial Review" (1997), 113
2014	Mission Institution v. Khela	3/27/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do	Mission Institution v. Khela, 2014 SCC 24, [2014] 1 S.C.R. 502	LeBel J.	unanimous	British Columbia	Administrative law Courts	C	referred to	R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192	SC	UK (HL)	[69] These decisions do not reflect the state of the law in Canada. First, if the Cheblak/Muboyayi line of cases were accepted in Canada, it would result in the bifurcated jurisdiction this Court explicitly rejected both in the Miller trilogy and in May (May, at para. 72; Miller, at pp. 624-26). Second, the conclusion that jurisdictional error alone is determinative of "lawfulness" contradicts a higher line of authority from the United Kingdom (see, for example, R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192 (H.L.); R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74 (H.L.); for further criticism of the Cheblak/Muboyayi line of cases see H. W. R. Wade, "Habeas Corpus and Judicial Review" (1997), 113 L.Q.R. 55, and Farbey, Sharpe and Atrill, at pp. 56-63).
2014	Mission Institution v. Khela	3/27/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13562/index.do	Mission Institution v. Khela, 2014 SCC 24, [2014] 1 S.C.R. 502	LeBel J.	unanimous	British Columbia	Administrative law Courts	C	referred to	R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74	SC	UK (HL)	[69] These decisions do not reflect the state of the law in Canada. First, if the Cheblak/Muboyayi line of cases were accepted in Canada, it would result in the bifurcated jurisdiction this Court explicitly rejected both in the Miller trilogy and in May (May, at para. 72; Miller, at pp. 624-26). Second, the conclusion that jurisdictional error alone is determinative of "lawfulness" contradicts a higher line of authority from the United Kingdom (see, for example, R. v. Governor of Brixton Prison, Ex parte Armah, [1968] A.C. 192 (H.L.); R. v. Secretary of State for the Home Department, Ex parte Khawaja, [1984] 1 A.C. 74 (H.L.); for further criticism of the Cheblak/Muboyayi line of cases see H. W. R. Wade, "Habeas Corpus and Judicial Review" (1997), 113 L.Q.R. 55, and Farbey, Sharpe and Atrill, at pp. 56-63).
2014	R. v. Sekhon	2/20/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13486/index.do	R. v. Sekhon, 2014 SCC 15, [2014] 1 S.C.R. 272	Moldaver J.	majority	British Columbia	Criminal law	C	referred to	R. v. Turner, [1975] 1 Q.B. 834	lower-level court	UK	[45] As for the "necessity" criterion, Mohan holds that "[i]f on the proven facts a judge or jury can form their own conclusions without help, then the opinion of [an] expert is unnecessary" (p. 23, quoting Lawton L.J. in R. v. Turner, [1975] 1 Q.B. 834, at p. 841). The Court went on to note that the concern "inherent in the application of this criterion [is] that experts not be permitted to usurp the functions of the trier of fact" (p. 24).
2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1	SC	UK (HL)	[16] At trial, neither party drew the attention of the court to the decision of the House of Lords in OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1, a decision which extensively examined the proper scope of the economic torts in general and of the unlawful means tort in particular. The decision was, however, placed before the Court of Appeal and, speaking through Robertson J.A., the court carefully and fully examined the law in light of it and subsequent developments. While the court took a considerably different view of the unlawful means tort than had the trial judge, it nonetheless dismissed the appeal. [17] The Court of Appeal noted that the unlawful means tort has been "in a state of flux" (para. 18) and that two opposing views on the proper scope of the unlawful means component have stemmed from the OBG decision. Lord Hoffmann, who was in the majority on this point, adopted a narrow definition of "unlawful means" whereby only breaches of the civil law such as a tort or breach of contract would suffice. The unlawful conduct would need to be actionable by the party against which it was directed in order to give rise to liability: see OBG, at para. 49. Lord Nicholls of Birkenhead advocated a broader view, according to which "unlawful means" included "common law torts, statutory torts, crimes, breaches of contract, breaches of trust and equitable obligations, breaches of confidence, and so on": OBG, at paras. 150 and 155. [18] The Court of Appeal preferred Lord Hoffmann's narrow definition. The conduct of the appellants, while lacking any legal justification, did not amount to a wrong actionable by the prospective purchasers. However, the Court of Appeal allowed for principled exceptions to mitigate the rigidity of the narrow rule. The court crafted an exception, which covered this case, in the following terms: In my view, the intentional erection of self-help legal barriers, some of which are enforceable through statutory processes not subject to prior judicial authorization, in circumstances where those barriers rest on rights fabricated with arguments of sand, warrants redress under the tort of unlawful means (akin to the tort of abuse of legal process). [para. 9]

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2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Revenue and Customs Commissioners v. Total Network SL, [2008] UKHL 19, [2008] 1 A.C. 1174	SC	UK (HL)	[53] Less than a year after OBG, the House of Lords reconsidered the scope of "unlawful means", but this time in the context of unlawful means conspiracy: Revenue and Customs Commissioners v. Total Network SL, [2008] UKHL 19, [2008] 1 A.C. 1174. The House of Lords distinguished the conspiracy tort from the unlawful means tort and held that a more flexible definition of "unlawful means" was needed in the conspiracy context: paras. 44, 76-77 and 94. Their Lordships echoed the views of Lord Nicholls in OBG in noting that criminal conduct is "at the top end" of "the scale of blameworthy conduct": see para. 91, per Lord Walker of Gestingthorpe.
2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Sanders v. Snell, [1998] HCA 64, 196 C.L.R. 329	SC	Australia	[54] While the position in Australia is not entirely settled, it is clear that the unlawful means tort will have at most a modest role to play in that country. In its most recent case on the unlawful means tort, the High Court left open the question of whether or not the independent tort of causing loss by unlawful means was even part of Australian law: Sanders v. Snell, [1998] HCA 64, 196 C.L.R. 329. Lower court decisions suggest that if the tort does exist, it exists in a narrow form similar to that articulated in OBG: Canberra Data Centres Pty Ltd. v. Vibe Constructions (ACT) Pty Ltd., [2010] ACTSC 20, 173 A.C.T.R. 33, at para. 141; Hardie Finance Corporation Pty Ltd. v. Ahern (No. 3), [2010] WASC 403 (AustLII); see also K. Barker et al., The Law of Torts in Australia (5th ed. 2012), at pp. 291 ff.
2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Canberra Data Centres Pty Ltd. v. Vibe Constructions (ACT) Pty Ltd., [2010] ACTSC 20, 173 A.C.T.R. 33	lower-level court	Australia	[54] While the position in Australia is not entirely settled, it is clear that the unlawful means tort will have at most a modest role to play in that country. In its most recent case on the unlawful means tort, the High Court left open the question of whether or not the independent tort of causing loss by unlawful means was even part of Australian law: Sanders v. Snell, [1998] HCA 64, 196 C.L.R. 329. Lower court decisions suggest that if the tort does exist, it exists in a narrow form similar to that articulated in OBG: Canberra Data Centres Pty Ltd. v. Vibe Constructions (ACT) Pty Ltd., [2010] ACTSC 20, 173 A.C.T.R. 33, at para. 141; Hardie Finance Corporation Pty Ltd. v. Ahern (No. 3), [2010] WASC 403 (AustLII); see also K. Barker et al., The Law of Torts in Australia (5th ed. 2012), at pp. 291 ff.
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2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Van Camp Chocolates Ltd. v. Aulsebrooks Ltd., [1984] 1 N.Z.L.R. 354	lower-level court	New Zealand	[55] The unlawful means tort is more firmly established in New Zealand and a narrow approach is taken to the unlawful means requirement: Van Camp Chocolates Ltd. v. Aulsebrooks Ltd., [1984] 1 N.Z.L.R. 354 (C.A.). More recently, in Diver v. Loktronic Industries Ltd., [2012] NZCA 131 (NZLII), the New Zealand Court of Appeal adopted Lord Hoffmann's analysis of the unlawful means tort in OBG, although this may not be the final word on the subject, as the analysis is brief and it is not clear that the point was argued: see para. 100.
2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Torquay Hotel Co., Ltd. v. Cousins, [1969] 1 All E.R. 522	lower-level court	UK	[71] The unlawful means tort has been addressed by many appellate courts across the country: see, e.g., Gershman v. Manitoba Vegetable Producers' Marketing Board (1976), 69 D.L.R. (3d) 114 (Man. C.A.); Conway v. Zinkhofer, 2008 ABCA 392 (CanLII); Polar Ice Express Inc. v. Arctic Glacier Inc., 2009 ABCA 20, 446 A.R. 295; R.L.T.V. Investments Inc. v. Saskatchewan Telecommunications, 2009 SKCA 83, 331 Sask. R. 78, leave to appeal refused, [2010] 1 S.C.R. xiv. In decisions that address the unlawful means component, there has been a general trend towards a narrower understanding of it. Earlier cases such as Reach M.D. Inc. v. Pharmaceutical Manufacturers Association of Canada (2003), 65 O.R. (3d) 30 (C.A.), had advanced a broad definition of "unlawful means" that included any act the defendant "is not at liberty to commit": paras. 50-52, citing Lord Denning M.R. in Torquay Hotel Co., Ltd. v. Cousins, [1969] 1 All E.R. 522, at p. 530. However, Reach has been narrowed by subsequent decisions: Drouillard v. Cogeco Cable Inc., 2007 ONCA 322, 86 O.R. (3d) 431, at paras. 22-24; Conversions by Vantasy Ltd. v. General Motors of Canada Ltd., 2006 MBCA 69, 205 Man. R. (2d) 131, at paras. 31-33, leave to appeal refused, [2007] 1 S.C.R. viii; Correia v. Canac Kitchens, 2008 ONCA 506, 91 O.R. (3d) 353, at para. 107; O'Dwyer v. Ontario Racing Commission, 2008 ONCA 446, 293 D.L.R. (4th) 559, at paras. 57-59. The Ontario Court of Appeal has confirmed that it "has now opted for the Lord Hoffmann side of the debate" in OBG and adopted the narrow definition of "unlawful means": see Alleslev-Krofchak v. Valcom Ltd., 2010 ONCA 557, 322 D.L.R. (4th) 193, at paras. 57 and 63, leave to appeal refused, [2011] 1 S.C.R. xi; Agribrands Purina, at para. 33; although compare Barber v. Vrozos, 2010 ONCA 570, 322 D.L.R. (4th) 577, at para. 58. Therien does not appear to have been addressed in any of these decisions.
2014	A.I. Enterprises Ltd. v. Bram Enterprises Ltd.	1/31/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13445/index.do	A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177	Cromwell J.	unanimous	New Brunswick	Torts	C	referred to	Douglas v. Hello! Ltd., [2005] EWCA Civ 595, [2005] 4 All E.R. 128	lower-level court	UK	[95] The Court of Appeal of England in Douglas v. Hello! Ltd., [2005] EWCA Civ 595, [2005] 4 All. E.R. 128, one of the appeals heard with OBG, identified five types of intention which might be relevant in this context: (a) an intention to cause economic harm to the claimant as an end in itself; (b) an intention to cause economic harm to the claimant because it is a necessary means of achieving an end that serves some ulterior motive; (c) knowledge that the course of conduct undertaken will have the inevitable consequence of causing the claimant economic harm; (d) knowledge that the course of conduct will probably cause the claimant economic harm; (e) knowledge that the course of conduct undertaken may cause the claimant economic harm coupled with reckless indifference as to whether it does or not: para. 159. In my opinion, the first two of these species of intention represent the core intention required for the unlawful means tort. They describe cases in which the tortfeasor is "aiming at" or "targeting" the plaintiff: see Carty, "The Economic Torts in the 21st Century", at p. 654. This is the approach favoured by the majority of commentators as well as by the cases: see, e.g., Carty, An Analysis of the Economic Torts, at pp. 80-82; Podolny, at p. 70; Kain and Alexander, at pp. 181-82; Correia, at para. 101. It is the intentional targeting of the plaintiff by the defendant that justifies stretching the defendant's liability so as to afford the plaintiff a cause of action. It is not sufficient that the harm to the plaintiff be an incidental consequence of the defendant's conduct, even where the defendant realizes that it is extremely likely that harm to the plaintiff may result. Such incidental economic harm is an accepted part of market competition

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2014	R. v. MacDonald	1/17/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13410/index.do	R. v. MacDonald, 2014 SCC 3, [2014] 1 S.C.R. 37	Moldaver and Wagner JJ.	concurring reasons	Nova Scotia	Constitutional law Criminal law	C	referred to	Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	Per Rothstein, Moldaver and Wagner JJ.: The majority concludes that the officer's conduct in this case was only justified because he had reasonable grounds to believe that M was armed and dangerous. In doing so, they effectively overturn the "safety search" power recognized in Mann and a decade of subsequent jurisprudence. This Court decided in Mann that officers may conduct protective searches when they have reasonable grounds to suspect that an individual is armed and dangerous. And that is why the search was justified in this case. Five reasons support this conclusion. First, the language of Mann makes clear that it recognized a protective search power predicated on reasonable suspicion. Second, Mann relies on the U.S. Supreme Court's seminal decision in Terry v. Ohio, 392 U.S. 1 (1968), a decision which recognized a directly analogous protective search power on a reasonable suspicion standard. Third, subsequent judgments from this Court and courts of appeal have affirmed that Mann employed the reasonable suspicion standard. Fourth, the logical consequences of a reasonable grounds to believe standard make little sense in this context; if Mann required reasonable grounds to believe for a pat-down search, it would seem that all that Mann achieves is a power to search when there are already grounds to arrest. Fifth, the facts of this case do not support a finding that the officer had reasonable grounds to believe that M was armed and dangerous.[74] Second, we look at the history from which Mann emerged. In recognizing a power of investigative detention and a related power to search for protective purposes incidental to that detention, Mann explicitly relied on the U.S. Supreme Court's seminal decision in Terry v. Ohio, 392 U.S. 1 (1968). Significant for present purposes, Mann quoted the following passage from Terry (at p. 27) when articulating the standard upon which an officer safety search must be measured: . . . there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. [Emphasis added; para. 41.] [75] As the excerpt makes clear, Chief Justice Warren clearly distinguished the Terry standard from the "probable cause" standard — the equivalent of our reasonable and probable grounds — traditionally used for arrests. And though there has never been any serious debate about what Terry meant, in speaking of a "reason to believe", the language of Terry risked being "confusing and contradictory" because "it is precisely the language the [U.S. Supreme] Court has used time and again to define the probable cause requisite for arrest" (W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (5th ed. 2012), vol. 4, at §9.6(a)). As our American colleagues only recently affirmed, however, under Terry, "the police must harbor reasonable suspicion that the person . . . is armed and dangerous" (Arizona v. Johnson, 129 S. Ct. 781 (2009), at p. 784 (emphasis added)). It is surely ironic, then, that in borrowing from Terry's diction, Mann inadvertently imported the same confusion and contradiction into Canada.
2014	R. v. MacDonald	1/17/2014	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13410/index.do	R. v. MacDonald, 2014 SCC 3, [2014] 1 S.C.R. 37	LeBel J.	majority	Nova Scotia	Constitutional law Criminal law	C	applied	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[33] In arguing that Sgt. Boyd's search was authorized by law, the Crown relies on the test from R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.), as set out by this Court in Dedman v. The Queen, [1985] 2 S.C.R. 2. It will be recalled that in Waterfield, two police officers had attempted to detain personal property (a car) belonging to the accused. The court set down a two-part test to determine whether the officers were acting in the execution of their duties when they sought to stop the accused from removing his property. As Professor P. Healy notes, the Waterfield test served in Dedman, as in earlier Canadian cases in which it had been applied (R. v. Stenning, [1970] S.C.R. 631, and Knowlton v. The Queen, [1974] S.C.R. 443), to mark "the limits of liability when there [was] some question whether a police officer [had] acted in the execution of his or her duty": "Investigative Detention in Canada", [2005] Crim. L.R. 98, at p. 102. It was of assistance in the determination of whether a police officer who had been assaulted was acting as an officer at the time of the assault, in which case the accused would be guilty of assaulting a police officer and not a regular citizen. Waterfield is therefore an imperfect authority on the question whether police have a common law power to search an individual in a safety search
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Ltd. v. William Hill (Football), Ltd., [1964] 1 All E.R. 465	SC	UK (HL)	[26] A substantial part of a work is a flexible notion. It is a matter of fact and degree. "Whether a part is substantial must be decided by its quality rather than its quantity": Ladbroke (Football), Ltd. v. William Hill (Football), Ltd., [1964] 1 All E.R. 465 (H.L.), at p. 481, per Lord Pearce. What constitutes a substantial part is determined in relation to the originality of the work that warrants the protection of the Copyright Act . As a general proposition, a substantial part of a work is a part of the work that represents a substantial portion of the author's skill and judgment expressed therein.
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Designers Guild Ltd. v. Russell Williams (Textiles) Ltd., [2001] 1 All E.R. 700	SC	UK (HL)	[27] A substantial part of a work is not limited to the words on the page or the brushstrokes on the canvas. The Act protects authors against both literal and non-literal copying, so long as the copied material forms a substantial part of the infringed work. As the House of Lords put it, the "part" which is regarded as substantial can be a feature or combination of features of the work, abstracted from it rather than forming a discrete part. . . . [T]he original elements in the plot of a play or novel may be a substantial part, so that copyright may be infringed by a work which does not reproduce a single sentence of the original. (Designers Guild Ltd. v. Russell Williams (Textiles) Ltd., [2001] 1 All E.R. 700, at p. 706, per Lord Hoffmann; see also Nichols v. Universal Pictures Corporation, 45 F.2d 119 (2d Cir. 1930), per Learned Hand J.) 30] The conclusion of the trial judge that a substantial part of a plaintiff's work was copied is entitled to appellate deference. The issue of substantiality is one of mixed fact and law. Consequently, an appellate court should generally defer to the trial judge's findings on substantiality, unless those findings are based on an error of law or palpable and overriding errors of fact: Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235; Designers Guild, at p. 707, per Lord Hoffman, and p. 708, per Lord Millett; Baigent v. The Random House Group Ltd., [2007] EWCA Civ 247, [2007] F.S.R. 24, at paras. 125-26; Delrina Corp. v. Triolet Systems Inc. (2002), 58 O.R. (3d) 339 (C.A.), at para. 81; Vaver, at p. 182. [36] As a general matter, it is important to not conduct the substantiality analysis by dealing with the copied features piecemeal: Designers Guild, at p. 705, per Lord Hoffman. The approach proposed by the Cinar appellants would risk dissecting Robinson's work into its component parts. The "abstraction" of Robinson's work to the essence of what makes it original and the exclusion of non-protectable elements at the outset of the analysis would prevent a truly holistic assessment. This approach focuses unduly on whether each of the parts of Robinson's work is individually original and protected by copyright law. Rather, the cumulative effect of the features copied from the work must be considered, to determine whether those features amount to a substantial part of Robinson's skill and judgment expressed in his work as a whole.
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Nichols v. Universal Pictures Corporation, 45 F.2d 119 (1930)	lower-level court	US	[27] A substantial part of a work is not limited to the words on the page or the brushstrokes on the canvas. The Act protects authors against both literal and non-literal copying, so long as the copied material forms a substantial part of the infringed work. As the House of Lords put it, the "part" which is regarded as substantial can be a feature or combination of features of the work, abstracted from it rather than forming a discrete part. . . . [T]he original elements in the plot of a play or novel may be a substantial part, so that copyright may be infringed by a work which does not reproduce a single sentence of the original. (Designers Guild Ltd. v. Russell Williams (Textiles) Ltd., [2001] 1 All E.R. 700, at p. 706, per Lord Hoffmann; see also Nichols v. Universal Pictures Corporation, 45 F.2d 119 (2d Cir. 1930), per Learned Hand J.)
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Baigent v. The Random House Group Ltd., [2007] EWCA Civ 247, [2007] F.S.R. 24	lower-level court	UK	[30] The conclusion of the trial judge that a substantial part of a plaintiff's work was copied is entitled to appellate deference. The issue of substantiality is one of mixed fact and law. Consequently, an appellate court should generally defer to the trial judge's findings on substantiality, unless those findings are based on an error of law or palpable and overriding errors of fact: Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235; Designers Guild, at p. 707, per Lord Hoffman, and p. 708, per Lord Millett; Baigent v. The Random House Group Ltd., [2007] EWCA Civ 247, [2007] F.S.R. 24, at paras. 125-26; Delrina Corp. v. Triolet Systems Inc. (2002), 58 O.R. (3d) 339 (C.A.), at para. 81; Vaver, at p. 182.
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Computer Associates International, Inc. v. Altai, Inc., 982 F.2d 693 (1992)	lower-level court	US	[35] The approach proposed by the Cinar appellants is similar to the "abstraction-filtration-comparison" approach used to assess substantiality in the context of computer software infringement in the United States: see Computer Associates International, Inc. v. Altai, Inc., 982 F.2d 693 (2d Cir. 1992); B. Clermont, "Les compilations et la Loi sur le droit d'auteur : leur protection et leur création" (2006), 18 C.P.I. 219, at p. 237; B. Tarantino, "'I've Got This Great Idea for a Show. . .' — Copyright Protection for Television Show and Motion Picture Concepts and Proposals" (2004), 17 I.P.J. 189, at pp. 199-200. It has been discussed, though not formally adopted, in Canadian jurisprudence: Delrina Corp., at paras. 43-47. I do not exclude the possibility that such an approach might be useful in deciding whether a substantial part of some works, for example computer programs, has been copied. But many types of works do not lend themselves to a reductive analysis. Canadian courts have generally adopted a qualitative and holistic approach to assessing substantiality. "The character of the works will be looked at, and the court will in all cases look, not at isolated passages, but at the two works as a whole to see whether the use by the defendant has unduly interfered with the plaintiff's right": J. S. McKeown, Fox on Canadian Law of Copyright and Industrial Designs (loose-leaf), at p. 21-16.4 (emphasis added).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2013	Cinar Corporation v. Robinson	12/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13390/index.do	Cinar Corporation v. Robinson, 2013 SCC 73, [2013] 3 S.C.R. 1168	McLachlin C.J.	unanimous	Quebec	Intellectual property	C	referred to	Sheldon v. Metro-Goldwyn Pictures Corporation, 106 F.2d 45 (1939)	lower-level court	US	[77] Section 35 of the Copyright Act provides that a defendant can be ordered to "disgorge its profit to the extent that such profit is caused by the infringement. The requirement for a [causal] link between infringement and profit may require that the profit be apportioned between that which is attributable to the infringement and that which is not": McKeown, at p. 24-82.3 (emphasis added). The onus is on the infringer to "satisfactorily separate non-infringing from infringing activities": Vaver, at p. 653; Sheldon v. Metro-Goldwyn Pictures Corporation, 106 F.2d 45 (2d Cir. 1939), per Learned Hand J. In some cases, "an infringer may so interweave the right-holder's work with its own as to make separation impossible": Vaver, at p. 637.
2013	Canada (Attorney General) v. Bedford	12/20/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do	Canada (Attorney General) v. Bedford, 2013 SCC 72, [2013] 3 S.C.R. 1101	McLachlin C.J.	majority	Ontario	Constitutional law Courts	C	referred to	Shaw v. Director of Public Prosecutions, [1962] A.C. 220	SC	UK (HL)	[141] The provision has been judicially restricted to those who provide a service or good to a prostitute because she is a prostitute, thus excluding grocers and doctors, for instance (Shaw v. Director of Public Prosecutions, [1962] A.C. 220 (H.L.)). It also has been held to require that exploitation be proven in the case of a person who lives with the prostitute, in order to exclude people in legitimate domestic relationships with a prostitute (Grilo). These refinements render the prohibition narrower than its words might suggest.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Rothstein J.	dissenting	British Columbia	Labour law	C	referred to	United States v. Price, 288 F.2d 448 (1961)	lower-level court	US	[146] The fact that this case involves a single contract also distinguishes the cases the majority cites, such as United States v. Price, 288 F.2d 448 (4th Cir. 1961), and Phillips v. Western Company of North America, 953 F.2d 923 (5th Cir. 1992), in which employees sued their employers in tort for personal injuries caused by the employer. In each of those cases, the employer sought to pay less than the plaintiff's loss from the injury, according to ordinary tort principles, based on benefits that flowed to the plaintiff from his employment contract. In neither case did the facts before the court establish that it would be inconsistent with the terms of the employment contract for the plaintiff to receive both tort damages and his employment benefits. That is in contrast to this case, where, as described above, Mr. Waterman's contract provided that he could receive salary or pension benefits, but not both. [147] Further, the choice before the courts in Price and Phillips was whether to (1) require the defendant to honour both of its legal duties (the legal duty to take reasonable care under tort and the legal duty to pay the plaintiff the amount promised under his employment contract) such that the plaintiff would receive compensation for his loss and the benefits he was entitled to under his employment contract; or (2) allow the defendant to offset the damages for breaching its duty of care using the benefits that it had separately promised the plaintiff in his employment contract, such that those benefits would enure to the defendant. Again, there is no parallel here. This case involves a single legal duty to honour the terms of an employment contract. The terms of that contract provided that Mr. Waterman would receive only his salary during his reasonable notice period.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Rothstein J.	dissenting	British Columbia	Labour law	C	referred to	Phillips v. Western Company of North America, 953 F.2d 923 (1992)	lower-level court	US	[146] The fact that this case involves a single contract also distinguishes the cases the majority cites, such as United States v. Price, 288 F.2d 448 (4th Cir. 1961), and Phillips v. Western Company of North America, 953 F.2d 923 (5th Cir. 1992), in which employees sued their employers in tort for personal injuries caused by the employer. In each of those cases, the employer sought to pay less than the plaintiff's loss from the injury, according to ordinary tort principles, based on benefits that flowed to the plaintiff from his employment contract. In neither case did the facts before the court establish that it would be inconsistent with the terms of the employment contract for the plaintiff to receive both tort damages and his employment benefits. That is in contrast to this case, where, as described above, Mr. Waterman's contract provided that he could receive salary or pension benefits, but not both. [147] Further, the choice before the courts in Price and Phillips was whether to (1) require the defendant to honour both of its legal duties (the legal duty to take reasonable care under tort and the legal duty to pay the plaintiff the amount promised under his employment contract) such that the plaintiff would receive compensation for his loss and the benefits he was entitled to under his employment contract; or (2) allow the defendant to offset the damages for breaching its duty of care using the benefits that it had separately promised the plaintiff in his employment contract, such that those benefits would enure to the defendant. Again, there is no parallel here. This case involves a single legal duty to honour the terms of an employment contract. The terms of that contract provided that Mr. Waterman would receive only his salary during his reasonable notice period.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Rothstein J.	dissenting	British Columbia	Labour law	C	referred to	Parry v. Cleaver, [1970] A.C. 1; Attorney General v. Blake, [2001] 1 A.C. 268	SC	UK (HL)	[141] In addition to this troubling inconsistency, applying the private insurance exception to this case would not be consistent with the justification for the exception. The rationale for the private insurance exception is that it would be "unjust and unreasonable to hold that the money which he prudently spent on premiums and the benefit from it should enure to the benefit of the tortfeasor" (Parry v. Cleaver, [1970] A.C. 1 (H.L.), per Lord Reid, at p. 14). Accepting the assumption that Mr. Waterman's work for IBM over the years is analogous to paying premiums to obtain his pension plan, it remains that the contractual terms of the pension or "insurance" he paid for allowed him to receive salary or pension benefits, but not both at the same time. In other words, this is not a case where deduction would lead to some benefit that the plaintiff paid for enuring to the benefit of the defendant. Quite to the contrary, as explained above, deducting is necessary to provide the plaintiff with the pension or "insurance" he paid for. Not deducting has the effect of the plaintiff receiving more than he expected to receive under the terms of his contract and requiring the defendant to pay more than it agreed to pay.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Phillips v. Western Company of North America, 953 F.2d 923 (1992)	lower-level court	US	27] Another problem with the terms "collateral benefit" or "collateral source" is that they suggest that the test for whether a benefit is deductible is whether it is "collateral", that is, independent of the relation between the plaintiff and the defendant. Some of the American jurisprudence, for example, has recognized that this "independence" test is an oversimplification which does not explain the treatment of benefit in the cases: see, e.g., Phillips v. Western Company of North America, 953 F.2d 923 (5th Cir. 1992), at pp. 931-33. Moreover, it can lead to fruitless semantic debates about whether a benefit is or is not "collateral" or "independent" rather than furthering principled analysis. As one court put it, that a benefit "comes from the defendant tortfeasor does not itself preclude the possibility that it is from a collateral source. The plaintiff may receive benefits from the defendant himself which, because of their nature, are not considered double compensation": United States v. Price, 288 F.2d 448 (4th Cir. 1961), at p. 450; Sloas v. CSX Transportation, Inc., 616 F.3d 380 (4th Cir. 2010), at p. 389. As we shall see, several factors other than the source of the benefit may be considered in order to determine whether it should be deducted.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	United States v. Price, 288 F.2d 448 (1961)	lower-level court	US	[27] Another problem with the terms "collateral benefit" or "collateral source" is that they suggest that the test for whether a benefit is deductible is whether it is "collateral", that is, independent of the relation between the plaintiff and the defendant. Some of the American jurisprudence, for example, has recognized that this "independence" test is an oversimplification which does not explain the treatment of benefit in the cases: see, e.g., Phillips v. Western Company of North America, 953 F.2d 923 (5th Cir. 1992), at pp. 931-33. Moreover, it can lead to fruitless semantic debates about whether a benefit is or is not "collateral" or "independent" rather than furthering principled analysis. As one court put it, that a benefit "comes from the defendant tortfeasor does not itself preclude the possibility that it is from a collateral source. The plaintiff may receive benefits from the defendant himself which, because of their nature, are not considered double compensation": United States v. Price, 288 F.2d 448 (4th Cir. 1961), at p. 450; Sloas v. CSX Transportation, Inc., 616 F.3d 380 (4th Cir. 2010), at p. 389. As we shall see, several factors other than the source of the benefit may be considered in order to determine whether it should be deducted.
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Sloas v. CSX Transportation, Inc., 616 F.3d 380 (2010)	lower-level court	US	[27] Another problem with the terms "collateral benefit" or "collateral source" is that they suggest that the test for whether a benefit is deductible is whether it is "collateral", that is, independent of the relation between the plaintiff and the defendant. Some of the American jurisprudence, for example, has recognized that this "independence" test is an oversimplification which does not explain the treatment of benefit in the cases: see, e.g., Phillips v. Western Company of North America, 953 F.2d 923 (5th Cir. 1992), at pp. 931-33. Moreover, it can lead to fruitless semantic debates about whether a benefit is or is not "collateral" or "independent" rather than furthering principled analysis. As one court put it, that a benefit "comes from the defendant tortfeasor does not itself preclude the possibility that it is from a collateral source. The plaintiff may receive benefits from the defendant himself which, because of their nature, are not considered double compensation": United States v. Price, 288 F.2d 448 (4th Cir. 1961), at p. 450; Sloas v. CSX Transportation, Inc., 616 F.3d 380 (4th Cir. 2010), at p. 389. As we shall see, several factors other than the source of the benefit may be considered in order to determine whether it should be deducted.

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2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Parry v. Cleaver, [1970] A.C. 1; Attorney General v. Blake, [2001] 1 A.C. 268	SC	UK (HL)	[31] The existence of these sorts of links between the breach and the benefit identifies whether there is a compensating advantage problem. But the existence of such a link is not a reliable marker of whether a particular benefit should be deducted. Relying on strict principles of causation, for example, often conceals unarticulated policy concerns: see, e.g., Parry v. Cleaver, [1970] A.C. 1 (H.L.), at pp. 34-35, per Lord Pearce; Ogus, at pp. 225-26; Ratych v. Bloomer, [1990] 1 S.C.R. 940, at pp. 965-66. Similarly, the indemnity factor is not a reliable marker of which benefits are or are not deductible. This is clear, for example, from the Court's decision in Cunningham. In issue were disability benefits provided for under collective agreements. They were clearly intended to provide an indemnity for wage loss arising from an inability to work. Nonetheless, the Court held that the benefits should not be deducted. [37] Finally, there are well-recognized exceptions in which benefits flowing to plaintiffs are not taken into account even though the result is that they are better off, economically speaking, after the breach than they would have been had there been no breach. These exceptions are ultimately based on factors other than strict compensatory considerations. As Lord Reid put it in Parry, "[t]he common law has treated [the deductibility of compensating advantages] as one depending on justice, reasonableness and public policy": p. 13. Or, as McLachlin J. wrote, this issue raises a question of "basic policy": Ratych, at p. 959. [44] In Guy v. Trizec Equities Ltd., [1979] 2 S.C.R. 756, Mr. Guy's injury led to his retirement and receipt of pension benefits. They were not deducted from damages for loss of earnings. Ritchie J., for the Court, viewed pensions, whether contributory or non-contributory, as flowing from the employee's work and part of what the employer was prepared to pay for the employee's services. He agreed with Lord Reid's conclusion, in Parry, as quoted by Spence J., in Gill, that "[t]he fact that they flow from past work equates them to rights which flow from an insurance privately effected by [the employee]": Guy, at p. 763. Similarly, in Jack Cewe, the Court did not deduct a dismissed employee's unemployment insurance benefits from his wrongful dismissal damages. The benefits, wrote Pigeon J., for the Court, were a consequence of the contract of employment making them similar to contributory pension benefits: p. 818. (The collateral benefit issue that arose in Jack Cewe is now addressed by s. 45 of the Employment Insurance Act, S.C. 1996, c. 23 , which states that a claimant who receives benefits and is subsequently awarded damages for the same period, "shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have been paid if the earnings had been paid or payable at the time the benefits were paid".) [47] The two cases in which the private insurance exception was not applied (Ratych and Sylvester) involved benefits that were intended to be an indemnity for the type of loss that resulted from the defendant's breach and to which the plaintiff had not contributed. Retirement pension benefits, which are not an indemnity for loss of wages resulting from inability to work and to which the employee contributes directly or indirectly, have been held by this Court and others to fall within the private insurance exception: Guy; Gill; Chandler v. Ball Packaging Products Canada Ltd. (1992), 2 C.C.P.B. 101 (Ont. Ct. J. (Gen. Div.)), aff'd (1993), 2 C.C.P.B. 99 (Ont. Ct. J. (Div. Ct.)); Emery v. Royal Oak Mines Inc. (1995), 24 O.R. (3d) 302 (Gen. Div.); Parry. [54] The strength-of-connection factor has often been referred to in the cases. The argument is that private insurance benefits (and benefits considered analogous to them) should not be deducted because they result from the plaintiff's contract of insurance, not from the defendant's wrongful act. This was part of the reasoning in Bradburn v. Great Western Railway Co. (1874), L.R. 10 Ex. 1, but at the distance of 140 years, this analysis seems artificial. Moreover, scholars have pointed out that decisions about legal as opposed to factual causation often simply disguise the true policy reasons underlying the decisions: see, e.g., Ogus, at p. 94; Burrows, at p. 162. In the leading English case on the private insurance exception, Parry, Lord Pearce commented that strict principles of causation do not provide a "satisfactory line of demarcation" between benefits that are and are not deductible: p. 34. While, as discussed, considering the connection between the breach and the benefit helps to identify that there is an issue about whether the benefit should be deducted, principles of causation do not provide reliable markers of whether a benefit should be deducted or not. [58] I begin my review with the decision of the House of Lords in Parry, which is the foundation of much of the Canadian jurisprudence. Lord Reid ultimately based his conclusion that the benefit (a pension) should not be deducted based on its "intrinsic nature": "A pension is intrinsically of a different kind from wages. . . . [W]ages are a reward for contemporaneous work, but . . . a pension is the fruit, through insurance, of all the money which was set aside in the past in respect of his past work. They are different in kind": p. 16. Lord Pearce also considered the nature and purpose of the benefit when he asked: "Is there anything else in the nature
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Attorney General v. Blake, [2001] 1 A.C. 268	SC	UK (HL)	[36] Considerations other than the extent of the plaintiff's actual loss shape the way the compensation principle is applied and there are well-established exceptions to it. For example, the rule that contract damages compensate only the plaintiff's actual loss is not the only rule that applies to assessing contract damages. As a leading English case put it, "Damages are measured by the plaintiff's loss, not the defendant's gain. But the common law, pragmatic as ever, has long recognised that there are many commonplace situations where a strict application of this principle would not do justice between the parties. Then compensation for the wrong done to the plaintiff is measured by a different yardstick" : Attorney General v. Blake, [2001] 1 A.C. 268 (H.L.), at p. 278. In some cases, for example, an award of damages in contract may be based on the advantage gained by the defendant as a result of the breach rather than the loss suffered by the plaintiff: see, e.g., Bank of America Canada v. Mutual Trust Co., 2002 SCC 43, [2002] 2 S.C.R. 601, at para. 25. The rule that damages are measured by the plaintiff's actual loss, while the general rule, does not cover all cases. In addition, through the doctrines of remoteness and mitigation, the compensation principle gives way to considerations of reasonableness in relation to whether the plaintiff's expectations of the contract and his or her conduct in response to the breach of it were reasonable
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Smoker v. London Fire and Civil Defence Authority, [1991] 2 A.C. 502	SC	UK (HL)	[60] Importantly, the minority judges accepted that the dominant tide of the jurisprudence in the common law world is that non-indemnity pension benefits should not be deducted: Cunningham, at p. 376. Although they mostly do not rely on the private insurance exception, Commonwealth decisions conclude that pension benefits should not be deducted from a damages award because pension benefits are not meant to compensate the plaintiff for the injury or breach of contract or to act as wage replacement. See for example: National Insurance Co. of New Zealand Ltd. v. Espagne (1961), 105 C.L.R. 569; Graham v. Baker (1961), 106 C.L.R. 340; Parry; Smoker v. London Fire and Civil Defence Authority, [1991] 2 A.C. 502 (H.L.). In Hopkins v. Norcross plc, [1993] 1 All E.R. 565 (Q.B.), the High Court applied this reasoning to the deductibility of pension benefits in a wrongful dismissal suit. The reasoning is also consistent with the decision of the U.K. Employment Appeal Tribunal in Knapton v. ECC Card Clothing Ltd., [2006] I.C.R. 1084. The non-deductibility of pension benefits was affirmed by the New Zealand Court of Appeal in Gilbert v. Attorney-General, [2010] NZCA 421, 8 N.Z.E.L.R. 72. This is consistent with the approach in Guy, discussed earlier, which concerned pension benefits that were clearly not intended to be an indemnity for loss of earnings due to an inability to work. They were held not to be deductible from damages for loss of earnings payable by those responsible for the plaintiff's inability to work
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Hopkins v. Norcross plc, [1993] 1 All E.R. 565	lower-level court	UK	[60] Importantly, the minority judges accepted that the dominant tide of the jurisprudence in the common law world is that non-indemnity pension benefits should not be deducted: Cunningham, at p. 376. Although they mostly do not rely on the private insurance exception, Commonwealth decisions conclude that pension benefits should not be deducted from a damages award because pension benefits are not meant to compensate the plaintiff for the injury or breach of contract or to act as wage replacement. See for example: National Insurance Co. of New Zealand Ltd. v. Espagne (1961), 105 C.L.R. 569; Graham v. Baker (1961), 106 C.L.R. 340; Parry; Smoker v. London Fire and Civil Defence Authority, [1991] 2 A.C. 502 (H.L.). In Hopkins v. Norcross plc, [1993] 1 All E.R. 565 (Q.B.), the High Court applied this reasoning to the deductibility of pension benefits in a wrongful dismissal suit. The reasoning is also consistent with the decision of the U.K. Employment Appeal Tribunal in Knapton v. ECC Card Clothing Ltd., [2006] I.C.R. 1084. The non-deductibility of pension benefits was affirmed by the New Zealand Court of Appeal in Gilbert v. Attorney-General, [2010] NZCA 421, 8 N.Z.E.L.R. 72. This is consistent with the approach in Guy, discussed earlier, which concerned pension benefits that were clearly not intended to be an indemnity for loss of earnings due to an inability to work. They were held not to be deductible from damages for loss of earnings payable by those responsible for the plaintiff's inability to work
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Knapton v. ECC Card Clothing Ltd., [2006] I.C.R. 1084	lower-level court	UK	[60] Importantly, the minority judges accepted that the dominant tide of the jurisprudence in the common law world is that non-indemnity pension benefits should not be deducted: Cunningham, at p. 376. Although they mostly do not rely on the private insurance exception, Commonwealth decisions conclude that pension benefits should not be deducted from a damages award because pension benefits are not meant to compensate the plaintiff for the injury or breach of contract or to act as wage replacement. See for example: National Insurance Co. of New Zealand Ltd. v. Espagne (1961), 105 C.L.R. 569; Graham v. Baker (1961), 106 C.L.R. 340; Parry; Smoker v. London Fire and Civil Defence Authority, [1991] 2 A.C. 502 (H.L.). In Hopkins v. Norcross plc, [1993] 1 All E.R. 565 (Q.B.), the High Court applied this reasoning to the deductibility of pension benefits in a wrongful dismissal suit. The reasoning is also consistent with the decision of the U.K. Employment Appeal Tribunal in Knapton v. ECC Card Clothing Ltd., [2006] I.C.R. 1084. The non-deductibility of pension benefits was affirmed by the New Zealand Court of Appeal in Gilbert v. Attorney-General, [2010] NZCA 421, 8 N.Z.E.L.R. 72. This is consistent with the approach in Guy, discussed earlier, which concerned pension benefits that were clearly not intended to be an indemnity for loss of earnings due to an inability to work. They were held not to be deductible from damages for loss of earnings payable by those responsible for the plaintiff's inability to work
2013	IBM Canada Limited v. Waterman	12/13/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13378/index.do	IBM Canada Limited v. Waterman, 2013 SCC 70, [2013] 3 S.C.R. 985	Cromwell J.	majority	British Columbia	Labour law	C	referred to	Gilbert v. Attorney-General, [2010] NZCA 421, 8 N.Z.E.L.R. 72	lower-level court	New Zealand	[60] Importantly, the minority judges accepted that the dominant tide of the jurisprudence in the common law world is that non-indemnity pension benefits should not be deducted: Cunningham, at p. 376. Although they mostly do not rely on the private insurance exception, Commonwealth decisions conclude that pension benefits should not be deducted from a damages award because pension benefits are not meant to compensate the plaintiff for the injury or breach of contract or to act as wage replacement. See for example: National Insurance Co. of New Zealand Ltd. v. Espagne (1961), 105 C.L.R. 569; Graham v. Baker (1961), 106 C.L.R. 340; Parry; Smoker v. London Fire and Civil Defence Authority, [1991] 2 A.C. 502 (H.L.). In Hopkins v. Norcross plc, [1993] 1 All E.R. 565 (Q.B.), the High Court applied this reasoning to the deductibility of pension benefits in a wrongful dismissal suit. The reasoning is also consistent with the decision of the U.K. Employment Appeal Tribunal in Knapton v. ECC Card Clothing Ltd., [2006] I.C.R. 1084. The non-deductibility of pension benefits was affirmed by the New Zealand Court of Appeal in Gilbert v. Attorney-General, [2010] NZCA 421, 8 N.Z.E.L.R. 72. This is consistent with the approach in Guy, discussed earlier, which concerned pension benefits that were clearly not intended to be an indemnity for loss of earnings due to an inability to work. They were held not to be deductible from damages for loss of earnings payable by those responsible for the plaintiff's inability to work
2013	AIC Limited v. Fischer	12/12/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13377/index.do	AIC Limited v. Fischer, 2013 SCC 69, [2013] 3 S.C.R. 949	Cromwell J.	majority	Ontario	Civil procedure	C	applied	Klay v. Humana, Inc., 382 F.3d 1241 (2004)	lower-level court	US	[23] This is a comparative exercise. The court has to consider the extent to which the proposed class action may achieve the three goals of the CPA, but the ultimate question is whether other available means of resolving the claim are preferable, not if a class action would fully achieve those goals. This point is well expressed in one U.S. Federal Court of Appeals judgment and it applies equally to CPA proceedings: "Our focus is not on the convenience or burden of a class action suit per se, but on the relative advantages of a class action suit over whatever other forms of litigation [and, I would add, dispute resolution] might be realistically available to the plaintiffs": Klay v. Humana, Inc., 382 F.3d 1241 (11th Cir. 2004), at p. 1269, cited in Rubenstein, at § 4:85, fn. 2.

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2013	R. v. Vu	11/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13327/index.do	R. v. Vu, 2013 SCC 60, [2013] 3 S.C.R. 657	Cromwell J.	unanimous	British Columbia	Constitutional law	C	referred to	United States v. Carey, 172 F.3d 1268 (1999)	lower-level court	US	[58] Courts in the United States have acknowledged the difficulty of predicting in advance where relevant files might be found on a computer. While the Tenth Circuit once suggested that police should be restricted to searching computers by file types, titles, or key words (see United States v. Carey, 172 F.3d 1268 (10th Cir. 1999), at p. 1276), later cases have moved away from this approach: W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (5th ed. 2012), vol. 2, at pp. 968-69. For example, in United States v. Burgess, 576 F.3d 1078 (10th Cir. 2009), decided 10 years after Carey, the same court held that "[i]t is unrealistic to expect a warrant to prospectively restrict the scope of a search by directory, filename or extension or to attempt to structure search methods . . . . [S]uch limits would unduly restrict legitimate search objectives" (pp. 1093-94). More recently, in United States v. Christie, 717 F.3d 1156 (10th Cir. 2013), the court found that "[c]omputer files can be misnamed by accident, disguised by intention, or hidden altogether, leaving investigators at a loss to know ex ante what sort of search will prove sufficient to ferret out the evidence they legitimately seek": p. 1166; see generally O. S. Kerr, "Ex Ante Regulation of Computer Search and Seizure" (2010), 96 Va. L. Rev. 1241, at p. 1277.
2013	R. v. Vu	11/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13327/index.do	R. v. Vu, 2013 SCC 60, [2013] 3 S.C.R. 657	Cromwell J.	unanimous	British Columbia	Constitutional law	C	referred to	United States v. Burgess, 576 F.3d 1078 (10th Cir. 2009)	lower-level court	US	[58] Courts in the United States have acknowledged the difficulty of predicting in advance where relevant files might be found on a computer. While the Tenth Circuit once suggested that police should be restricted to searching computers by file types, titles, or key words (see United States v. Carey, 172 F.3d 1268 (10th Cir. 1999), at p. 1276), later cases have moved away from this approach: W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (5th ed. 2012), vol. 2, at pp. 968-69. For example, in United States v. Burgess, 576 F.3d 1078 (10th Cir. 2009), decided 10 years after Carey, the same court held that "[i]t is unrealistic to expect a warrant to prospectively restrict the scope of a search by directory, filename or extension or to attempt to structure search methods . . . . [S]uch limits would unduly restrict legitimate search objectives" (pp. 1093-94). More recently, in United States v. Christie, 717 F.3d 1156 (10th Cir. 2013), the court found that "[c]omputer files can be misnamed by accident, disguised by intention, or hidden altogether, leaving investigators at a loss to know ex ante what sort of search will prove sufficient to ferret out the evidence they legitimately seek": p. 1166; see generally O. S. Kerr, "Ex Ante Regulation of Computer Search and Seizure" (2010), 96 Va. L. Rev. 1241, at p. 1277.
2013	R. v. Vu	11/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13327/index.do	R. v. Vu, 2013 SCC 60, [2013] 3 S.C.R. 657	Cromwell J.	unanimous	British Columbia	Constitutional law	C	referred to	United States v. Christie, 717 F.3d 1156 (10th Cir. 2013)	lower-level court	US	[58] Courts in the United States have acknowledged the difficulty of predicting in advance where relevant files might be found on a computer. While the Tenth Circuit once suggested that police should be restricted to searching computers by file types, titles, or key words (see United States v. Carey, 172 F.3d 1268 (10th Cir. 1999), at p. 1276), later cases have moved away from this approach: W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (5th ed. 2012), vol. 2, at pp. 968-69. For example, in United States v. Burgess, 576 F.3d 1078 (10th Cir. 2009), decided 10 years after Carey, the same court held that "[i]t is unrealistic to expect a warrant to prospectively restrict the scope of a search by directory, filename or extension or to attempt to structure search methods . . . . [S]uch limits would unduly restrict legitimate search objectives" (pp. 1093-94). More recently, in United States v. Christie, 717 F.3d 1156 (10th Cir. 2013), the court found that "[c]omputer files can be misnamed by accident, disguised by intention, or hidden altogether, leaving investigators at a loss to know ex ante what sort of search will prove sufficient to ferret out the evidence they legitimately seek": p. 1166; see generally O. S. Kerr, "Ex Ante Regulation of Computer Search and Seizure" (2010), 96 Va. L. Rev. 1241, at p. 1277.
2013	Infineon Technologies AG v. Option consommateurs	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13318/index.do	Infineon Technologies AG v. Option consommateurs, 2013 SCC 59, [2013] 3 S.C.R. 600	LeBel and Wagner JJ.	unanimous	Quebec	Civil procedure	C	referred to	Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968)	SC	US	[109] The root of this argument is the proposition that passing on cannot be raised as a defence. The United States Supreme Court explicitly accepted this proposition in the seminal decision of Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968), in which it rejected the passing-on defence. The appellants contend that this same principle applies in Canadian law, citing British Columbia v. Canadian Forest Products Ltd., 2004 SCC 38, [2004] 2 S.C.R. 74, and Kingstreet Investments Ltd. v. New Brunswick (Finance), 2007 SCC 1, [2007] 1 S.C.R. 3, in which this Court criticized the theory of passing on when raised as a defence, stressing the policy consideration of ensuring that the twin goals of deterrence and victim compensation are not eroded.
2013	Infineon Technologies AG v. Option consommateurs	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13318/index.do	Infineon Technologies AG v. Option consommateurs, 2013 SCC 59, [2013] 3 S.C.R. 600	LeBel and Wagner JJ.	unanimous	Quebec	Civil procedure	C	referred to	Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)	SC	US	[110] The appellants argue that if the defence of passing on is not accepted in Canadian law, the corollary is that passing on should not be accepted as the basis for a cause of action. They rely in support of this position on the United States Supreme Court's decision in Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977), in which that court explicitly rejected passing on as the basis for a cause of action, citing concerns of an excessively onerous burden of proof for plaintiffs and a risk of multiple liability for defendant manufacturers against which direct and indirect purchasers pursue separate claims.
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968)	SC	US	[19] The passing-on defence has been rejected in both Canadian and U.S. jurisprudence. It was first addressed by the Supreme Court of the United States in 1968 in Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968). In that case, Hanover sued United for damages under U.S. antitrust laws because United would only lease, not sell, its shoe machinery, which Hanover claimed resulted in an overcharge to it. United argued that Hanover had passed on the overcharge to its own customers and had therefore suffered no harm. The U.S. Supreme Court (per White J., Stewart J. dissenting) rejected the passing-on defence to overcharging. It cited difficulties in ascertaining the nature and extent of the passing on of the overcharge as the reason for rejecting the defence: Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price had the overcharge been discontinued. Since establishing the applicability of the passing-on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable. [p. 493] [20] The court added that to leave the only actionable causes in the hands of the indirect purchasers who "have only a tiny stake in a lawsuit and little interest in attempting a class action", would mean that "those who violate the antitrust laws by price fixing or monopolizing would retain the fruits of their illegality" (Hanover Shoe, at p. 494). The court thus rejected the passing-on defence. Since Hanover Shoe, defendants who effectuate illegal overcharges have been precluded from employing the passing-on defence as a means of absolving themselves of liability to their direct purchasers
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918	SC	US	[25] First, this Court's jurisprudence supports the broader rejection of the passing-on defence. In British Columbia v. Canadian Forest Products Ltd., 2004 SCC 38, [2004] 2 S.C.R. 74 ("Canfor"), the Crown claimed "diminution of the value of the timber" that it sold, following a forest fire caused largely by Canfor. Though the Court ultimately held in that case that the Crown had not in fact suffered loss because it was able to recover its damages through the regulatory scheme it had instituted, Binnie J. stated (albeit in obiter) that "[i]t is not generally open to a wrongdoer to dispute the existence of a loss on the basis it has been 'passed on' by the plaintiff" because this would burden courts with "the endlessness and futility of the effort to follow every transaction to its ultimate result" (para. 111, quoting Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918), at p. 534). Likewise, in the same decision LeBel J., dissenting, though not on this point, said that "the passing-on defence, on the facts of this case and generally, must not be allowed to take hold in Canadian jurisprudence" (para. 197). To allow otherwise, LeBel J. indicated, would force a difficult burden of proof on the plaintiff to demonstrate not only that it had suffered a loss, but that it did not engage in any other transactions that would have offset the loss (para. 203).

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2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)	SC	US	[30] As described above, the offensive use of passing on would provide the basis for indirect purchaser actions. Microsoft argues that this Court's rejection of the passing-on defence carries, as a necessary corollary, a corresponding rejection of the offensive use of passing on. The rationale is that the rejection should apply equally so that if overchargers are not permitted to rely on passing on in their own defence, indirect purchasers should also not be able to invoke passed on overcharges as a basis for their cause of action. [31] Microsoft relies on the 1977 decision of the U.S. Supreme Court in Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). Illinois Brick manufactured concrete block and sold it to masonry contractors who in turn provided their services to general contractors. The general contractors incorporated the concrete block into buildings and sold the buildings to customers such as the State of Illinois. The State was therefore an indirect purchaser of the products of Illinois Brick (p. 726). The State alleged that Illinois Brick had engaged in a conspiracy to fix the prices of concrete block, contrary to U.S. antitrust legislation, and brought an indirect purchaser action against the company (p. 727). [32] The U.S. Supreme Court found against the State of Illinois. It held that since, according to Hanover Shoe, passing on may not be used defensively, it should not be available to indirect purchasers to use offensively by bringing an action alleging that an overcharge was passed down to them. The court explained that "whatever rule [was] to be adopted regarding pass-on in antitrust damages actions, it must apply equally to plaintiffs and defendants" (Illinois Brick, at p. 728). [33] Microsoft argues that, just as the prohibition on the offensive use of passing on in Illinois Brick was considered a necessary corollary to the rejection of the passing-on defence in Hanover Shoe, the same result should flow in Canada from the rejection of the passing-on defence in Kingstreet. The passing-on issue was not raised before either of the applications judges because those decisions were released prior to Kingstreet. However, the majority of the B.C.C.A. accepted this argument in dismissing the Pro-Sys claim. [35] Microsoft submits that the offensive use of passing on through indirect purchaser actions leaves it exposed to liability from all purchasers in the chain of distribution. It says that its inability to employ the passing-on defence means that direct purchasers would be able to seek recovery for the entire amount of the overcharge. If, at the same time, indirect purchasers bring actions, this would result in both direct and indirect purchasers seeking recovery of the same amount. Microsoft argues that this potential for double or even multiple recovery should be a sufficient reason to reject the offensive use of passing on. [36] In Illinois Brick, the U.S. Supreme Court considered multiple recovery to be a "serious risk" and said that it was "unwilling to 'open the door to duplicative recoveries'" (pp. 730-31, per White J.): A one-sided application of Hanover Shoe substantially increases the possibility of inconsistent adjudications — and therefore of unwarranted multiple liability for the defendant — by presuming that one plaintiff (the direct purchaser) is entitled to full recovery while preventing the defendant from using that presumption against the other plaintiff . . . . [Emphasis deleted; p. 730.] [37] This concern cannot be lightly dismissed. However, in my view, there are countervailing arguments to be considered. Practically, the risk of duplicate or multiple recoveries can be managed by the courts. Brennan J., dissenting in Illinois Brick, indicated that the risk of overlapping recovery exists only where additional suits are filed after an award for damages has been made or where actions by direct and indirect purchasers are pending at the same time. In both cases, he said, the risk is remote (pp. 762-64).
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	California v. ARC America Corp., 490 U.S. 93 (1989	SC	US	[51] Although Illinois Brick remains the law at the federal level, it has been made inapplicable at the state level in many states through so-called "repealer statutes" or by judicial decisions. In 2007, the Antitrust Modernization Commission issued a report to Congress indicating that "more than thirty-five states permit indirect, as well as direct, purchasers to sue for damages under state law" (Antitrust Modernization Commission: Report and Recommendations (2007) (online), at p. 269). It recommended to Congress that the rule in Illinois Brick be statutorily repealed at the federal level (p. 270). The validity of the "repealer statutes" came before the U.S. Supreme Court in California v. ARC America Corp., 490 U.S. 93 (1989). That court held that Illinois Brick did not preempt the enactment of state antitrust laws, even if they had the effect of repealing the rule in Illinois Brick. These developments cast doubt on the "necessary corollary" approach in Illinois Brick.
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1	SC	UK (HL)	[81] The tort of intentional interference with economic interests aims to provide a remedy to victims of intentional commercial wrongdoing (Correia v. Canac Kitchens, 2008 ONCA 506, 91 O.R. (3d) 353, at para. 98; OBG Ltd. v. Allan, [2007] UKHL 21, [2008] 1 A.C. 1). The three essential elements of this tort are (1) the defendant intended to injure the plaintiff's economic interests; (2) the interference was by illegal or unlawful means; and (3) the plaintiff suffered economic loss or harm as a result (see P. H. Osborne, The Law of Torts (4th ed. 2011), at p. 336).
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	United Australia, Ltd. v. Barclays Bank, Ltd., [1941] A.C. 1	SC	UK (HL)	[93] As an alternative to the causes of action in tort, Pro-Sys waives the tort and seeks to recover the unjust enrichment accruing to Microsoft. Waiver of tort occurs when the plaintiff gives up the right to sue in tort and elects instead to base its claim in restitution, "thereby seeking to recoup the benefits that the defendant has derived from the tortious conduct" (Maddaugh and McCamus (2013), at p. 24-1). Causes of action in tort and restitution are not mutually exclusive, but rather provide alternative remedies that may be pursued concurrently (United Australia, Ltd. v. Barclays Bank, Ltd., [1941] A.C. 1 (H.L.), at p. 18). Waiver of tort is based on the theory that "in certain situations, where a tort has been committed, it may be to the plaintiff's advantage to seek recovery of an unjust enrichment accruing to the defendant rather than normal tort damages" (Maddaugh and McCamus, at pp. 24-1 and 24-2). An action in waiver of tort is considered by some to offer the plaintiff an advantage in that it may relieve them of the need to prove loss in tort, or in fact at all (Maddaugh and McCamus, at p. 24-4)
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	National Trust Co. v. Gleason, 77 N.Y. 400 (1879)	lower-level court	US	[96] The U.S. and U.K. jurisprudence as well as the academic texts on the subject have largely rejected the requirement that the underlying tort must be established in order for a claim in waiver of tort to succeed (see Serhan, at paras. 51-68, citing Maddaugh and McCamus (2005), at p. 24-20; J. Beatson, The Use and Abuse of Unjust Enrichment: Essays on the Law of Restitution (1991); D. Friedmann, "Restitution for Wrongs: The Basis of Liability", in W. R. Cornish et al., eds., Restitution: Past, Present and Future: Essays in Honour of Gareth Jones (1998), 133; National Trust Co. v. Gleason, 77 N.Y. 400 (1879); Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc., 268 F. 575 (S.D.N.Y. 1920); Mahesan v. Malaysia Government Officers' Co-operative Housing Society Ltd., [1979] A.C. 374 (P.C.); Universe Tankships Inc. of Monrovia v. International Transport Workers Federation, [1983] A.C. 366 (H.L.)). Another line of cases would find a cause of action in waiver of tort to be unavailable unless it can be established that the defendant has committed the underlying tort giving rise to the cause of action (see United Australia, at p. 18; Zidaric v. Toshiba of Canada Ltd. (2000), 5 C.C.L.T. (3d) 61 (Ont. S.C.J.), at para. 14; Reid v. Ford Motor Co., 2006 BCSC 712 (CanLII)). At least one of these cases (Reid) suggests that a reluctance to eliminate the requirement of proving loss as an element of the cause of action is part of the reason for requiring the establishment of the underlying tort (para. 17)
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc., 268 F. 575 (1920)	lower-level court	US	[96] The U.S. and U.K. jurisprudence as well as the academic texts on the subject have largely rejected the requirement that the underlying tort must be established in order for a claim in waiver of tort to succeed (see Serhan, at paras. 51-68, citing Maddaugh and McCamus (2005), at p. 24-20; J. Beatson, The Use and Abuse of Unjust Enrichment: Essays on the Law of Restitution (1991); D. Friedmann, "Restitution for Wrongs: The Basis of Liability", in W. R. Cornish et al., eds., Restitution: Past, Present and Future: Essays in Honour of Gareth Jones (1998), 133; National Trust Co. v. Gleason, 77 N.Y. 400 (1879); Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc., 268 F. 575 (S.D.N.Y. 1920); Mahesan v. Malaysia Government Officers' Co-operative Housing Society Ltd., [1979] A.C. 374 (P.C.); Universe Tankships Inc. of Monrovia v. International Transport Workers Federation, [1983] A.C. 366 (H.L.)). Another line of cases would find a cause of action in waiver of tort to be unavailable unless it can be established that the defendant has committed the underlying tort giving rise to the cause of action (see United Australia, at p. 18; Zidaric v. Toshiba of Canada Ltd. (2000), 5 C.C.L.T. (3d) 61 (Ont. S.C.J.), at para. 14; Reid v. Ford Motor Co., 2006 BCSC 712 (CanLII)). At least one of these cases (Reid) suggests that a reluctance to eliminate the requirement of proving loss as an element of the cause of action is part of the reason for requiring the establishment of the underlying tort (para. 17)
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2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	In re: Hydrogen Peroxide Antitrust Litigation, 552 F.3d 305 (2008)	lower-level court	US	[101] Microsoft, while accepting the "some basis in fact" standard, argues that "in order for the Plaintiffs to meet the standard of proof, the evidence must establish that the proposed class action raises common issues and is the preferable procedure on a balance of probabilities" (R.F., at para. 41 (emphasis in original)). Microsoft relies on the academic writings of Justice Cullity of the Ontario Superior Court of Justice. Cullity J. expressed the view that "[t]o the extent that some basis in fact reflects a concern that certification motions are procedural and should not be concerned with the merits of the claims asserted, there seems no justification for applying the lesser standard to essential preconditions for certification that will not be within the jurisdiction of the court at trial" ("Certification in Class Proceedings — The Curious Requirement of 'Some Basis in Fact'" (2011), 51 Can. Bus. L.J. 407, at p. 422). In other words, Cullity J. suggests that because certification requirements are procedural, they will not be revisited at a trial of the common issues. As such, there is no reason to assess them on a standard lower than the traditional civil standard of "balance of probabilities". Microsoft further submits that this Court should endorse the American approach of making factual determinations at the certification stage on a preponderance of the evidence and should require certification judges to weigh the evidence so as to resolve all factual or legal disputes at certification, even if those disputes overlap with the merits (see R.F., at para. 42, citing In re: Hydrogen Peroxide Antitrust Litigation, 552 F.3d 305 (3rd Cir. 2008), at p. 307, and R.F., at para. 43). [117] Microsoft submits that the "credible or plausible methodology" standard adopted by Myers J. was too permissive and allowed for a claim to be founded on insufficient evidence. It argues that under s. 5(4) of the CPA, the parties are required to file affidavits containing all material facts upon which they intend to rely, and as such Myers J. was under an obligation to weigh the evidence of both parties where a conflict arises. Microsoft alleges that despite this requirement, Myers J. failed to weigh Pro-Sys's expert evidence against Microsoft's expert evidence, merely concluding that Pro-Sys's expert evidence was "not implausible" and that assessing competing evidence was "not something that can and should be done in a certification application" (R.F., at para. 43, citing reasons of Myers J., at para. 144). Microsoft argues that this approach was in error and is inconsistent with the standard required at certification. Once again relying on U.S. case law, Microsoft urges this Court to weigh conflicting expert testimony at certification and to perform this review in a "robust" and "rigorous" manner (R.F., at paras. 45-48, citing Hydrogen Peroxide, at p. 323, and Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541 (2011), at p. 2551).
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	In Re: Linerboard Antitrust Litigation, 305 F.3d 145 (2002)	lower-level court	US	[115] The role of the expert methodology is to establish that the overcharge was passed on to the indirect purchasers, making the issue common to the class as a whole (see Chadha, at para. 31). The requirement at the certification stage is not that the methodology quantify the damages in question; rather, the critical element that the methodology must establish is the ability to prove "common impact", as described in the U.S. antitrust case of In Re: Linerboard Antitrust Litigation, 305 F.3d 145 (3rd Cir. 2002). That is, plaintiffs must demonstrate that "sufficient proof [is] available, for use at trial, to prove antitrust impact common to all the members of the class" (ibid., at p. 155). It is not necessary at the certification stage that the methodology establish the actual loss to the class, as long as the plaintiff has demonstrated that there is a methodology capable of doing so. In indirect purchaser actions, this means that the methodology must be able to establish that the overcharges have been passed on to the indirect-purchaser level in the distribution chain
2013	Pro-Sys Consultants Ltd. v. Microsoft Corporation	10/31/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13320/index.do	Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57, [2013] 3 S.C.R. 477	Rothstein J.	unanimous	British Columbia	Civil procedure	C	referred to	Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541 (2011)	SC	US	[117] Microsoft submits that the "credible or plausible methodology" standard adopted by Myers J. was too permissive and allowed for a claim to be founded on insufficient evidence. It argues that under s. 5(4) of the CPA, the parties are required to file affidavits containing all material facts upon which they intend to rely, and as such Myers J. was under an obligation to weigh the evidence of both parties where a conflict arises. Microsoft alleges that despite this requirement, Myers J. failed to weigh Pro-Sys's expert evidence against Microsoft's expert evidence, merely concluding that Pro-Sys's expert evidence was "not implausible" and that assessing competing evidence was "not something that can and should be done in a certification application" (R.F., at para. 43, citing reasons of Myers J., at para. 144). Microsoft argues that this approach was in error and is inconsistent with the standard required at certification. Once again relying on U.S. case law, Microsoft urges this Court to weigh conflicting expert testimony at certification and to perform this review in a "robust" and "rigorous" manner (R.F., at paras. 45-48, citing Hydrogen Peroxide, at p. 323, and Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541 (2011), at p. 2551).
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	C	D	Airedale N.H.S. Trust v. Bland, [1993] A.C. 789	SC	UK (HL)	[174] The withdrawal of life support, however, involves stark emotional responses, competing values and difficult choices. Increasingly, medical advances permit institutions to use extraordinary measures to prevent patients from dying. In Airedale N.H.S. Trust v. Bland, [1993] A.C. 789 (H.L.), at p. 868, Lord Goff of Chieveley stated that the court's task is not to determine "whether it is in the best interests of the patient that he should die. The question is whether it is in the best interests of the patient that his life should be prolonged by the continuance of this form of medical treatment or care." As the application judge Himel J. noted, in her careful and thorough review of the common law (at paras. 53-83), the issue of whether consent is required for the withdrawal of life support treatment has come before the courts in recent years.
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	C	D	Re J (a minor) (wardship: medical treatment), [1992] 4 All E.R. 614;	lower-level court	UK	[182] This reasoning in R.L. reflects the well-established approach in the United Kingdom. U.K. courts generally agree that consent is not required to withdraw life support. Holding that physicians were not obligated to adopt a course of treatment that, in their view, was not in the patient's best interests, the Court of Appeal considered that a court order would be "an abuse of power as directly or indirectly requiring the practitioner to act contrary to the fundamental duty which he owes to his patient" (Re J (a minor) (wardship: medical treatment), [1992] 4 All E.R. 614, at p. 622; see also Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177; Bland).
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	C	D	Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177	lower-level court	UK	[182] This reasoning in R.L. reflects the well-established approach in the United Kingdom. U.K. courts generally agree that consent is not required to withdraw life support. Holding that physicians were not obligated to adopt a course of treatment that, in their view, was not in the patient's best interests, the Court of Appeal considered that a court order would be "an abuse of power as directly or indirectly requiring the practitioner to act contrary to the fundamental duty which he owes to his patient" (Re J (a minor) (wardship: medical treatment), [1992] 4 All E.R. 614, at p. 622; see also Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177; Bland).
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	C	D	In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (1991), reported in (1991), 7 Issues L. & Med. 369	lower-level court	US	[184] In the United States, some state legislatures have addressed the withholding and withdrawal of life support directly.[2] While U.S. courts have shown deference to patient wishes, they have declined to address the issue of whether a patient has the right to insist on life support (In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (Minn. Dist. Ct. (Prob. Ct. Div.) 1991), reported in (1991), 7 Issues L. & Med. 369), and whether consent was required to withdraw life sustaining treatment that has no benefit to the patient (In the Matter of Baby "K", 16 F.3d 590 (4th Cir. 1994)).
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	C	D	In the Matter of Baby "K", 16 F.3d 590 (1994)	lower-level court	US	[184] In the United States, some state legislatures have addressed the withholding and withdrawal of life support directly.[2] While U.S. courts have shown deference to patient wishes, they have declined to address the issue of whether a patient has the right to insist on life support (In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (Minn. Dist. Ct. (Prob. Ct. Div.) 1991), reported in (1991), 7 Issues L. & Med. 369), and whether consent was required to withdraw life sustaining treatment that has no benefit to the patient (In the Matter of Baby "K", 16 F.3d 590 (4th Cir. 1994)).
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	R		Health Care Decisions Act, Va. Code Ann. § 54.1-2990 (2013).	statute	US	[184] In the United States, some state legislatures have addressed the withholding and withdrawal of life support directly.[2] While U.S. courts have shown deference to patient wishes, they have declined to address the issue of whether a patient has the right to insist on life support (In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (Minn. Dist. Ct. (Prob. Ct. Div.) 1991), reported in (1991), 7 Issues L. & Med. 369), and whether consent was required to withdraw life sustaining treatment that has no benefit to the patient (In the Matter of Baby "K", 16 F.3d 590 (4th Cir. 1994)). lábjegyzet [2] At least 11 states, including: Arizona, Idaho, Indiana, Kentucky, Maryland, Minnesota, North Dakota, Oregon, Pennsylvania, South Dakota, and Wisconsin, permit requests for life-sustaining treatments in an advance directive. Other states, however, have enacted statutes that allow for the unilateral withdrawal or withholding of life-sustaining treatment by health care providers when it is deemed medically inappropriate. For example, Virginia's Health Care Decisions Act, Va. Code Ann. § 54.1-2990 (2013), provides that physicians are not required to provide treatment which, in their opinion, is medically or ethically inappropriate. The Uniform Health-Care Decisions Act, 9 U.L.A. 83 (2011), adopted (at least in part) by Maine, New Mexico, Mississippi, and Delaware, provides that health care providers may refuse to comply with an advance directive that "requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution" (§ 7(f)). Other states have struck more of a middle ground in their legislation. In Texas, the Tex. Health & Safety Code Ann. § 166.052 (Vernon 2012), creates a process for resolving disagreements between physicians and substitute decision-makers with respect to the withdrawal of life support.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	R		Tex. Health & Safety Code Ann. § 166.052 (Vernon 2012).	statute	US	[184] In the United States, some state legislatures have addressed the withholding and withdrawal of life support directly.[2] While U.S. courts have shown deference to patient wishes, they have declined to address the issue of whether a patient has the right to insist on life support (In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (Minn. Dist. Ct. (Prob. Ct. Div.) 1991), reported in (1991), 7 Issues L. & Med. 369), and whether consent was required to withdraw life sustaining treatment that has no benefit to the patient (In the Matter of Baby "K", 16 F.3d 590 (4th Cir. 1994)). lábjegyzet [2] At least 11 states, including: Arizona, Idaho, Indiana, Kentucky, Maryland, Minnesota, North Dakota, Oregon, Pennsylvania, South Dakota, and Wisconsin, permit requests for life-sustaining treatments in an advance directive. Other states, however, have enacted statutes that allow for the unilateral withdrawal or withholding of life-sustaining treatment by health care providers when it is deemed medically inappropriate. For example, Virginia's Health Care Decisions Act, Va. Code Ann. § 54.1-2990 (2013), provides that physicians are not required to provide treatment which, in their opinion, is medically or ethically inappropriate. The Uniform Health-Care Decisions Act, 9 U.L.A. 83 (2011), adopted (at least in part) by Maine, New Mexico, Mississippi, and Delaware, provides that health care providers may refuse to comply with an advance directive that "requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution" (§ 7(f)). Other states have struck more of a middle ground in their legislation. In Texas, the Tex. Health & Safety Code Ann. § 166.052 (Vernon 2012), creates a process for resolving disagreements between physicians and substitute decision-makers with respect to the withdrawal of life support.
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	Karakatsanis J.	dissenting	Ontario	Statutes	R		Uniform Health-Care Decisions Act § 7, 9 U.L.A. 83 (2011).	statute	US	[184] In the United States, some state legislatures have addressed the withholding and withdrawal of life support directly.[2] While U.S. courts have shown deference to patient wishes, they have declined to address the issue of whether a patient has the right to insist on life support (In Re: The Conservatorship of Helga M. Wanglie, No. PX-91-283 (Minn. Dist. Ct. (Prob. Ct. Div.) 1991), reported in (1991), 7 Issues L. & Med. 369), and whether consent was required to withdraw life sustaining treatment that has no benefit to the patient (In the Matter of Baby "K", 16 F.3d 590 (4th Cir. 1994)). lábjegyzet [2] At least 11 states, including: Arizona, Idaho, Indiana, Kentucky, Maryland, Minnesota, North Dakota, Oregon, Pennsylvania, South Dakota, and Wisconsin, permit requests for life-sustaining treatments in an advance directive. Other states, however, have enacted statutes that allow for the unilateral withdrawal or withholding of life-sustaining treatment by health care providers when it is deemed medically inappropriate. For example, Virginia's Health Care Decisions Act, Va. Code Ann. § 54.1-2990 (2013), provides that physicians are not required to provide treatment which, in their opinion, is medically or ethically inappropriate. The Uniform Health-Care Decisions Act, 9 U.L.A. 83 (2011), adopted (at least in part) by Maine, New Mexico, Mississippi, and Delaware, provides that health care providers may refuse to comply with an advance directive that "requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution" (§ 7(f)). Other states have struck more of a middle ground in their legislation. In Texas, the Tex. Health & Safety Code Ann. § 166.052 (Vernon 2012), creates a process for resolving disagreements between physicians and substitute decision-makers with respect to the withdrawal of life support.
2013	Cuthbertson v. Rasouli	10/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13290/index.do	Cuthbertson v. Rasouli, 2013 SCC 53, [2013] 3 S.C.R. 341	McLachlin C.J.	majority	Ontario	Statutes	C	referred to	R. (Burke) v. General Medical Council, [2005] EWCA Civ 1003, [2005] 3 W.L.R. 1132	lower-level court	UK	[73] However, a physician may feel that his legal obligation not to withdraw life support is in tension with his professional or personal ethics. Such tensions are inherent to medical practice. Indeed, the law of consent to medical treatment evolved through cases in which the patient did not wish to be treated, but the physician felt a professional obligation to treat: see Malette, at p. 420; Fleming, at pp. 85-86. The law is now clear that treatment cannot be administered without consent, irrespective of the ethical imperative that physicians may feel. Similarly, a physician's duty of care may require that treatment not be withdrawn despite the physician's ethical objections to its administration: see R. (Burke) v. General Medical Council, [2005] EWCA Civ 1003, [2005] 3 W.L.R. 1132, at para. 34. If the present case were resolved as my colleague Justice Karakatsanis proposes, the physicians may still be required not to withdraw life support based on their common law or fiduciary duties. Their ethical position under the HCCA is no different.
2013	R. v. Chehil	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13264/index.do	R. v. Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220	Karakatsanis J.	unanimous	Nova Scotia	Constitutional law	C	referred to	United States v. Gooding, 695 F.2d 78 (4th Cir. 1982)	lower-level court	US	[30] A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a "generalized" suspicion because it "would include such a number of presumably innocent persons as to approach a subjectively administered, random basis" for a search: United States v. Gooding, 695 F.2d 78 (4th Cir. 1982), at p. 83. The American jurisprudence supports the need for a sufficiently particularized constellation of factors. See Reid v. Georgia, 448 U.S. 438 (1980), and Terry v. Ohio, 392 U.S. 1 (1968). Indeed, the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches.
2013	R. v. Chehil	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13264/index.do	R. v. Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220	Karakatsanis J.	unanimous	Nova Scotia	Constitutional law	C	referred to	Reid v. Georgia, 448 U.S. 438 (1980)	SC	US	[30] A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a "generalized" suspicion because it "would include such a number of presumably innocent persons as to approach a subjectively administered, random basis" for a search: United States v. Gooding, 695 F.2d 78 (4th Cir. 1982), at p. 83. The American jurisprudence supports the need for a sufficiently particularized constellation of factors. See Reid v. Georgia, 448 U.S. 438 (1980), and Terry v. Ohio, 392 U.S. 1 (1968). Indeed, the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches.
2013	R. v. Chehil	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13264/index.do	R. v. Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220	Karakatsanis J.	unanimous	Nova Scotia	Constitutional law	C	referred to	Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	[30] A constellation of factors will not be sufficient to ground reasonable suspicion where it amounts merely to a "generalized" suspicion because it "would include such a number of presumably innocent persons as to approach a subjectively administered, random basis" for a search: United States v. Gooding, 695 F.2d 78 (4th Cir. 1982), at p. 83. The American jurisprudence supports the need for a sufficiently particularized constellation of factors. See Reid v. Georgia, 448 U.S. 438 (1980), and Terry v. Ohio, 392 U.S. 1 (1968). Indeed, the reasonable suspicion standard is designed to avoid indiscriminate and discriminatory searches.
2013	R. v. Chehil	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13264/index.do	R. v. Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220	Karakatsanis J.	unanimous	Nova Scotia	Constitutional law	C	referred to	United States v. Sokolow, 490 U.S. 1 (1989)	SC	US	[34] However, the obligation of the police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations. As was noted in United States v. Sokolow, 490 U.S. 1 (1989), at p. 10 (citing Illinois v. Gates, 462 U.S. 213 (1983), at p. 244, footnote 13), "the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts". In conducting this inquiry to ascertain whether reasonable suspicion was present, the court will assess the circumstances the police were aware of at the time of the execution of the search, including those learned after the decision to deploy the sniffer dog was made if there is a delay in deployment, as there was in this case. However, it would not be permissible for the reasonable suspicion inquiry to assess circumstances learned after the execution of the search: see Kang-Brown, at para. 92.
2013	R. v. Chehil	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13264/index.do	R. v. Chehil, 2013 SCC 49, [2013] 3 S.C.R. 220	Karakatsanis J.	unanimous	Nova Scotia	Constitutional law	C	referred to	Florida v. Harris, 133 S.Ct. 1050 (2013)	SC	US	[54] Dog reliability is also important to determining whether a positive indication provides the reasonable and probable grounds required to justify further police action. The reviewing court will make this determination armed with the results of the sniff search and evidence regarding the reliability of the dog. If a sniff search is conducted lawfully, the officer already has reasonable grounds to suspect criminal conduct based on the totality of the circumstances that existed prior to the sniff search. With all these elements in mind, the court must determine whether the totality of the circumstances reached the reasonable and probable grounds threshold. I note that a similar approach was recently endorsed by the Supreme Court of the United States in Florida v. Harris, 133 S.Ct. 1050 (2013), albeit in the context of the "probable cause" test, which is specific to American law.
2013	R. v. MacKenzie	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13265/index.do	R. v. MacKenzie, 2013 SCC 50, [2013] 3 S.C.R. 250	Moldaver J.	majority	Saskatchewan	Constitutional law	C	referred to	Florida v. Jardines, 133 S.Ct. 1409 (2013)	SC	US	[32] Neither Chehil nor this case "require a category-based decision on the constitutionality of the use of sniffer dogs by the police that will apply in all circumstances" (Kang-Brown, at para. 137, per Deschamps J.). We continue to approach the use of this police investigative technique one case at a time, in each instance having regard to the context of the situation, balancing the extent of any privacy interest and the state's countervailing interest in law enforcement. This case, for example, "does not involve explosives, guns or other public safety concerns" (Kang-Brown, at para. 18, per Binnie J.; see also A.M., at para. 3, per Binnie J.). Nor does it involve the use of sniffer dogs in contexts such as the home, where courts have long recognized a heightened privacy interest (see, e.g., R. v. Evans, [1996] 1 S.C.R. 8; Florida v. Jardines, 133 S.Ct. 1409 (2013)).
2013	R. v. MacKenzie	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13265/index.do	Marine Services International Ltd. v. Ryan Estate, 2013 SCC 44, [2013] 3 S.C.R. 53	Moldaver J.	majority	Saskatchewan	Constitutional law	C	referred to	Florida v. Jardines, 133 S.Ct. 1409 (2013	SC	US	[32] Neither Chehil nor this case "require a category-based decision on the constitutionality of the use of sniffer dogs by the police that will apply in all circumstances" (Kang-Brown, at para. 137, per Deschamps J.). We continue to approach the use of this police investigative technique one case at a time, in each instance having regard to the context of the situation, balancing the extent of any privacy interest and the state's countervailing interest in law enforcement. This case, for example, "does not involve explosives, guns or other public safety concerns" (Kang-Brown, at para. 18, per Binnie J.; see also A.M., at para. 3, per Binnie J.). Nor does it involve the use of sniffer dogs in contexts such as the home, where courts have long recognized a heightened privacy interest (see, e.g., R. v. Evans, [1996] 1 S.C.R. 8; Florida v. Jardines, 133 S.Ct. 1409 (2013)).
2013	R. v. MacKenzie	9/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13265/index.do	R. v. MacKenzie, 2013 SCC 50, [2013] 3 S.C.R. 250	Moldaver J.	majority	Saskatchewan	Constitutional law	C	referred to	Florida v. Jardines, 133 S.Ct. 1409 (2013)	SC	US	[32] Neither Chehil nor this case "require a category-based decision on the constitutionality of the use of sniffer dogs by the police that will apply in all circumstances" (Kang-Brown, at para. 137, per Deschamps J.). We continue to approach the use of this police investigative technique one case at a time, in each instance having regard to the context of the situation, balancing the extent of any privacy interest and the state's countervailing interest in law enforcement. This case, for example, "does not involve explosives, guns or other public safety concerns" (Kang-Brown, at para. 18, per Binnie J.; see also A.M., at para. 3, per Binnie J.). Nor does it involve the use of sniffer dogs in contexts such as the home, where courts have long recognized a heightened privacy interest (see, e.g., R. v. Evans, [1996] 1 S.C.R. 8; Florida v. Jardines, 133 S.Ct. 1409 (2013)).
2013	Ontario v. Criminal Lawyers' Association of Ontario	8/1/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13191/index.do	Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 S.C.R. 3	Karakatsanis J.	majority	Ontario	Courts	C	referred to	Al Rawi v. Security Service, [2011] UKSC 34, [2012] 1 A.C. 531	SC	UK (SC)	[22] In spite of its amorphous nature, providing the foundation for powers as diverse as contempt of court, the stay of proceedings and judicial review, the doctrine of inherent jurisdiction does not operate without limits.[2]lábjegyzet [2] These limits are a topic that has also been considered by the highest courts in the United Kingdom and Australia, see Al Rawi v. Security Service, [2011] UKSC 34, [2012] 1 A.C. 531, at paras. 18-22, per Lord Dyson J.S.C.; Batistatos v. Roads and Traffic Authority of New South Wales, [2006] HCA 27, 227 A.L.R. 425, at paras. 121-36, per Kirby J.

Supreme Court of Canada (2000-2019)

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2013	Ontario v. Criminal Lawyers' Association of Ontario	8/1/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13191/index.do#_ftnref2	Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 S.C.R. 3	Karakatsanis J.	majority	Ontario	Courts	C	referred to	Al Rawi v. Security Service, [2011] UKSC 34, [2012] 1 A.C. 531	SC	UK (SC)	[22] In spite of its amorphous nature, providing the foundation for powers as diverse as contempt of court, the stay of proceedings and judicial review, the doctrine of inherent jurisdiction does not operate without limits.[2] [2] These limits are a topic that has also been considered by the highest courts in the United Kingdom and Australia, see Al Rawi v. Security Service, [2011] UKSC 34, [2012] 1 A.C. 531, at paras. 18-22, per Lord Dyson J.S.C.; Batistatos v. Roads and Traffic Authority of New South Wales, [2006] HCA 27, 227 A.L.R. 425, at paras. 121-36, per Kirby J.
2013	Ontario v. Criminal Lawyers' Association of Ontario	8/1/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13191/index.do#_ftnref2	Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 S.C.R. 3	Karakatsanis J.	majority	Ontario	Courts	C	referred to	Batistatos v. Roads and Traffic Authority of New South Wales, [2006] HCA 27, 227 A.L.R. 425	SC	Australia	[22] In spite of its amorphous nature, providing the foundation for powers as diverse as contempt of court, the stay of proceedings and judicial review, the doctrine of inherent jurisdiction does not operate without limits.[2] [2] These limits are a topic that has also been considered by the highest courts in the United Kingdom and Australia, see Al Rawi v. Security Service, [2011] UKSC 34, [2012] 1 A.C. 531, at paras. 18-22, per Lord Dyson J.S.C.; Batistatos v. Roads and Traffic Authority of New South Wales, [2006] HCA 27, 227 A.L.R. 425, at paras. 121-36, per Kirby J.
2013	Ezokola v. Canada (Citizenship and Immigration)	7/19/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13184/index.do	Ezokola v. Canada (Citizenship and Immigration), 2013 SCC 40, [2013] 2 S.C.R. 678	LeBel and Fish JJ.	unanimous	LeBel and Fish JJ.	Immigration	C	referred to	R. (J.S. (Sri Lanka)) v. Secretary of State for the Home Department, [2010] UKSC 15, [2011] 1 A.C. 184	SC	UK (SC)	[47] The question is — what are the relevant sources of international criminal law? [48] In our view, the best place to start is the Rome Statute. As Lord Brown of Eaton-under-Heywood J.S.C. recognized in R. (J.S. (Sri Lanka)) v. Secretary of State for the Home Department, [2010] UKSC 15, [2011] 1 A.C. 184 ("J.S."), at para. 9: It is convenient to go at once to the [Rome] Statute, ratified as it now is by more than 100 states and standing as now surely it does as the most comprehensive and authoritative statement of international thinking on the principles that govern liability for the most serious international crimes (which alone could justify the denial of asylum to those otherwise in need of it).
2013	Ezokola v. Canada (Citizenship and Immigration)	7/19/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13184/index.do	Ezokola v. Canada (Citizenship and Immigration), 2013 SCC 40, [2013] 2 S.C.R. 678	LeBel and Fish JJ.	unanimous	LeBel and Fish JJ.	Immigration	C	referred to	Xu Sheng Gao v. United States Attorney General, 500 F.3d 93 (2007)	lower-level court	US	[75] Similarly, United States appellate jurisprudence on refugee exclusions does not recognize complicity based on passive acquiescence or "tangential" contributions. While the U.S. "persecutor bar" does not directly incorporate art. 1F(a), it nevertheless represents an approach to exclusion that would only capture those who have committed international crimes as recognized by international criminal law: A.F., at para. 167. A recent decision by the Second Circuit Court of Appeals said: . . . the mere fact that [a person] may be associated with an enterprise that engages in persecution is insufficient by itself to trigger the effects of the persecutor bar. As the Supreme Court's oft-quoted dicta in Fedorenko v. United States, 449 U.S. 490, 101 S.Ct. 737, 66 L.Ed.2d 686 (1981), illustrates, a "guilt by association" approach to the persecutor bar is improper. . . . . . . Before [a claimant] may be held personally accountable for assisting in acts of persecution, there must be some evidence that he himself engaged in conduct that assisted in the persecution of another. (Xu Sheng Gao v. United States Attorney General, 500 F.3d 93 (2007), at paras. 5-6, cited in P. Zambelli, "Problematic Trends in the Analysis of State Protection and Article 1F(a) Exclusion in Canadian Refugee Law" (2011), 23 Int'l J. Refugee L. 252, at pp. 284-85.)
2013	Canadian National Railway Co. v. McKercher LLP	7/5/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13154/index.do	Canadian National Railway Co. v. McKercher LLP, 2013 SCC 39, [2013] 2 S.C.R. 649	McLachlin C.J.	unanimous	Saskatchewan	Professional law	C	referred to	Bolkiah v. KPMG, [1999] 2 A.C. 222	SC	UK (HL)	[31] The bright line rule holds that a law firm cannot act for a client whose interests are adverse to those of another existing client, unless both clients consent. It applies regardless of whether the client matters are related or unrelated. The rule is based on "the inescapable conflict of interest which is inherent" in some situations of concurrent representation: Bolkiah v. KPMG, [1999] 2 A.C. 222 (H.L.), at p. 235, cited in Neil, at para. 27. It reflects the essence of the fiduciary's duty of loyalty: ". . . a fiduciary cannot act at the same time both for and against the same client, and his firm is in no better position": Bolkiah, at p. 234.
2013	Sable Offshore Energy Inc. v. Ameron International Corp.	6/21/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13138/index.do	Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37, [2013] 2 S.C.R. 623	Abella J.	majority	Nova Scotia	Civil procedure	C	referred to	Pierringer v. Hoger, 124 N.W.2d 106 (1963)	lower-level court	US	[6] Sable entered into three Pierringer Agreements with some of the defendants. Named for the 1963 Wisconsin case of Pierringer v. Hoger, 124 N.W.2d 106 (Wis. 1963), a Pierringer Agreement allows one or more defendants in a multi-party proceeding to settle with the plaintiff and withdraw from the litigation, leaving the remaining defendants responsible only for the loss they actually caused. There is no joint liability with the settling defendants, but non-settling defendants may be jointly liable with each other.
2013	Sable Offshore Energy Inc. v. Ameron International Corp.	6/21/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13138/index.do	Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37, [2013] 2 S.C.R. 623	Abella J.	majority	Nova Scotia	Civil procedure	C	referred to	Rush & Tompkins Ltd. v. Greater London Council, [1988] 3 All E.R. 737	SC	uk (HL)	[12] Settlement privilege promotes settlements. As the weight of the jurisprudence confirms, it is a class privilege. As with other class privileges, while there is a prima facie presumption of inadmissibility, exceptions will be found "when the justice of the case requires it" (Rush & Tompkins Ltd. v. Greater London Council, [1988] 3 All E.R. 737 (H.L.), at p. 740). [14] Rush & Tompkins confirmed that settlement privilege extends beyond documents and communications expressly designated to be "without prejudice". In that case, a contractor settled its action against one defendant, the Greater London Council (the GLC), while maintaining it against the other defendant, the Carey contractors. The House of Lords considered whether communications made in the process of negotiating the settlement with the GLC should be admissible in the ongoing litigation with the Carey contractors. Lord Griffiths reached two conclusions of significance for this case. First, although the privilege is often referred to as the rule about "without prejudice" communications, those precise words are not required to invoke the privilege. What matters instead is the intent of the parties to settle the action (p. 739). Any negotiations undertaken with this purpose are inadmissible. [15] Lord Griffiths' second relevant conclusion was that although most cases considering the "without prejudice" rule have dealt with the admissibility of communications once negotiations have failed, the rationale of promoting settlement is no less applicable if an agreement is actually reached. Lord Griffiths explained that a plaintiff in Rush & Tompkins' situation would be discouraged from settling with one defendant if any admissions it made during the course of its negotiations were admissible in its claim against the other: In such circumstances it would, I think, place a serious fetter on negotiations . . . if they knew that everything that passed between them would ultimately have to be revealed to the one obdurate litigant. [p. 744]
2013	Sable Offshore Energy Inc. v. Ameron International Corp.	6/21/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13138/index.do	Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37, [2013] 2 S.C.R. 623	Abella J.	majority	Nova Scotia	Civil procedure	C	referred to	Cutts v. Head, [1984] 1 All E.R. 597	lower-level court	UK	[13] Settlement negotiations have long been protected by the common law rule that "without prejudice" communications made in the course of such negotiations are inadmissible (see David Vaver, "'Without Prejudice' Communications — Their Admissibility and Effect" (1974), 9 U.B.C. L. Rev. 85, at p. 88). The settlement privilege created by the "without prejudice" rule was based on the understanding that parties will be more likely to settle if they have confidence from the outset that their negotiations will not be disclosed. As Oliver L.J. of the English Court of Appeal explained in Cutts v. Head, [1984] 1 All E.R. 597, at p. 605: . . . parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations . . . may be used to their prejudice in the course of the proceedings. They should, as it was expressed by Clauson J in Scott Paper Co v. Drayton Paper Works Ltd (1927) 44 RPC 151 at 157, be encouraged freely and frankly to put their cards on the table. What is said during negotiations, in other words, will be more open, and therefore more fruitful, if the parties know that it cannot be subsequently disclosed.

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2013	Sable Offshore Energy Inc. v. Ameron International Corp.	6/21/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13138/index.do	Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37, [2013] 2 S.C.R. 623	Abella J.	majority	Nova Scotia	Civil procedure	C	referred to	Unilever plc v. Procter & Gamble Co., [2001] 1 All E.R. 783	lower-level court	UK	[19] There are, inevitably, exceptions to the privilege. To come within those exceptions, a defendant must show that, on balance, "a competing public interest outweighs the public interest in encouraging settlement" (Dos Santos Estate v. Sun Life Assurance Co. of Canada, 2005 BCCA 4, 207 B.C.A.C. 54, at para. 20). These countervailing interests have been found to include allegations of misrepresentation, fraud or undue influence (Unilever plc v. Procter & Gamble Co., [2001] 1 All E.R. 783 (C.A. Civ. Div.), Underwood v. Cox (1912), 26 O.L.R. 303 (Div. Ct.)), and preventing a plaintiff from being overcompensated (Dos Santos).
2013	R. v. Baldree	6/19/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13136/index.do	R. v. Baldree, 2013 SCC 35, [2013] 2 S.C.R. 520	Fish J.	majority	Ontario	Criminal law	C	referred to	R. v. Kearley, [1992] 2 All E.R. 345	SC	UK (HL)	[21] Citing the reasons of the majority of the House of Lords in R. v. Kearley, [1992] 2 All E.R. 345, and the opinion of McMurtry C.J.O. in R. v. Wilson (1996), 29 O.R. (3d) 97 (C.A.), Feldman J.A. concluded that the hearsay analysis should not hinge on whether the assertion is express or implied (para. 140). [55] The highest courts of England and Wales, and Australia, have likewise concluded that the hearsay rule governs implied assertions, only to have these decisions reversed by statute: see Kearley; R. v. Bannon (1995), 132 A.L.R. 87 (H.C.); Criminal Justice Act 2003 (U.K.), 2003, c. 44, s. 115; Evidence Act 1995 (Aust.), No. 2, s. 59(1). [56] In Canada, Parliament has not found it necessary or appropriate to adopt legislation classifying implied assertions as non-hearsay. This is, of course, entirely understandable in view of our principled and more flexible approach to exclusion. [57] As noted by Feldman J.A., the facts in Kearley, the leading British decision, were similar to the facts in this case. In Kearley, the police raided the home of the accused on suspicion that he was selling drugs. Drugs were found, but in insufficient quantities to support an inference of drug trafficking. While the police were present at the accused's residence, they intercepted ten telephone calls from callers asking to purchase drugs from him. Seven people also came to the apartment seeking to buy narcotics. [61] Second, as critics of Kearley have pointed out, applying the hearsay rule to implied assertions such as drug purchase calls has the potential to deprive the trier of fact of reliable evidence and thereby impede the truth-finding process: see, for example, D. Birch, "Criminal Justice Act 2003 (4) Hearsay: Same Old Story, Same Old Song?", [2004] Crim. L.R. 556, at pp. 564-65. [65] In Kearley, having found the evidence in that case to be hearsay, it was automatically excluded because it did not fall within a traditional exception to the hearsay rule
2013	Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.	6/14/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13106/index.do	Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., 2013 SCC 34, [2013] 2 S.C.R. 458	Rothstein and Moldaver JJ.	dissenting reasons	New Brunswick	Administrative law	R		Code of Federal Regulations 49 C.F.R. Part 382 (2001) (U.S.).	statute	US	[72] The New Brunswick legislature has within the scope of its legislative authority the power to take drug and alcohol testing outside the purview of the collective bargaining process, as some other legislative bodies have done in certain contexts. See, e.g., Code of Federal Regulations, 49 C.F.R. Part 382 (United States); Rail Safety (Adoption of National Law) Regulation 2012, No. 662 (New South Wales); Railway Safety Act 2005 (Ireland). Indeed, some experts have suggested there is an "overwhelming argument" in this country for "legislative direction and definition that would add consistency, uniformity of meaning, and predictability for all workplace stakeholders" (N. Keith and A. J. Wiggins, Alcohol and Drugs in the Canadian Workplace: An Employer's Guide to the Law, Prevention and Management of Substance Abuse (2008), at p. 240). That decision, however, is one for the New Brunswick legislature and not for this Court — no matter how strongly we might favour such a step.
2013	Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.	6/14/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13106/index.do	Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., 2013 SCC 34, [2013] 2 S.C.R. 458	Rothstein and Moldaver JJ.	dissenting reasons	New Brunswick	Administrative law	R		Rail Safety (Adoption of National Law) Regulation 2012, No. 662 (N.S.W.).	statute	Australia	[72] The New Brunswick legislature has within the scope of its legislative authority the power to take drug and alcohol testing outside the purview of the collective bargaining process, as some other legislative bodies have done in certain contexts. See, e.g., Code of Federal Regulations, 49 C.F.R. Part 382 (United States); Rail Safety (Adoption of National Law) Regulation 2012, No. 662 (New South Wales); Railway Safety Act 2005 (Ireland). Indeed, some experts have suggested there is an "overwhelming argument" in this country for "legislative direction and definition that would add consistency, uniformity of meaning, and predictability for all workplace stakeholders" (N. Keith and A. J. Wiggins, Alcohol and Drugs in the Canadian Workplace: An Employer's Guide to the Law, Prevention and Management of Substance Abuse (2008), at p. 240). That decision, however, is one for the New Brunswick legislature and not for this Court — no matter how strongly we might favour such a step.
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2013	R. v. Gauthier	6/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13098/index.do	R. v. Gauthier, 2013 SCC 32, [2013] 2 S.C.R. 403	Fish J.	dissenting	Quebec	Criminal law	C	D	R. v. O'Flaherty, [2004] EWCA Crim 526, [2004] 2 Cr. App. R. 20 (p. 315)	lower-level court	UK	[91] Courts in the United Kingdom, approving Whitehouse, have concluded that neutralizing or preventative steps are not required to establish abandonment. In R. v. O'Flaherty, [2004] EWCA Crim 526, [2004] 2 Cr. App. R. 20 (p. 315), at para. 60, the Court of Appeal acknowledged that whether an accused has done enough "to demonstrate that he or she is withdrawing from the joint enterprise . . . is ultimately a question of fact and degree for the jury". The jury should account for "the nature of the assistance and encouragement already given and how imminent the infliction of the fatal injury or injuries is, as well as the nature of the action said to constitute withdrawal". And, the court explicitly rejected the proposition that effective withdrawal requires reasonable steps to prevent the crime: In cases of assistance it has sometimes been suggested that, for there to be an effective withdrawal, reasonable steps must have been taken to prevent the crime. It is clear, however, this is not necessary. [Para. 60; see also para. 61.] See also R. v. Otway, [2011] EWCA Crim 3 (BAILII), at para. 32, where the court held that efforts to prevent the crime were relevant but not required for withdrawal. [104] Whether the appellant ultimately "did enough" to communicate timely and unequivocal withdrawal was a question of fact that should have been left for the jury to decide; R.K., at para. 11; O'Flaherty, at para. 60; Cipous, at paras. 52 and 54
2013	R. v. Gauthier	6/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13098/index.do	R. v. Gauthier, 2013 SCC 32, [2013] 2 S.C.R. 403	Fish J.	dissenting	Quebec	Criminal law	C	D	R. v. Otway, [2011] EWCA Crim 3 (BAILII)	lower-level court	UK	[91] Courts in the United Kingdom, approving Whitehouse, have concluded that neutralizing or preventative steps are not required to establish abandonment. In R. v. O'Flaherty, [2004] EWCA Crim 526, [2004] 2 Cr. App. R. 20 (p. 315), at para. 60, the Court of Appeal acknowledged that whether an accused has done enough "to demonstrate that he or she is withdrawing from the joint enterprise . . . is ultimately a question of fact and degree for the jury". The jury should account for "the nature of the assistance and encouragement already given and how imminent the infliction of the fatal injury or injuries is, as well as the nature of the action said to constitute withdrawal". And, the court explicitly rejected the proposition that effective withdrawal requires reasonable steps to prevent the crime: In cases of assistance it has sometimes been suggested that, for there to be an effective withdrawal, reasonable steps must have been taken to prevent the crime. It is clear, however, this is not necessary. [Para. 60; see also para. 61.] See also R. v. Otway, [2011] EWCA Crim 3 (BAILII), at para. 32, where the court held that efforts to prevent the crime were relevant but not required for withdrawal
2013	Cojocaru v. British Columbia Women's Hospital and Health Centre	5/24/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13072/index.do	Cojocaru v. British Columbia Women's Hospital and Health Centre, 2013 SCC 30, [2013] 2 S.C.R. 357	McLachlin C.J.	unanimous	British Columbia	Torts	C	referred to	English v. Emery Reimbold & Strick Ltd., [2002] EWCA Civ 605, [2002] 3 All E.R. 385	lower-level court	UK	[38] In England, the Court of Appeal has affirmed that copying does not invalidate a decision: English v. Emery Reimbold & Strick Ltd., [2002] EWCA Civ 605, [2002] 3 All E.R. 385. This view appears to be generally accepted. For example, in 2006, a British tribunal, applying Emery, explained that "there is nothing to prevent a Tribunal from adopting the arguments advanced on behalf of one of the parties if it accepts those arguments and has nothing to add to them": Meadowstone (Derbyshire) Ltd. v. Kirk, 2006 WL 690588 (U.K. Employment Appeal Tribunal), at para. 21. Although the tribunal acknowledged that "[i]t is better practice for a Tribunal to spell out in its own words the reasons for any conclusion which it reaches", if it chooses to repeat a party's language, it cannot be said that this practice "fail[s] to meet . . . the minimum standards by which every judgment should be measured" (para. 21). [39] Emery was applied by the Hong Kong Court of Appeal in a case where the trial judge incorporated extensive portions of counsel's submissions in the judgment, and the losing party appealed on grounds of procedural fairness and adequacy: Shin v. Kung, [2004] HKCA 205 (HKLII), at paras. 366-69 and 377. The court dismissed the appeal, holding that a judge is entitled to accept or reject a party's case in its entirety. "A judge's total adoption or rejection of counsel's submissions per se does not imply the lack of independent adjudication, nor does it constitute a valid ground for upsetting the judgment on the basis of an unfair trial", the court stated (para. 367). Applying the test of "a fair-minded and informed observer" (para. 377), it dismissed concerns about adequacy and bias

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2013	Cojocaru v. British Columbia Women's Hospital and Health Centre	5/24/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13072/index.do	Cojocaru v. British Columbia Women's Hospital and Health Centre, 2013 SCC 30, [2013] 2 S.C.R. 357	McLachlin C.J.	unanimous	British Columbia	Torts	C	referred to	United States v. Marine Bancorporation, Inc., 418 U.S. 602 (1974)	SC	US	[41] The United States Supreme Court ruled almost 50 years ago that when a trial judge "adopt[s] verbatim" the findings of fact submitted by counsel, "[t]hose findings, though not the product of the workings of the . . . judge's mind, are formally his; they are not to be rejected out-of-hand, and they will stand if supported by evidence": United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964), at p. 656. This rule appears to have been consistently followed in the United States although not without occasional adverse comment in extreme cases, as in United States v. Marine Bancorporation, Inc., 418 U.S. 602 (1974), at p. 615, where extensive copying without citations to transcripts hampered appellate review and added to the appellate court's burden. (See Stern, at p. 9, fn. 24.)
2013	Daishowa-Marubeni International Ltd. v. Canada	5/23/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13071/index.do	Daishowa-Marubeni International Ltd. v. Canada, 2013 SCC 29, [2013] 2 S.C.R. 336	Rothstein J.	majority	Federal Court of Appeal	Taxation	C	referred to	Winter v. Inland Revenue Commissioners, [1963] A.C. 235	SC	UK (HL)	[39] A contingent liability is "a liability which depends for its existence upon an event which may or may not happen": Canada v. McLarty, 2008 SCC 26, [2008] 2 S.C.R. 79, at para. 17, quoting Winter v. Inland Revenue Commissioners, [1963] A.C. 235 (H.L.), at p. 262. This Court has recognized that the contingent nature of a liability may have implications on the tax treatment of the liability. In McLarty, for instance, this Court recognized that, although a taxpayer generally incurs an expense when he has a legal obligation to pay a sum of money, no expense is incurred for tax purposes if the liability is contingent: paras. 14-16. In Mandel v. The Queen, [1980] 1 S.C.R. 318, aff'g [1979] 1 F.C. 560, this Court affirmed the Federal Court of Appeal's determination that a taxpayer who purchases a capital asset may not include in his capital cost a liability to the vendor if the liability is contingent.
2013	R. v. A.D.H.	5/17/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13051/index.do	R. v. A.D.H., 2013 SCC 28, [2013] 2 S.C.R. 269	Moldaver J.	concurring in the result	Saskatchewan	Criminal law	C	referred to	R. v. Miller, [1983] 1 All E.R. 978	SC	UK (HL)	[112] When one steps back to look at the broader picture, the understanding that one's positive actions can give rise to a situational duty is a principle well known to the common law. As Professors Colvin and Anand have noted, historically there have been "three reasonably well-established categories of duty to act" (Principles of Criminal Law (3rd ed. 2007), at p. 141). The first is well known and concerns "general relationships of care and protection", such as those captured by para. (a) of the s. 214 definition. The second concerns "specific undertakings to act" (see, e.g., R. v. Nicholls (1874), 13 Cox C.C. 75; R. v. Instan, [1893] 1 Q.B. 450) and the third concerns duties arising from "causal responsibility for dangerous situations" (see, e.g., R. v. Salmon (1880), 6 Q.B.D. 79; R. v. Coyne (1958), 124 C.C.C. 176 (N.B.S.C. (App. Div.)); R. v. Miller, [1983] 1 All E.R. 978 (H.L.)). See also Ormerod, at pp. 70-75 (including "[p]arents and other relations", "[v]oluntary undertakings", and "[c]reating a dangerous situation" as categories). These three categories map precisely to the three groups of individuals who I conclude come within the ambit of s. 218 . While it is, of course, true that our criminal law does not include common law offences, in my view, the wording of para. (b) of the s. 214 definition reflects a specific statutory instantiation of the second and third of these long-standing common law principles — much like ss. 216 , 217 and 217.1 do — in this case with respect to young children.
2013	R. v. A.D.H.	5/17/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13051/index.do	R. v. A.D.H., 2013 SCC 28, [2013] 2 S.C.R. 269	Cromwell J.	majority	Saskatchewan	Criminal law	C	referred to	Sweet v. Parsley, [1970] A.C. 132	SC	UK (HL)	[20] Discerning parliamentary intent in relation to the fault element of crimes is often not an easy task. Offences that have long been held to have subjective fault requirements do not expressly say so and even when Parliament decides to expressly set out fault requirements, it does not use language consistently: M. Manning and P. Sankoff, Manning, Mewett & Sankoff: Criminal Law (4th ed. 2009), at pp. 148-49. As a result, the courts must, and often do, infer the fault element: see, e.g., Pappajohn v. The Queen, [1980] 2 S.C.R. 120, per Dickson J. (as he then was), at p. 146; Sweet v. Parsley, [1970] A.C. 132 (H.L.), per Lord Reid, at p. 148; K. Roach, Criminal Law (5th ed. 2012), at pp. 163-64.
2013	R. v. A.D.H.	5/17/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13051/index.do	R. v. A.D.H., 2013 SCC 28, [2013] 2 S.C.R. 269	Cromwell J.	majority	Saskatchewan	Criminal law	C	referred to	R. v. Boulden (1957), 41 Cr. App. R. 105	lower-level court	UK	[46] I agree with Richards J.A. that the words "abandon" and "expose" on their face, and standing alone, are indicative of subjective fault: C.A., at para. 59. They involve more than just leaving a child alone or failing to take care of it: they denote awareness of the risk involved. This view is also perfectly consistent with the statutory non-exhaustive definition of "abandon" or "expose" in s. 214 of the Code which, as noted earlier, suggests a requirement for knowledge of the consequences flowing from the prohibited acts of abandonment or exposure. This is also reflected in the jurisprudence. As noted in L.M., abandon means "leaving the child to its fate" which suggests an act accompanied by knowledge of or recklessness as to the consequences: paras. 28 and 47; see also, e.g., R. v. Boulden (1957), 41 Cr. App. R. 105 , at p. 110; Re Davis (1909), 18 O.L.R. 384, at p. 387. This is one of the factors that led the court in Beedy (No. 2), to imply a subjective fault requirement (p. 107).
2013	Penner v. Niagara (Regional Police Services Board)	4/5/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12962/index.do?q=carl+zeiss	Penner v. Niagara (Regional Police Services Board), 2013 SCC 19, [2013] 2 S.C.R. 125	LeBel and Abella JJ. (dissenting)	dissenting	Ontario	Civil procedure	C	D	Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2), [1967] 1 A.C. 853	SC	UK (HL)	[78] The "twin principles" which underlie the doctrine of issue estoppel — "that there should be an end to litigation and . . . that the same party shall not be harassed twice for the same cause" (Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2), [1967] 1 A.C. 853 (H.L.), at p. 946) — are core principles which focus on achieving fairness and preventing injustice by preserving the finality of litigation. This, as the majority said in Figliola, is the case whether we are dealing with courts or administrative tribunals. Our colleagues' approach undermines these principles and risks transforming issue estoppel into a free-floating inquiry into "fairness" and "injustice" for administrative tribunals and revives an approach that our Court refused to apply in Figliola. [88] The doctrine of issue estoppel seeks to protect the finality of litigation by precluding the relitigation of issues that have been conclusively determined in a prior proceeding. It arose as a doctrinal response to the "twin principles . . . that there should be an end to litigation and . . . that the same party shall not be harassed twice for the same cause" (Carl Zeiss Stiftung, at p. 946; K. R. Handley, Spencer Bower and Handley: Res Judicata (4th ed. 2009), at p. 4; Donald J. Lange, The Doctrine of Res Judicata in Canada (3rd ed. 2010), at pp. 4-7).

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2013	Manitoba Metis Federation Inc. v. Canada (Attorney General)	3/8/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do	Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 S.C.R. 623	Rothstein J.	dissenting	Manitoba	Aboriginal law Civil procedure	C	D	United States v. Marion, 404 U.S. 307 (1971)	SC	US	[234] Finally, the diligence rationale encourages plaintiffs to not sleep on their rights. An aspect of this concept is the idea that "claims, which are valid, are not usually allowed to remain neglected" (Riddlesbarger v. Hartford Insurance Co., 74 U.S. (7 Wall.) 386 (1868), at p. 390, cited in United States v. Marion, 404 U.S. 307 (1971), at p. 322, footnote 14).
2013	Manitoba Metis Federation Inc. v. Canada (Attorney General)	3/8/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do	Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 S.C.R. 623	Rothstein J.	dissenting	Manitoba	Aboriginal law Civil procedure	C	D	Sparham-Souter v. Town and Country Developments (Essex) Ltd., [1976] 1 Q.B. 858	lower-level court	UK	[236] The discoverability principle has its origins in judicial interpretations of when a cause of action "accrues". Discoverability was described in the English case of Sparham-Souter v. Town and Country Developments (Essex) Ltd., [1976] 1 Q.B. 858 (C.A.), at p. 868, where Lord Denning, M.R. stated: . . . when building work is badly done — and covered up — the cause of action does not accrue, and time does not begin to run, until such time as the plaintiff discovers that it has done damage, or ought, with reasonable diligence, to have discovered it.
2013	Manitoba Metis Federation Inc. v. Canada (Attorney General)	3/8/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do	Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 S.C.R. 623	Rothstein J.	dissenting	Manitoba	Aboriginal law Civil procedure	C	D	Ultramares Corp. v. Touche, 174 N.E. 441 (1931	lower-level court	US	[266] This exception creates the possibility of indeterminate liability for the Crown, since claims under this new duty will apparently be possible forever. Courts have always been wary of the possibility of indeterminate liability. In Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at p. 444, Cardozo C.J. expressed concern about the creation of "liability in an indeterminate amount for an indeterminate time to an indeterminate class". This concern was recognized, albeit more with respect to indeterminate amounts and classes, by this Court in Design Services Ltd. v. Canada, 2008 SCC 22, [2008] 1 S.C.R. 737, at paras. 59-66. In my view, as this exception from limitations periods creates liability for an indeterminate time, it is not an appropriate step for this Court to take.
2013	Manitoba Metis Federation Inc. v. Canada (Attorney General)	3/8/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12888/index.do	Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 S.C.R. 623	Rothstein J.	dissenting	Manitoba	Aboriginal law Civil procedure	C	D	In re Spectrum Plus Ltd. (in liquidation), [2005] UKHL 41, [2005] 2 A.C. 680	SC	UK (HL)	[279] My colleagues suggest, at para. 149, that no one can acquiesce where the law has changed, since it is "unrealistic" to expect someone to have enforced their claim before the courts were prepared to recognize those rights. With respect, this conclusion is at odds with the common law approach to changes in the law. While there is no doubt that the law on Crown duties to Aboriginal people has evolved since the 1870s, defences of general application, including laches, have always applied to claimants despite such changes in the law (In re Spectrum Plus Ltd. (in liquidation), 2005 UKHL 41, [2005] 2 A.C. 680, at para. 26). The applicability of general defences like limitations periods to evolving areas of the law was also recognized by this Court in Canada (Attorney General) v. Hislop, 2007 SCC 10, [2007] 1 S.C.R. 429, at para. 101. My colleagues' approach to acquiescence is a significant change in the law of laches in Canada with potentially significant repercussions.
2013	Antrim Truck Centre Ltd. v. Ontario (Transportation)	3/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12887/index.do	Antrim Truck Centre Ltd. v. Ontario (Transportation), 2013 SCC 13, [2013] 1 S.C.R. 594	Cromwell J.	unanimous	Ontario	Expropriation	C	referred to	Wildtree Hotels Ltd. v. Harrow London Borough Council, [2001] 2 A.C. 1	SC	UK (HL)	[42] There are several important ideas in this quotation. One is that the duration of the interference is a relevant consideration. Admittedly, duration was not a relevant factor in this case because the injury was permanent. In cases where it is relevant however, it is helpful to consider that some sorts of temporary inconvenience are more obviously part of the normal "give and take" than are more prolonged interferences. While temporary interferences may certainly support a claim in nuisance in some circumstances, interferences that persist for a prolonged period of time will be more likely to attract a remedy: see, in the context of public nuisance, Wildtree Hotels Ltd. v. Harrow London Borough Council, [2001] 2 A.C. 1 (H.L.).
2013	Antrim Truck Centre Ltd. v. Ontario (Transportation)	3/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12887/index.do	Antrim Truck Centre Ltd. v. Ontario (Transportation), 2013 SCC 13, [2013] 1 S.C.R. 594	Cromwell J.	unanimous	Ontario	Expropriation	C	referred to	Allen v. Gulf Oil Refining Ltd., [1981] A.C. 1001	SC	UK (HL)	[44] A final point emerging from the Andreae case, which I alluded to above, relates to the manner in which the work is carried out. While nuisance focuses mainly on the harm and not on the blameworthiness of the defendant's conduct, the fact that a public work is carried out with "all reasonable regard and care" for the affected citizens is properly part of the reasonableness analysis: see, e.g., Allen v. Gulf Oil Refining Ltd., [1981] A.C. 1001, per Lord Wilberforce, at p. 1011.
2013	Antrim Truck Centre Ltd. v. Ontario (Transportation)	3/7/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12887/index.do	Antrim Truck Centre Ltd. v. Ontario (Transportation), 2013 SCC 13, [2013] 1 S.C.R. 594	Cromwell J.	unanimous	Ontario	Expropriation	C	referred to	St. Helen's Smelting Co. v. Tipping (1865), 11 H.L.C. 642, 11 E.R. 1483	SC	UK (HL)	[47] The distinction between material or physical harms on the one hand and interferences such as loss of amenities on the other has a long history and deep roots, going back at least to the House of Lords decision in St. Helen's Smelting Co. v. Tipping (1865), 11 H.L.C. 642, 11 E.R. 1483. In that case, the Lord Chancellor distinguished between nuisance causing "material injury" to property and nuisance "productive of sensible personal discomfort", finding that only the latter category required an assessment of whether an interference is reasonable taking into account all of the surrounding circumstances: p. 650. This approach has since been adopted in many Canadian decisions (see, e.g., Walker v. McKinnon Industries Ltd., [1949] 4 D.L.R. 739 (Ont. H.C.), at p. 763, injunction order varied by [1950] 3 D.L.R. 159 (Ont. C.A.), aff'd [1951] 3 D.L.R. 577 (P.C.)) including a few more recent cases, such as, for example, Jesperson's and Airport Realty. A good deal of the jurisprudence is helpfully reviewed in Smith v. Inco Ltd., 2011 ONCA 628, 107 O.R. (3d) 321, at paras. 45-50. At the same time, there is appellate authority affirming the need to consider the reasonableness of the interference in every case: Susan Heyes Inc
2013	Saskatchewan (Human Rights Commission) v. Whatcott	2/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do	Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467	Rothstein J.	unanimous	Saskatchewan	Administrative law Constitutional law	C	referred to	Abrams v. United States, 250 U.S. 616 (1919)	SC	US	[103] The notion of leaving the regulation of hate speech to the "marketplace of ideas" has long been advocated by critics of the regulation of hate speech: see Abrams v. United States, 250 U.S. 616 (1919), at p. 630, per Holmes J., dissenting; R. Dworkin, "Foreword", in I. Hare and J. Weinstein, eds., Extreme Speech and Democracy (2009), v; and R. Moon, The Constitutional Protection of Freedom of Expression (2000). In the context of racial and religious discrimination, Dickson C.J. describes this approach as one that argues that "discriminatory ideas can best be met with information and education programmes extolling the merits of tolerance and cooperation between racial and religious groups": Keegstra, at p. 784. Under this theory, unfettered debate is the most effective way for rational beings to attain the truth, thus accomplishing one of the three purposes of freedom of expression.
2013	Saskatchewan (Human Rights Commission) v. Whatcott	2/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do	Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467	Rothstein J.	unanimous	Saskatchewan	Administrative law Constitutional law	G		fact		Uganda	[72] The majority in Keegstra and Taylor reviewed evidence detailing the potential risks of harm from the dissemination of messages of hate, including the 1966 Report of the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee. The Cohen Committee wrote at a time when the experiences of fascism in Italy and National Socialism in Germany were in recent memory. Almost 50 years later, I cannot say that those examples have proven to be isolated and unrepeated at our current point in history. One need only look to the former Yugoslavia, Cambodia, Rwanda, Darfur, or Uganda to see more recent examples of attempted cleansing or genocide on the basis of religion, ethnicity or sexual orientation. In terms of the effects of disseminating hateful messages, there is today the added impact of the Internet.
2013	Saskatchewan (Human Rights Commission) v. Whatcott	2/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do	Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467	Rothstein J.	unanimous	Saskatchewan	Administrative law Constitutional law	G		fact		Rwanda	[72] The majority in Keegstra and Taylor reviewed evidence detailing the potential risks of harm from the dissemination of messages of hate, including the 1966 Report of the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee. The Cohen Committee wrote at a time when the experiences of fascism in Italy and National Socialism in Germany were in recent memory. Almost 50 years later, I cannot say that those examples have proven to be isolated and unrepeated at our current point in history. One need only look to the former Yugoslavia, Cambodia, Rwanda, Darfur, or Uganda to see more recent examples of attempted cleansing or genocide on the basis of religion, ethnicity or sexual orientation. In terms of the effects of disseminating hateful messages, there is today the added impact of the Internet.
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2013	Saskatchewan (Human Rights Commission) v. Whatcott	2/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do	Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467	Rothstein J.	unanimous	Saskatchewan	Administrative law Constitutional law	G		fact		Italy	[72] The majority in Keegstra and Taylor reviewed evidence detailing the potential risks of harm from the dissemination of messages of hate, including the 1966 Report of the Special Committee on Hate Propaganda in Canada, commonly known as the Cohen Committee. The Cohen Committee wrote at a time when the experiences of fascism in Italy and National Socialism in Germany were in recent memory. Almost 50 years later, I cannot say that those examples have proven to be isolated and unrepeated at our current point in history. One need only look to the former Yugoslavia, Cambodia, Rwanda, Darfur, or Uganda to see more recent examples of attempted cleansing or genocide on the basis of religion, ethnicity or sexual orientation. In terms of the effects of disseminating hateful messages, there is today the added impact of the Internet.
2013	Saskatchewan (Human Rights Commission) v. Whatcott	2/27/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do	Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11, [2013] 1 S.C.R. 467	Rothstein J.	unanimous	Saskatchewan	Administrative law Constitutional law	C	referred to	Snyder v. Phelps, 131 S. Ct. 1207 (2011)	SC	US	[119] The polemicist may still participate on controversial topics that may be characterized as "moral" or "political". However, words matter. In the context of this case, Mr. Whatcott can express disapproval of homosexual conduct and advocate that it should not be discussed in public schools or at university conferences. Section 14(1)(b) only prohibits his use of hate-inspiring representations against homosexuals in the course of expressing those views. As stated by Alito J. in dissent in Snyder v. Phelps, 131 S. Ct. 1207 (2011), at p. 1227: . . . I fail to see why actionable speech should be immunized simply because it is interspersed with speech that is protected. [174] I agree that the words and phrases in a publication cannot properly be assessed out of context. The expression must be considered as a whole, to determine the overall impact or effect of the publication. However, it is also legitimate to proceed with a closer scrutiny of those parts of the expression which draw nearer to the purview of s. 14(1)(b) of the Code. In most cases, the overall context of the expression will affect the presentation, tone, or meaning of particular phrases or excerpts. However, a dissertation on public policy issues will not necessarily cleanse passages within a publication that would otherwise contravene a hate speech prohibition; Kempling; Snyder
2013	Quebec (Attorney General) v. A	1/25/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10536/index.do	Quebec (Attorney General) v. A, 2013 SCC 5, [2013] 1 S.C.R. 61	Abella J.	dissenting in the result	Quebec	Constitutional law Family law	C	referred to	Griggs v. Duke Power Co., 401 U.S. 424 (1971)	SC	US	[332] The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory. As the U.S. Supreme Court warned in Griggs v. Duke Power Co., 401 U.S. 424 (1971): . . . practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices. [p. 430]
2013	R. v. Ryan	1/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12807/index.do	R. v. Ryan, 2013 SCC 3, [2013] 1 S.C.R. 14	LeBel and Cromwell JJ.	majority	Nova Scotia	Criminal law	C	referred to	R. v. Howe, [1987] A.C. 417	SC	UK (HL)	[52] The addition of the common law requirements to replace the now defunct immediacy and presence elements of s. 17 thus act to temper the once purely subjective belief as to the threat. Furthermore, they bring the statutory provision in line with the principle of moral involuntariness. Considering that society's opinion of the accused's actions is an important aspect of the principle, it would be contrary to the very idea of moral involuntariness to simply accept the accused's subjective belief without requiring that certain external factors be present. Citing R. v. Howe, [1987] A.C. 417 (H.L.), at p. 426, Baker agrees that "[t]he threat 'must involve a threat of such a degree of violence that "a person of reasonable firmness" with the characteristics and in the situation of the defendant could not have been expected to resist'" (para. 25-015). He specifically mentions that there must be reasonable grounds for the accused's belief that the threat would be carried out (paras. 25-015 and 25-016).
2013	R. v. Ryan	1/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12807/index.do	R. v. Ryan, 2013 SCC 3, [2013] 1 S.C.R. 14	LeBel and Cromwell JJ.	majority	Nova Scotia	Criminal law	C		nincs megjelölve		Australia	[79] There is division of opinion as to whether the accused's knowledge of potential threats or coercion is evaluated on a subjective or objective standard. According to Yeo, the above-cited conclusion in Ruzic is consistent with Australian law, which only denies the defence of duress to those who were actually aware of the risk of being coerced by the criminal association (S. Yeo, "Defining Duress" (2002), 46 Crim. L.Q. 293, at p. 315). A subjective standard is also applied in the United States (United States v. Burnes, 666 F.Supp.2d 968 (D. Minn. 2009); United States v. Gamboa, 439 F.3d 796 (8th Cir. 2006); United States v. Montes, 602 F.3d 381 (5th Cir. 2010)). Baker, however, seems to reject a purely subjective standard. According to him, the test should be whether the accused "[r]ecklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act" (para. 25-044).
2013	R. v. Ryan	1/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12807/index.do	R. v. Ryan, 2013 SCC 3, [2013] 1 S.C.R. 14	LeBel and Cromwell JJ.	majority	Nova Scotia	Criminal law	C	referred to	United States v. Burnes, 666 F.Supp.2d 968 (2009)	lower-level court	US	[79] There is division of opinion as to whether the accused's knowledge of potential threats or coercion is evaluated on a subjective or objective standard. According to Yeo, the above-cited conclusion in Ruzic is consistent with Australian law, which only denies the defence of duress to those who were actually aware of the risk of being coerced by the criminal association (S. Yeo, "Defining Duress" (2002), 46 Crim. L.Q. 293, at p. 315). A subjective standard is also applied in the United States (United States v. Burnes, 666 F.Supp.2d 968 (D. Minn. 2009); United States v. Gamboa, 439 F.3d 796 (8th Cir. 2006); United States v. Montes, 602 F.3d 381 (5th Cir. 2010)). Baker, however, seems to reject a purely subjective standard. According to him, the test should be whether the accused "[r]ecklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act" (para. 25-044).
2013	R. v. Ryan	1/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12807/index.do	R. v. Ryan, 2013 SCC 3, [2013] 1 S.C.R. 14	LeBel and Cromwell JJ.	majority	Nova Scotia	Criminal law	C		United States v. Gamboa, 439 F.3d 796 (2006)	lower-level court	US	[79] There is division of opinion as to whether the accused's knowledge of potential threats or coercion is evaluated on a subjective or objective standard. According to Yeo, the above-cited conclusion in Ruzic is consistent with Australian law, which only denies the defence of duress to those who were actually aware of the risk of being coerced by the criminal association (S. Yeo, "Defining Duress" (2002), 46 Crim. L.Q. 293, at p. 315). A subjective standard is also applied in the United States (United States v. Burnes, 666 F.Supp.2d 968 (D. Minn. 2009); United States v. Gamboa, 439 F.3d 796 (8th Cir. 2006); United States v. Montes, 602 F.3d 381 (5th Cir. 2010)). Baker, however, seems to reject a purely subjective standard. According to him, the test should be whether the accused "[r]ecklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act" (para. 25-044).
2013	R. v. Ryan	1/18/2013	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12807/index.do	R. v. Ryan, 2013 SCC 3, [2013] 1 S.C.R. 14	LeBel and Cromwell JJ.	majority	Nova Scotia	Criminal law	C	referred to	United States v. Montes, 602 F.3d 381 (2010	lower-level court	US	[79] There is division of opinion as to whether the accused's knowledge of potential threats or coercion is evaluated on a subjective or objective standard. According to Yeo, the above-cited conclusion in Ruzic is consistent with Australian law, which only denies the defence of duress to those who were actually aware of the risk of being coerced by the criminal association (S. Yeo, "Defining Duress" (2002), 46 Crim. L.Q. 293, at p. 315). A subjective standard is also applied in the United States (United States v. Burnes, 666 F.Supp.2d 968 (D. Minn. 2009); United States v. Gamboa, 439 F.3d 796 (8th Cir. 2006); United States v. Montes, 602 F.3d 381 (5th Cir. 2010)). Baker, however, seems to reject a purely subjective standard. According to him, the test should be whether the accused "[r]ecklessly or negligently placed himself in a situation in which it was probable that he would be forced to commit a criminal act" (para. 25-044).
2012	R. v. N.S.	12/20/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12779/index.do	R. v. N.S., 2012 SCC 72, [2012] 3 S.C.R. 726	McLachlin C.J.	majority	Ontario	Criminal law	C	referred to	Police v. Razamjoo, [2005] D.C.R. 408	lower-level court	New Zealand	[26] Changes in a witness's demeanour can be highly instructive; in Police v. Razamjoo, [2005] D.C.R. 408, a New Zealand judge asked to decide whether witnesses could testify wearing burkas commented: . . . there are types of situations . . . in which the demeanour of a witness undergoes a quite dramatic change in the course of his evidence. The look which says "I hoped not to be asked that question", sometimes even a look of downright hatred at counsel by a witness who obviously senses he is getting trapped, can be expressive. So too can abrupt changes in mode of speaking, facial expression or body language. The witness who moves from expressing himself calmly to an excited gabble; the witness who from speaking clearly with good eye contact becomes hesitant and starts looking at his feet; the witness who at a particular point becomes flustered and sweaty, all provide examples of circumstances which, despite cultural and language barriers, convey, at least in part by his facial expression, a message touching credibility. [para. 78]
2012	R. v. Aucoin	11/30/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12743/index.do	R. v. Aucoin, 2012 SCC 66, [2012] 3 S.C.R. 408	LeBel J.	dissenting	Nova Scotia	Constitutional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[73] This appeal raises yet again the issue of the nature and scope of common law police powers, this time in the context of a regulatory offence. For the purpose of determining whether the police have a common law power to engage in particular conduct that interferes with an individual's liberty, this Court has adopted the two-stage test first set out by the English Court of Appeal in R. v. Waterfield, [1963] 3 All E.R. 659, at pp. 660-61. [74] At the first stage, the Court must determine whether the conduct falls within the general scope of any duty imposed on the police by statute or at common law. Common law police duties include the preservation of the peace, the prevention of crime, and the protection of life and property (Dedman v. The Queen, [1985] 2 S.C.R. 2). [75] At the second stage, the Court must consider whether the conduct, albeit within the general scope of a police duty, involved an unjustifiable use of powers associated with that duty. To be justified, "[t]he interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference" (Dedman, at p. 35). [76] The Waterfield test has consistently been applied by this Court to determine the scope of common law police powers. For example, in Cloutier v. Langlois, [1990] 1 S.C.R. 158, the Court recognized a common law power to search incident to a lawful arrest; in Mann, the Court recognized a common law power of investigative detention and a power to search incident to that detention; and in R. v. Kang-Brown, 2008 SCC 18, [2008] 1 S.C.R. 456, a majority of the Court recognized a common law power to conduct sniffer-dog searches.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2012	Moore v. British Columbia (Education)	11/9/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12680/index.do	Moore v. British Columbia (Education), 2012 SCC 61, [2012] 3 S.C.R. 360	Abella J.	unanimous	British Columbia	Education law	C	referred to	Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)	SC	US	[30] To define 'special education' as the service at issue also risks descending into the kind of "separate but equal" approach which was majestically discarded in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954). Comparing Jeffrey only with other special needs students would mean that the District could cut all special needs programs and yet be immune from a claim of discrimination. It is not a question of who else is or is not experiencing similar barriers. This formalism was one of the potential dangers of comparator groups identified in Withler v. Canada (Attorney General), [2011] 1 S.C.R. 396.
2012	Moore v. British Columbia (Education)	11/9/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12680/index.do	Moore v. British Columbia (Education), 2012 SCC 61, [2012] 3 S.C.R. 360	Abella J.	unanimous	British Columbia	Education law	C	referred to	Griggs v. Duke Power Co., 401 U.S. 424 (1971)	SC	US	[58] Having first found that Jeffrey had suffered discrimination at the hands of the District, the Tribunal then considered whether the broader policies of the District and the Province constituted systemic discrimination. I think this flows from the fact that it approached discrimination in a binary way: individual and systemic. It was, however, neither necessary nor conceptually helpful to divide discrimination into these two discrete categories. A practice is discriminatory whether it has an unjustifiably adverse impact on a single individual or systemically on several: Griggs v. Duke Power Co., 401 U.S. 424 (1971). The only difference is quantitative, that is, the number of people disadvantaged by the practice.
2012	R. v. Dineley	11/2/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12656/index.do	R. v. Dineley, 2012 SCC 58, [2012] 3 S.C.R. 272	Cromwell J.	dissenting reasons	Ontario	Criminal law Statutes	C	D	R. v. Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd., [2001] 2 A.C. 349	SC	UK (HL)	[44] Statutory interpretation aims to ascertain legislative intent, which is "a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used": R. v. Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd., [2001] 2 A.C. 349 (H.L.), at p. 396; R. v. Monney, [1999] 1 S.C.R. 652, at para. 26. The courts ascertain legislative intent by reading legislative language in context and in its grammatical and ordinary sense, harmoniously with the scheme and purpose of the legislation at issue: Canada (Information Commissioner) v. Canada (Minister of National Defence), 2011 SCC 25, [2011] 2 S.C.R. 306, at para. 27. When the legislator's words permit it, the courts will take the legislature not to have intended to work injustice or unfairness. The presumptions against the alteration of the legal character or consequences of past acts and against the interference with vested rights, as well as the presumption supporting the immediate application of purely procedural changes, are all manifestations of this posture of respect.
2012	R. v. Dineley	11/2/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12656/index.do	R. v. Dineley, 2012 SCC 58, [2012] 3 S.C.R. 272	Cromwell J.	dissenting reasons	Ontario	Criminal law Statutes	C	D	Yew Bon Tew v. Kenderaan Bas Mara, [1983] 1 A.C. 553	SC	UK (PC)	[52] The question is how to determine whether an enactment is substantive or procedural. A provision is substantive if it alters the legal effect of a transaction, or if it interferes with vested rights. While there have been many attempts to define what sorts of provisions interfere with substantive or vested rights, a good starting point is the statement of Duff J. in Upper Canada College, at p. 417, citing with approval Moon v. Durden, [1848] 2 Ex. 22, 154 E.R. 389, per Rolfe B. (at p. 396) and per Parke B. (at p. 398): ". . . it would not only be widely inconvenient but 'a flagrant violation of natural justice' to deprive people of rights acquired by transactions perfectly valid and regular according to the law of the time" (emphasis added). The same point is captured by the idea that a provision affects substantive or vested rights if "an act legal at the time of doing it should be made unlawful by some new enactment": Midland Railway Co. v. Pye (1861), 10 C.B. (N.S.) 179, 142 E.R. 419, at p. 424, cited with approval by Duff J. in Upper Canada College, at p. 419. Yet another way of putting it is to ask whether, if applied, the provision "would impair existing rights and obligations": Yew Bon Tew v. Kenderaan Bas Mara, [1983] 1 A.C. 553 (P.C.), at p. 563, approved in Martin v. Perrie, [1986] 1 S.C.R. 41, at pp. 48-49. Most recently, the Court accepted that a vested right is one that results from a legal situation that is tangible, concrete and sufficiently constituted at the time of the enactment of the new provision: Dikranian, at para. 37. [55] A key point arising from the jurisprudence is that the courts do not classify a provision as substantive or procedural by looking simply at its form, but also at its function and effect: Howard Smith Paper Mills Ltd. v. The Queen, [1957] S.C.R. 403; R. v. E. (A.W.), [1993] 3 S.C.R. 155; Yew Bon Tew, at p. 563; Angus, at p. 265. This applies to rules of evidence as much as it does to other procedural provisions. If a rule of evidence "either creates or impinges upon substantive or vested rights, its effects are not exclusively procedural and it will not have immediate effect": Application under s. 83.28 of the Criminal Code (Re), at para. 57. It will be helpful to review a few examples from the Court's jurisprudence. I will begin with three cases that deal with the substantive/procedural distinction in more general terms.
2012	R. v. Cole	10/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12615/index.do	R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34	Fish J.	majority	Ontario	Constitutional law	C	referred to	O'Connor v. Ortega, 480 U.S. 709 (1987)	SC	US	[52] The context in which personal information is placed on an employer-owned computer is nonetheless significant. The policies, practices, and customs of the workplace are relevant to the extent that they concern the use of computers by employees. These "operational realities" may diminish the expectation of privacy that reasonable employees might otherwise have in their personal information (O'Connor v. Ortega, 480 U.S. 709 (1987), at p. 717, per O'Connor J.).
2012	R. v. Cole	10/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12615/index.do	R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34	Fish J.	majority	Ontario	Constitutional law	C	referred to	United States v. Matlock, 415 U.S. 164 (1974)	SC	US	[75] In the United States, unlike in Canada, there is high authority for a doctrine of third party consent (United States v. Matlock, 415 U.S. 164 (1974); Illinois v. Rodriguez, 497 U.S. 177 (1990)). [76] Matlock is premised on the notion that third party consent is justifiable because the individual voluntarily assumed the risk that his information would fall into the hands of law enforcement (see United States v. Ziegler, 474 F.3d 1184 (9th Circ. 2007), at p. 1191). However, this Court rejected that sort of "risk analysis" in R. v. Duarte, [1990] 1 S.C.R. 30, at pp. 47-48, and R. v. Wong, [1990] 3 S.C.R. 36, at p. 45.
2012	R. v. Cole	10/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12615/index.do	R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34	Fish J.	majority	Ontario	Constitutional law	C	referred to	Illinois v. Rodriguez, 497 U.S. 177 (1990)	SC	US	[75] In the United States, unlike in Canada, there is high authority for a doctrine of third party consent (United States v. Matlock, 415 U.S. 164 (1974); Illinois v. Rodriguez, 497 U.S. 177 (1990)).
2012	R. v. Cole	10/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12615/index.do	R. v. Cole, 2012 SCC 53, [2012] 3 S.C.R. 34	Fish J.	majority	Ontario	Constitutional law	C	referred to	United States v. Ziegler, 474 F.3d 1184 (2007)	SC	US	[76] Matlock is premised on the notion that third party consent is justifiable because the individual voluntarily assumed the risk that his information would fall into the hands of law enforcement (see United States v. Ziegler, 474 F.3d 1184 (9th Circ. 2007), at p. 1191). However, this Court rejected that sort of "risk analysis" in R. v. Duarte, [1990] 1 S.C.R. 30, at pp. 47-48, and R. v. Wong, [1990] 3 S.C.R. 36, at p. 45.
2012	Opitz v. Wrzesnewskyj	10/25/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12635/index.do	Opitz v. Wrzesnewskyj, 2012 SCC 55, [2012] 3 S.C.R. 76	McLachlin C.J.	dissenting	Ontario	Elections Evidence	C	D	Morgan v. Simpson, [1974] 3 All E.R. 722	lower-level court	UK	[148] The objective of efficiency and certainty in the electoral process suggests that there ought to be strict compliance with the requirements of the Act . The objective of ensuring that those not qualified to vote not do so pulls in the same direction. On the other hand, the objective of enfranchisement suggests that "irregularities" should not be interpreted in a technical or trivial way that improperly disenfranchises voters. The votes of Canadian citizens 18 years of age or over should not be set aside over trifles: Beamish v. Miltenberger, [1997] N.W.T.R. 160 (S.C.), at para. 33; Wright v. Koziak, [1981] 1 W.W.R. 449 (Alta. C.A.); Morgan v. Simpson, [1974] 3 All E.R. 722 (C.A.). Based on the language and purposes of the Act , I conclude that "irregularities" under s. 524(1) (b) should be interpreted to mean failures to comply with the requirements of the Act , unless the deficiency is merely technical or trivial.
2012	Southcott Estates Inc. v. Toronto Catholic District School Board	10/17/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12612/index.do	Southcott Estates Inc. v. Toronto Catholic District School Board, 2012 SCC 51, [2012] 2 S.C.R. 675	McLachlin C.J.	dissenting	Ontario	Contract	C	D	Lagden v. O'Connor, [2003] UKHL 64, [2004] 1 All E.R. 277	SC	UK (HL)	[74] Failure to mitigate may not be unreasonable for a variety of reasons. One such reason may be a "fair, real, and substantial justification" for claiming specific performance: Asamera, at pp. 667-68. Another may be lack of financial resources: McGregor on Damages (18th ed. 2009), at para. 7-088. The rules for mitigation "do not require the injured party to do what he cannot afford to do when he is seeking to reduce the damages payable by the wrongdoer": Lagden v. O'Connor, [2003] UKHL 64, [2004] 1 All E.R. 277, at para. 51 (per Lord Hope); see also General Securities Ltd. v. Don Ingram Ltd., [1940] S.C.R. 670.
2012	Southcott Estates Inc. v. Toronto Catholic District School Board	10/17/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12612/index.do	Southcott Estates Inc. v. Toronto Catholic District School Board, 2012 SCC 51, [2012] 2 S.C.R. 675	McLachlin C.J.	dissenting	Ontario	Contract	C	D	Andros Springs v. World Beauty, [1970] P. 144	lower-level court	UK	[75] Unreasonable failure to mitigate loss reduces damages to the extent that mitigation would have avoided the loss: see Andros Springs v. World Beauty, [1970] P. 144 (C.A.), at p. 154 (per Lord Denning). If a mitigation opportunity would only partially avoid the plaintiff's loss, then only a partial reduction in damages can be justified.
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	C	referred to	Papadimitropoulos v. The Queen (1957), 98 C.L.R. 249	SC	Australia	[38] The Clarence test was accepted throughout the common law world and prevailed until recent times. The strictness with which it was applied is illustrated by a 1957 decision of the Australian High Court, Papadimitropoulos v. The Queen (1957), 98 C.L.R. 249. The accused had induced the complainant to have sexual intercourse by duping her into believing that they were legally married. He was acquitted of the charge of rape. The court summed up the law as follows: To say that in having intercourse with him she supposed that she was concerned in a perfectly moral act is not to say that the intercourse was without her consent. To return to the central point; rape is carnal knowledge of a woman without her consent: carnal knowledge is the physical fact of penetration; it is the consent to that which is in question; such a consent demands a perception as to what is about to take place, as to the identity of the man and the character of what he is doing. But once the consent is comprehending and actual the inducing causes cannot destroy its reality and leave the man guilty of rape. [Emphasis added; p. 261.]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	C	referred to	United States v. Johnson, 27 M.J. 798 (1988)	lower-level court	US	[41] Occasionally, a more generous approach surfaced as to when fraud could vitiate consent to sexual relations. For instance, American caselaw was more inclined to convict the accused of assault or rape on facts similar to those in Clarence: State v. Marcks, 41 S.W. 973 (Miss. 1897), at p. 973, and 43 S.W. 1095 (1898), at pp. 1097-98; State v. Lankford, 102 A. 63 (Del. Ct. Gen. Sess. 1917), at p. 64; United States v. Johnson, 27 M.J. 798 (A.F.C.M.R. 1988), at p. 804; United States v. Dumford, 28 M.J. 836 (A.F.C.M.R. 1989), at p. 839. And in Canada, in R. v. Maurantonio, [1968] 1 O.R. 145 (C.A.), Hartt J. (ad hoc) held that "the words 'nature and quality of the act' . . . should not be so narrowly construed as to include only the physical action but rather must be interpreted to encompass those concomitant circumstances which give meaning to the particular physical activity in question" (p. 153). But these were minority voices.
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	C	referred to	United States v. Dumford, 28 M.J. 836 (1989)	lower-level court	US	[41] Occasionally, a more generous approach surfaced as to when fraud could vitiate consent to sexual relations. For instance, American caselaw was more inclined to convict the accused of assault or rape on facts similar to those in Clarence: State v. Marcks, 41 S.W. 973 (Miss. 1897), at p. 973, and 43 S.W. 1095 (1898), at pp. 1097-98; State v. Lankford, 102 A. 63 (Del. Ct. Gen. Sess. 1917), at p. 64; United States v. Johnson, 27 M.J. 798 (A.F.C.M.R. 1988), at p. 804; United States v. Dumford, 28 M.J. 836 (A.F.C.M.R. 1989), at p. 839. And in Canada, in R. v. Maurantonio, [1968] 1 O.R. 145 (C.A.), Hartt J. (ad hoc) held that "the words 'nature and quality of the act' . . . should not be so narrowly construed as to include only the physical action but rather must be interpreted to encompass those concomitant circumstances which give meaning to the particular physical activity in question" (p. 153). But these were minority voices.
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	C	referred to	R. v. B., [2006] EWCA Crim 2945, [2007] 1 W.L.R. 1567	lower-level court	UK	[51] However, deception that exposes a partner to a risk of transmission — but that does not ultimately result in transmission — is not criminalized in many jurisdictions. In England, exposing one's partner to HIV without advising of HIV status does not vitiate consent. Fraud vitiates consent only if it goes to "the nature or purpose of the relevant act", which excludes deception as to HIV status: R. v. B., [2006] EWCA Crim 2945, [2007] 1 W.L.R. 1567, at para. 12. Theoretically, s. 18 of The Offences against the Person Act, 1861, which criminalizes intentional infliction of harm, could be used in England to punish non-disclosure of HIV-positive status as a form of attempted intentional infliction of harm. However, the high evidentiary burden "of proving that someone actually intended to transmit HIV through sex (as opposed to intending to have unprotected sex)" places a prohibitive onus on the Crown (Grant, at p. 32).
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	C	referred to	R. v. Mwai, [1995] 3 N.Z.L.R. 149	lower-level court	New Zealand	[53] In New Zealand, liability hinges, inter alia, on whether transmission occurs. Absent transmission, the failure to disclose HIV-positive status prior to sexual relations attracts the lesser offence of criminal nuisance (s. 145 of the Crimes Act 1961; R. v. Mwai, [1995] 3 N.Z.L.R. 149 (C.A.)).
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	R		Crimes Act 1958 (Vic.), ss. 22, 23.	lower-level statute	Australia	[50] A survey of comparative law shows that common law jurisdictions criminalize the actual sexual transmission of HIV, when the HIV-positive person is aware of his or her serologic status and when the partner does not give informed consent to the risk of infection. Several jurisdictions treat transmission of HIV following non-disclosure as offences involving bodily harm, rather than as sexual offences. Such transmission has been prosecuted on the following legal grounds: in England, for reckless infliction of bodily injury, under s. 20 of The Offences against the Person Act, 1861, 24 & 25 Vict., c. 100; in the Australian state of Victoria, for "[c]onduct endangering life" (s. 22 of the Crimes Act 1958 (Vic.)); and in New Zealand, for, inter alia, "reckless disregard for the safety of others" that "causes grievous bodily harm" (s. 188(2) of the Crimes Act 1961, No. 43). See I. Grant, "The Prosecution of Non-disclosure of HIV in Canada: Time to Rethink Cuerrier" (2011), 5 M.J.L.H. 7, at pp. 31-41. [52] In Australia, six of the nine jurisdictions do not criminalize exposure absent transmission. Of the three jurisdictions that criminalize exposure to a risk of transmission (Crimes Act 1958 (Vic.), ss. 22 and 23; Criminal Law Consolidation Act 1935 (S.A.), s. 29; Criminal Code Act (N.T.), ss. 174C and 174D), two (Victoria and the Northern Territory) apply lesser criminal offences for cases where no actual transmission resulted from exposure.
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	R		Crimes Act 1961 (N.Z.), 1961, No. 43, ss. 145, 188(2).	statute	New Zealand	[50] A survey of comparative law shows that common law jurisdictions criminalize the actual sexual transmission of HIV, when the HIV-positive person is aware of his or her serologic status and when the partner does not give informed consent to the risk of infection. Several jurisdictions treat transmission of HIV following non-disclosure as offences involving bodily harm, rather than as sexual offences. Such transmission has been prosecuted on the following legal grounds: in England, for reckless infliction of bodily injury, under s. 20 of The Offences against the Person Act, 1861, 24 & 25 Vict., c. 100; in the Australian state of Victoria, for "[c]onduct endangering life" (s. 22 of the Crimes Act 1958 (Vic.)); and in New Zealand, for, inter alia, "reckless disregard for the safety of others" that "causes grievous bodily harm" (s. 188(2) of the Crimes Act 1961, No. 43). See I. Grant, "The Prosecution of Non-disclosure of HIV in Canada: Time to Rethink Cuerrier" (2011), 5 M.J.L.H. 7, at pp. 31-41. [53] In New Zealand, liability hinges, inter alia, on whether transmission occurs. Absent transmission, the failure to disclose HIV-positive status prior to sexual relations attracts the lesser offence of criminal nuisance (s. 145 of the Crimes Act 1961; R. v. Mwai, [1995] 3 N.Z.L.R. 149 (C.A.)).
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	R		Criminal Code Act (N.T.), ss. 174C, 174D.	lower-level statute	Australia	[52] In Australia, six of the nine jurisdictions do not criminalize exposure absent transmission. Of the three jurisdictions that criminalize exposure to a risk of transmission (Crimes Act 1958 (Vic.), ss. 22 and 23; Criminal Law Consolidation Act 1935 (S.A.), s. 29; Criminal Code Act (N.T.), ss. 174C and 174D), two (Victoria and the Northern Territory) apply lesser criminal offences for cases where no actual transmission resulted from exposure.
2012	R. v. Mabior	10/5/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10008/index.do	R. v. Mabior, 2012 SCC 47, [2012] 2 S.C.R. 584	McLachlin C.J.	unanimous	Manitoba	Criminal law	R		Criminal Law Consolidation Act 1935 (S.A.), s. 29.	lower-level statute	Australia	[52] In Australia, six of the nine jurisdictions do not criminalize exposure absent transmission. Of the three jurisdictions that criminalize exposure to a risk of transmission (Crimes Act 1958 (Vic.), ss. 22 and 23; Criminal Law Consolidation Act 1935 (S.A.), s. 29; Criminal Code Act (N.T.), ss. 174C and 174D), two (Victoria and the Northern Territory) apply lesser criminal offences for cases where no actual transmission resulted from exposure.
2012	Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society	9/21/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10006/index.do	Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45, [2012] 2 S.C.R. 524	Cromwell J.	unanimous	British Columbia	Civil procedure	C	referred to	Baker v. Carr, 369 U.S. 186 (1962)	SC	US	[29] The second underlying purpose of limiting standing relates to the need for courts to have the benefit of contending points of view of the persons most directly affected by the issue. Courts function as impartial arbiters within an adversary system. They depend on the parties to present the evidence and relevant arguments fully and skillfully. "[C]oncrete adverseness" sharpens the debate of the issues and the parties' personal stake in the outcome helps ensure that the arguments are presented thoroughly and diligently: see, e.g., Baker v. Carr, 369 U.S. 186 (1962), at p. 204.
2012	R. v. Vu	7/26/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10001/index.do	R. v. Vu, 2012 SCC 40, [2012] 2 S.C.R. 411	Moldaver J.	unanimous	British Columbia	Criminal law	C	referred to	Midgett v. State, 139 A.2d 209 (1958	lower-level court	US	[30] American jurisprudence confirms the common law meaning of the offences of kidnapping and false imprisonment. (See, e.g., Click v. The State, 3 Tex. 282 (1848), at p. 286; Smith v. The State, 63 Wis. 453 (1885); Midgett v. State, 139 A.2d 209 (Md. 1958); People v. Adams, 205 N.W.2d 415 (Mich. 1973), at p. 419; U.S. v. Garcia, 854 F.2d 340 (9th Cir. 1988), at pp. 343-44.) The same interpretation is found in other common law jurisdictions. (See, e.g., Davis v. R., [2006] NSWCCA 392 (AustLII).)
2012	R. v. Vu	7/26/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10001/index.do	R. v. Vu, 2012 SCC 40, [2012] 2 S.C.R. 411	Moldaver J.	unanimous	British Columbia	Criminal law	C	referred to	People v. Adams, 205 N.W.2d 415 (1973)	lower-level court	US	[30] American jurisprudence confirms the common law meaning of the offences of kidnapping and false imprisonment. (See, e.g., Click v. The State, 3 Tex. 282 (1848), at p. 286; Smith v. The State, 63 Wis. 453 (1885); Midgett v. State, 139 A.2d 209 (Md. 1958); People v. Adams, 205 N.W.2d 415 (Mich. 1973), at p. 419; U.S. v. Garcia, 854 F.2d 340 (9th Cir. 1988), at pp. 343-44.) The same interpretation is found in other common law jurisdictions. (See, e.g., Davis v. R., [2006] NSWCCA 392 (AustLII).)
2012	R. v. Vu	7/26/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10001/index.do	R. v. Vu, 2012 SCC 40, [2012] 2 S.C.R. 411	Moldaver J.	unanimous	British Columbia	Criminal law	C	referred to	U.S. v. Garcia, 854 F.2d 340 (1988)	lower-level court	US	[30] American jurisprudence confirms the common law meaning of the offences of kidnapping and false imprisonment. (See, e.g., Click v. The State, 3 Tex. 282 (1848), at p. 286; Smith v. The State, 63 Wis. 453 (1885); Midgett v. State, 139 A.2d 209 (Md. 1958); People v. Adams, 205 N.W.2d 415 (Mich. 1973), at p. 419; U.S. v. Garcia, 854 F.2d 340 (9th Cir. 1988), at pp. 343-44.) The same interpretation is found in other common law jurisdictions. (See, e.g., Davis v. R., [2006] NSWCCA 392 (AustLII).)
2012	R. v. Vu	7/26/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10001/index.do	R. v. Vu, 2012 SCC 40, [2012] 2 S.C.R. 411	Moldaver J.	unanimous	British Columbia	Criminal law	C	referred to	Davis v. R., [2006] NSWCCA 392 (AustLII)	lower-level court	Australia	[30] American jurisprudence confirms the common law meaning of the offences of kidnapping and false imprisonment. (See, e.g., Click v. The State, 3 Tex. 282 (1848), at p. 286; Smith v. The State, 63 Wis. 453 (1885); Midgett v. State, 139 A.2d 209 (Md. 1958); People v. Adams, 205 N.W.2d 415 (Mich. 1973), at p. 419; U.S. v. Garcia, 854 F.2d 340 (9th Cir. 1988), at pp. 343-44.) The same interpretation is found in other common law jurisdictions. (See, e.g., Davis v. R., [2006] NSWCCA 392 (AustLII).)

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2012	R. v. Vu	7/26/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10001/index.do	R. v. Vu, 2012 SCC 40, [2012] 2 S.C.R. 411	Moldaver J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Reid, [1972] 2 All E.R. 1350	lower-level court	UK	[48] The appellant, however, points to one statement from Metcalfe, which he says supports his argument that kidnapping is not a continuing offence. At p. 118, Nemetz C.J.B.C. observed that "[t]he crime [of kidnapping] is complete when the person is picked up and then transported . . . to his place of confinement." The appellant also relies on a similar comment in R. v. Reid, [1972] 2 All E.R. 1350, where the English Court of Appeal said: We can find no reason in authority or in principle why the crime [of kidnapping] should not be complete when the person is seized and carried away, or why kidnapping should be regarded, as was urged by counsel, as a continuing offence involving the concealment of the person seized. [pp. 1351-52] [49] In my view, Metcalfe and Reid do not advance the appellant's position. These cases stand for the proposition that the crime of kidnapping is complete in law at the point of the taking, irrespective of whether the victim is subsequently "secreted" or held in confinement. The converse inference — that a subsequent confinement is not a part of the offence of kidnapping — does not follow. Chief Justice Finch recognized this distinction in the instant case. He stated, correctly in my view, that the comment [in Reid] that kidnapping need not be regarded as a "continuing offence" was made in the context of deciding whether there was a completed offence without the secreting or concealment of the victim. I do not think it can be regarded as authority for saying that a subsequent confinement may not form part of the offence. [Emphasis added; para. 45.] [50] Faced with a similar question, the Supreme Court of New South Wales unanimously held in Davis that the victim's subsequent confinement did form part of the offence of kidnapping: Neither Reid nor [other case law] supports the proposition that a taking ceases to be a taking at the moment that the kidnapper becomes criminally liable for the offence. The offence might at that moment be complete in law, because the taking has been completed for the purposes of proving the offence, but it is not necessarily complete in fact. Once it has been established that a person has been "taken", in the sense that he or she has been compelled to go where he or she did not want to go, the "taking" continues until the compulsion ceases. It does not cease merely because the person has been taken for a certain distance or for a certain time or even because the kidnapper has ceased to physically move the victim and has commenced detaining that person in the one place. In a real sense, the kidnapper is taking the victim, that is causing the victim to accompany him or her, for the entire duration of the time, however long it is, that the victim is, as a result of the kidnapper's conduct, involuntarily detained in a place that is not the place where the victim was first detained. The taking begins with the detention and asportation of the victim, and only ends when the victim is
2012	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R 345	Rothstein J.	dissenting	Federal Court of Appeal	Administrative law Intellectual property	C	D	Hubbard v. Vosper, [1972] 1 All E.R. 1023	lower-level court	UK	[39] This appeal is about fair dealing under s. 29 of the Copyright Act, R.S.C. 1985, c. C-42 ("Act "). Whether something is fair is a question of fact (CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, [2004] 1 S.C.R. 339, at para. 52 ("CCH")). Fair dealing is "a matter of impression" (CCH, at para. 52, citing Hubbard v. Vosper, [1972] 1 All E.R. 1023 (C.A.), at p. 1027). In CCH, this Court found that the factors proposed by Linden J.A., at the Federal Court of Appeal (2002 FCA 187, [2002] 4 F.C. 213, at para. 150), to help assess whether a dealing is fair, provided a "useful analytical framework to govern determinations of fairness in future cases" (para. 53). While useful for purposes of the fair dealing analysis, the factors are not statutory requirements.
2012	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R 345	Abella J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	referred to	Sillitoe v. McGraw-Hill Book Company (U.K.) Ltd., [1983] F.S.R. 545	lower-level court	UK	[16] Access Copyright argued that the purpose of the dealing should be seen, as it was by the Board and the Federal Court of Appeal, from the copier's, or teacher's perspective. It relied particularly on three key Commonwealth cases which found the copier's purpose in reproducing the work to be determinative. In Sillitoe v. McGraw-Hill Book Company (U.K.) Ltd., [1983] F.S.R. 545 (Ch. D.), an importer and seller of "study notes" which reproduced a substantial part of a literary work, argued that the notes were intended as a supplementary aid for students engaging in research and private study. The court held that the seller was unable to invoke the fair dealing exception since it was not itself engaged in private study or research, but was merely facilitating this activity for others (p. 558). [17] The court in Sillitoe relied on University of London Press, Ltd. v. University Tutorial Press, Ltd., [1916] 2 Ch. 601, where a publisher issued a publication reproducing old exams and sold it to students who were preparing for their own exams. The publisher argued that the publication amounted to fair dealing "for the purposes of private study" by university students preparing for exams. The court held that the company could not bring itself within the fair dealing exception, rejecting the argument that the purpose of the publication was "private study": It could not be contended that the mere republication of a copyright work was a "fair dealing" because it was intended for purposes of private study; nor, if an author produced a book of questions for the use of students, could another person with impunity republish the book with the answers to the questions. Neither case would, in my judgment, come within the description of "fair dealing". [p. 612]
2012	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R 345	Abella J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	referred to	Copyright Licensing Ltd. v. University of Auckland, [2002] 3 N.Z.L.R. 76;	SC	New Zealand	[18] In the New Zealand case Copyright Licensing Ltd. v. University of Auckland, [2002] 3 N.Z.L.R. 76 (H.C.), several universities provided copies of copyrighted works to students as part of course packs, and charged the students for these materials through various school fees. The universities argued that the copying constituted fair dealing for the purposes of research or private study. The court held that the "purpose" must be that of the person "doing the copying" (paras. 43 and 52). Since the copiers — the universities — were not themselves dealing with the work for the purposes of research or private study, the copying did not amount to fair dealing.
2012	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R 345	Abella J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	referred to	Hubbard v. Vosper, [1972] 1 All E.R. 1023	lower-level court	UK	[37] This Court in CCH stated that whether something is "fair" is a question of fact and "a matter of impression" (para. 52, citing Hubbard v. Vosper, [1972] 1 All E.R. 1023 (C.A.), at p. 1027). As a result, the Board's decision as to whether the photocopies amount to fair dealing is to be reviewed, as it was by the Federal Court of Appeal, on a reasonableness standard. Because the Board's finding of unfairness was based on what was, in my respectful view, a misapplication of the CCH factors, its outcome was rendered unreasonable.
2012	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9997/index.do	Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R 345	Abella J.	majority	Federal Court of Appeal	Administrative law Intellectual property	R		Copyright, Designs and Patents Act 1988 (U.K.), 1988, c. 48, s. 178 "private study".	statute	UK	[19] With respect, I do not find these authorities particularly helpful. Firstly, courts in the U.K. have tended to take a more restrictive approach to determining the "purpose" of the dealing than does CCH. Based on s. 178 of the Copyright, Designs and Patents Act 1988 (U.K.), 1988, c. 48, for example, which defines "private study" to exclude "a commercial purpose", courts in the U.K. have asserted that both research and private study must be for a non-commercial purpose: see G. D'Agostino, "Healing Fair Dealing? A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use" (2008), 53 McGill L.J. 309, at p. 339. This expressly contradicts the statement in CCH that the allowable purposes must be given a "large and liberal interpretation", and that "research" is not limited to non-commercial or private contexts (para. 51).

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2012	Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9994/index.do	Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 34, [2012] 2 S.C.R. 231	Rothstein J.	dissenting	Federal Court of Appeal	Intellectual property	R		U.S. Copyright Act, 17 U.S.C. §§ 101 and 106(4)	statute	US	(6) American Jurisprudence [102] The ESA relies on the decision of the United States Court of Appeals for the Second Circuit in United States v. American Society of Composers, Authors and Publishers, 627 F.3d 64 (2010) ("U.S. v. ASCAP"), certiorari denied (U.S.S.C., Octobre 3, 2011, No. 10-1337), where the Court of Appeals for the Second Circuit decided that the download of a copy of a work did not come within the scope of the right to perform in public, as defined in the U.S. Copyright Act, 17 U.S.C. §§ 101 and 106(4). [103] This decision is of no avail to the ESA. The United States copyright law does not include an exclusive right in the copyright holder to communicate to the public. Rather, it recognizes a right of public performance (17 U.S.C. § 106(4)), which has been understood to include situations such as radio or television broadcasting where performances are made available to a distant public. This is a fundamental difference with the right to communicate a work by telecommunication in s. 3(1)(f) of the Canadian Act, as explained above. The two cannot be equated. [104] This Court has recognized in the past important differences both in wording and in policy between Canadian and American copyright legislation. It has cautioned that "United States court decisions, even where the factual situations are similar, must be scrutinized very carefully" (see Compo Co. v. Blue Crest Music Inc., at p. 367). The difference in statutory wording between the provisions of the American legislation and of the Canadian Copyright Act is sufficient to render the U.S. decisions of no assistance in the interpretive exercise engaged here. Indeed, following the
2012	Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9994/index.do	Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 34, [2012] 2 S.C.R. 231	Rothstein J.	dissenting	Federal Court of Appeal	Intellectual property	R		United States v. American Society of Composers, Authors and Publishers, 627 F.3d 64 (2010), cert. denied (U.S.S.C., October 3, 2011, No. 10-1337)	lower-level court	US	(6) American Jurisprudence [102] The ESA relies on the decision of the United States Court of Appeals for the Second Circuit in United States v. American Society of Composers, Authors and Publishers, 627 F.3d 64 (2010) ("U.S. v. ASCAP"), certiorari denied (U.S.S.C., Octobre 3, 2011, No. 10-1337), where the Court of Appeals for the Second Circuit decided that the download of a copy of a work did not come within the scope of the right to perform in public, as defined in the U.S. Copyright Act, 17 U.S.C. §§ 101 and 106(4). [103] This decision is of no avail to the ESA. The United States copyright law does not include an exclusive right in the copyright holder to communicate to the public. Rather, it recognizes a right of public performance (17 U.S.C. § 106(4)), which has been understood to include situations such as radio or television broadcasting where performances are made available to a distant public. This is a fundamental difference with the right to communicate a work by telecommunication in s. 3(1)(f) of the Canadian Act, as explained above. The two cannot be equated. [104] This Court has recognized in the past important differences both in wording and in policy between Canadian and American copyright legislation. It has cautioned that "United States court decisions, even where the factual situations are similar, must be scrutinized very carefully" (see Compo Co. v. Blue Crest Music Inc., at p. 367). The difference in statutory wording between the provisions of the American legislation and of the Canadian Copyright Act is sufficient to render the U.S. decisions of no assistance in the interpretive exercise engaged here. Indeed, following the
2012	Re:Sound v. Motion Picture Theatre Associations of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9999/index.do	Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38, [2012] 2 S.C.R. 376	LeBel J.	unanimous	Federal Court of Appeal	Intellectual property	D	not followed	Phonographic Performance Co. of Australia Ltd. v. Federation of Australian Commercial Television Stations, [1998] HCA 39, 195 C.L.R. 158	SC	Australia	[45] The decision the appellant relies on most heavily is that of the High Court of Australia in Phonographic Performance Co. of Australia Ltd. v. Federation of Australian Commercial Television Stations, [1998] HCA 39, 195 C.L.R. 158. In that case, the court was faced with a similar issue. The court held, on the basis of the definitions in the Australian Act, that "[w]hat the Act deems not to be a sound recording is the aggregate of sounds that is recorded in a particular form: a sound-track" (para. 22 (emphasis added)). However, the legislation in question in that case was different and, what is more, the court was deeply divided on the issue, with two judges dissenting.
2012	Re:Sound v. Motion Picture Theatre Associations of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9999/index.do	Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38, [2012] 2 S.C.R. 376	LeBel J.	unanimous	Federal Court of Appeal	Intellectual property	R		Copyright Act, 1956 (U.K.), c. 74, s. 12(9) "sound recording".	statute	UK	[42] The U.K. Copyright Act, 1956, c. 74, contains a definition for "sound recording" that is fundamentally different from the definition in the Canadian Act. The relevant portion of s. 12(9) reads, In this Act "sound recording" means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a sound-track associated with a cinematograph film;
2012	Re:Sound v. Motion Picture Theatre Associations of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9999/index.do	Re:Sound v. Motion Picture Theatre Associations of Canada, 2012 SCC 38, [2012] 2 S.C.R. 376	LeBel J.	unanimous	Federal Court of Appeal	Intellectual property	R		Copyright Act 1968 (Aust.), No. 63, s. 10 "cinematograph film", "sound recording".	statute	Australia	[43] The Australian Copyright Act 1968, No. 63, defines "sound recording" as "the aggregate of the sounds embodied in a record" (s. 10). "Cinematograph film" is defined as the aggregate of the visual images embodied in an article or thing so as to be capable by the use of that article or thing . . . and includes the aggregate of the sounds embodied in a sound-track associated with such visual images; [s. 10]
2012	Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9995/index.do	Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada, 2012 SCC 35, [2012] 2 S.C.R. 283	Rothstein J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	not followed	Cartoon Network v. CSC Holdings, Inc., 536 F.3d 121 (2008)	lower-level court	US	[50] The appellants' remaining argument is based on American jurisprudence. This argument must also be dismissed. They mainly rely on the decision of the Court of Appeals for the Second Circuit in Cartoon Network v. CSC Holdings, Inc., 536 F.3d 121 (2008), in which it was held that the potential audience of each point-to-point transmission must be considered to determine whether a given transmission is "to the public". The Second Circuit Court of Appeals found in that case that the transmissions were not "to the public".
2012	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36, [2012] 2 S.C.R. 326	Abella J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	United States v. American Society of Composers, Authors and Publishers, 599 F.Supp.2d 415 (2009)	lower-level court	US	[23] In urging the Court to narrow the definition of "research" as requiring the creation of something new, SOCAN relied on American jurisprudence which looks to the requirement of a "transformative" purpose before the use is seen as fair. It cited as an example United States v. American Society of Composers, Authors and Publishers, 599 F.Supp.2d 415 (2009), where the New York District Court held that the use of music previews as a marketing tool to sell musical ringtones was not "transformative" in nature and therefore could not be fairly described as "criticism, comment, news reporting . . . or research" under the fair use provisions in Title 17, § 107 of the U.S. Code, at pp. 424-25.
2012	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36, [2012] 2 S.C.R. 326	Abella J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)	SC	US	[24] The American approach is called "fair use". The U.S. Code provisions create an open set of purposes for fair use which include criticism, comment, news reporting, teaching, scholarship, or research: 17 U.S.C. § 107. The analysis proceeds straight to the assessment of fairness, an assessment based on factors enumerated in the Code or established by the case law. Although one of those fairness factors includes whether the use is transformative, it is not at all clear that a transformative use is "absolutely necessary" for a finding of fair use: Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994), at p. 579.

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2012	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36, [2012] 2 S.C.R. 326	Abella J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Hubbard v. Vosper, [1972] 1 All E.R. 1023	lower-level court	UK	[32] Whether something is "fair" is a question of fact and depends on the facts of each case: CCH, at para. 52, citing Hubbard v. Vosper, [1972] 1 All E.R. 1023 (C.A.), at p. 1027. Based on all the factors, the Board concluded, properly in my view, that previews amounted to fair dealing.
2012	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada	7/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9996/index.do	Society of Composers, Authors and Music Publishers of Canada v. Bell Canada, 2012 SCC 36, [2012] 2 S.C.R. 326	Abella J.	unanimous	Federal Court of Appeal	Intellectual property	R		17 U.S.C. § 107 (2006)	statute	US	[23] In urging the Court to narrow the definition of "research" as requiring the creation of something new, SOCAN relied on American jurisprudence which looks to the requirement of a "transformative" purpose before the use is seen as fair. It cited as an example United States v. American Society of Composers, Authors and Publishers, 599 F.Supp.2d 415 (2009), where the New York District Court held that the use of music previews as a marketing tool to sell musical ringtones was not "transformative" in nature and therefore could not be fairly described as "criticism, comment, news reporting . . . or research" under the fair use provisions in Title 17, § 107 of the U.S. Code, at pp. 424-25. [24] The American approach is called "fair use". The U.S. Code provisions create an open set of purposes for fair use which include criticism, comment, news reporting, teaching, scholarship, or research: 17 U.S.C. § 107. The analysis proceeds straight to the assessment of fairness, an assessment based on factors enumerated in the Code or established by the case law. Although one of those fairness factors includes whether the use is transformative, it is not at all clear that a transformative use is "absolutely necessary" for a finding of fair use: Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994), at p. 579. [25] But even if it were a requirement under American law, this Court has previously cautioned against the automatic portability of American copyright concepts into the Canadian arena, given the "fundamental differences" in the respective legislative schemes: Compo Co. v. Blue Crest Music Inc., [1980] 1 S.C.R. 357, at p. 367. This caution has resonance in the fair dealing context. [26] Unlike the American approach of proceeding straight to the fairness assessment, we do not engage in the fairness analysis in Canada until we are satisfied that the dealing is for one of the allowable purposes enumerated in the Copyright Act . Under the test set out in CCH, "fairness" is not considered until the second step of the test for fair dealing: see CCH, at para. 51; see also Giuseppina D'Agostino, "Healing Fair Dealing? A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use" (2008), 53 McGill L.J. 309, and Century 21 Canada Limited
2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	distinguished	Sienkiewicz v. Greif (UK) Ltd., [2011] UKSC 10, [2011] 2 All E.R. 857	SC	UK (SC)	2. The United Kingdom Cases [29] The courts of the United Kingdom have adopted a material contribution to risk approach to the problem of toxic agent cases involving negligence by more than one employer: Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2002] 3 All E.R. 305; and Barker v. Corus UK Ltd., [2006] UKHL 20, [2006] 2 A.C. 572. Recently, the United Kingdom Supreme Court decided that a material contribution to risk approach can apply as well when a single negligent employer has exposed a plaintiff to asbestos: see Sienkiewicz v. Greif (UK) Ltd., [2011] UKSC 10, [2011] 2 All E.R. 857. I will return to this case later in these reasons. [30] The plaintiffs in Fairchild and Barker had developed diseases related to toxic workplace agents, but were unable to prove which of several possible sources of the agents had caused their disease. In both cases, the plaintiffs had been exposed to asbestos at different times when working for different employers. A single fibre of asbestos could have caused the disease. As all the employers had exposed the employee to the same risk, it was impossible to say which employer's negligence in fact led to the disease. In each case, the defendants pointed the finger at the negligence of others. And in each case, the court rejected this defence and found liability on the basis of material contribution. [31] The U.K. toxic agent cases debated whether the defendants in these circumstances were held liable because they materially contributed to the injury, or to the risk of the injury. Lord Hoffmann, in Barker, stated that the purpose of the Fairchild exception was "to provide a cause of action against a defendant who has materially increased the risk that the claimant will suffer damage and may have caused that damage, but cannot be proved to have done so because it is impossible to show, on a balance of probability, that some other exposure to the same risk may not have caused it instead" (para. 17). [32] Viewed generally, the toxic agent cases up to Sienkiewicz hold that resort may be had to the concept of material contribution to the risk of injury where it is plain that any or all of a number of tortfeasors could have caused the plaintiff's injury, but it is impossible to say that any particular one in fact did so. In this situation, fairness and policy support relaxation of the "but for" test. In each case, the plaintiff would not have contracted the disease, "but for" the negligence of the defendants as a group. As I will discuss further below, to allow the defendants to each escape liability by pointing the finger at one another would have been at odds with the fairness, deterrence, and corrective justice objectives of the law of negligence. [42] The only case to apply a material contribution to risk approach to a single tortfeasor is Sienkiewicz. A plaintiff suffering from mesothelioma had only been exposed to asbestos from a single negligent source and on the trial judge's findings, "but for" causation could not be inferred. The United Kingdom Supreme Court took the view that it was bound by precedent to apply a material contribution to risk approach in all mesothelioma cases. Several members of the court in Sienkiewicz noted the difficulty with such a result. Lady Hale observed that she found it hard to believe that a defendant "whose wrongful exposure might or might not have led to the disease would be liable in full for the consequences even if it was more likely than not that some other cause was to blame (let alone that it was not more likely than not that he was to blame)" (para. 167). In my view, nothing compels a similar result in Canada, and thus far, although Sopinka J.'s remarks in Snell (quoted above at para. 20) do not preclude it, courts in
2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Wilsher v. Essex Area Health Authority, [1988] A.C. 1074	SC	UK (HL)	[9] The "but for" causation test must be applied in a robust common sense fashion. There is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury. See Wilsher v. Essex Area Health Authority, [1988] A.C. 1074 (H.L.), at p. 1090, per Lord Bridge; Snell v. Farrell, [1990] 2 S.C.R. 311. [11] Where "but for" causation is established by inference only, it is open to the defendant to argue or call evidence that the accident would have happened without the defendant's negligence, i.e. that the negligence was not a necessary cause of the injury, which was, in any event, inevitable. As Sopinka J. put it in Snell, at p. 330: The legal or ultimate burden remains with the plaintiff, but in the absence of evidence to the contrary adduced by the defendant, an inference of causation may be drawn although positive or scientific proof of causation has not been adduced. If some evidence to the contrary is adduced by the defendant, the trial judge is entitled to take account of Lord Mansfield's famous precept [that "all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted" (Blatch v. Archer (1774), 1 Cowp. 63, 98 E.R. 969, at p. 970)]. This is, I believe, what Lord Bridge had in mind in Wilsher when he referred to a "robust and pragmatic approach to the . . . facts" (p. 569). [Emphasis added.]
2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Flounders v. Millar, [2007] NSWCA 238, 49 M.V.R. 53	lower-level court	Australia	[10] A common sense inference of "but for" causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant's negligence probably caused the loss. See Snell and Athey v. Leonati, [1996] 3 S.C.R. 458. See also the discussion on this issue by the Australian courts: Betts v. Whittingslowe (1945), 71 C.L.R. 637 (H.C.), at p. 649; Bennett v. Minister of Community Welfare (1992), 176 C.L.R. 408 (H.C.), at pp. 415-16; Flounders v. Millar, [2007] NSWCA 238, 49 M.V.R. 53; Roads and Traffic Authority v. Royal, [2008] HCA 19, 245 A.L.R. 653, at paras. 137-44.
2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Roads and Traffic Authority v. Royal, [2008] HCA 19, 245 A.L.R. 653	SC	Australia	[10] A common sense inference of "but for" causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant's negligence probably caused the loss. See Snell and Athey v. Leonati, [1996] 3 S.C.R. 458. See also the discussion on this issue by the Australian courts: Betts v. Whittingslowe (1945), 71 C.L.R. 637 (H.C.), at p. 649; Bennett v. Minister of Community Welfare (1992), 176 C.L.R. 408 (H.C.), at pp. 415-16; Flounders v. Millar, [2007] NSWCA 238, 49 M.V.R. 53; Roads and Traffic Authority v. Royal, [2008] HCA 19, 245 A.L.R. 653, at paras. 137-44.

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2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2002] 3 All E.R. 305	SC	UK (HL)	2. The United Kingdom Cases [29] The courts of the United Kingdom have adopted a material contribution to risk approach to the problem of toxic agent cases involving negligence by more than one employer: Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2002] 3 All E.R. 305; and Barker v. Corus UK Ltd., [2006] UKHL 20, [2006] 2 A.C. 572. Recently, the United Kingdom Supreme Court decided that a material contribution to risk approach can apply as well when a single negligent employer has exposed a plaintiff to asbestos: see Sienkiewicz v. Greif (UK) Ltd., [2011] UKSC 10, [2011] 2 All E.R. 857. I will return to this case later in these reasons. [30] The plaintiffs in Fairchild and Barker had developed diseases related to toxic workplace agents, but were unable to prove which of several possible sources of the agents had caused their disease. In both cases, the plaintiffs had been exposed to asbestos at different times when working for different employers. A single fibre of asbestos could have caused the disease. As all the employers had exposed the employee to the same risk, it was impossible to say which employer's negligence in fact led to the disease. In each case, the defendants pointed the finger at the negligence of others. And in each case, the court rejected this defence and found liability on the basis of material contribution. [31] The U.K. toxic agent cases debated whether the defendants in these circumstances were held liable because they materially contributed to the injury, or to the risk of the injury. Lord Hoffmann, in Barker, stated that the purpose of the Fairchild exception was "to provide a cause of action against a defendant who has materially increased the risk that the claimant will suffer damage and may have caused that damage, but cannot be proved to have done so because it is impossible to show, on a balance of probability, that some other exposure to the same risk may not have caused it instead" (para. 17)
2012	Clements v. Clements	6/29/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9992/index.do	Clements v. Clements, 2012 SCC 32, [2012] 2 S.C.R. 181	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Barker v. Corus UK Ltd., [2006] UKHL 20, [2006] 2 A.C. 572	SC	UK (HL)	[29] The courts of the United Kingdom have adopted a material contribution to risk approach to the problem of toxic agent cases involving negligence by more than one employer: Fairchild v. Glenhaven Funeral Services Ltd., [2002] UKHL 22, [2002] 3 All E.R. 305; and Barker v. Corus UK Ltd., [2006] UKHL 20, [2006] 2 A.C. 572. Recently, the United Kingdom Supreme Court decided that a material contribution to risk approach can apply as well when a single negligent employer has exposed a plaintiff to asbestos: see Sienkiewicz v. Greif (UK) Ltd., [2011] UKSC 10, [2011] 2 All E.R. 857. I will return to this case later in these reasons. [30] The plaintiffs in Fairchild and Barker had developed diseases related to toxic workplace agents, but were unable to prove which of several possible sources of the agents had caused their disease. In both cases, the plaintiffs had been exposed to asbestos at different times when working for different employers. A single fibre of asbestos could have caused the disease. As all the employers had exposed the employee to the same risk, it was impossible to say which employer's negligence in fact led to the disease. In each case, the defendants pointed the finger at the negligence of others. And in each case, the court rejected this defence and found liability on the basis of material contribution. [31] The U.K. toxic agent cases debated whether the defendants in these circumstances were held liable because they materially contributed to the injury, or to the risk of the injury. Lord Hoffmann, in Barker, stated that the purpose of the Fairchild exception was "to provide a cause of action against a defendant who has materially increased the risk that the claimant will suffer damage and may have caused that damage, but cannot be proved to have done so because it is impossible to show, on a balance of probability, that some other exposure to the same risk may not have caused it instead" (para. 17)
2012	Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)	5/17/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8010/index.do	Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail), 2012 SCC 23, [2012] 2 S.C.R. 3	Abella J.	unanimous	Quebec	Constitutional law	C	referred to	Attorney-General for Ontario v. Winner, [1954] A.C. 541	SC	UK (PC)	[51] In this sense, Tessier's acknowledgment that it operates an indivisible undertaking works against its position that its stevedoring employees render the whole company subject to federal regulation. If Tessier itself was an inter-provincial transportation undertaking, it would be justified in assuming that the percentage of its activities devoted to local versus extra-provincial transportation would not be relevant: Attorney-General for Ontario v. Winner, [1954] A.C. 541. But since Tessier can only qualify derivatively as a federal undertaking, federal jurisdiction is only justified if the federal activity is a significant part of its operation.
2012	Club Resorts Ltd. v. Van Breda	4/18/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8004/index.do	Club Resorts Ltd. v. Van Breda, 2012 SCC 17, [2012] 1 S.C.R. 572	LeBel J.	unanimous	Ontario	International law	C	referred to	Spiliada Maritime Corp. v. Cansulex Ltd., [1987] 1 A.C. 460	SC	UK (HL)	[104] This Court reviewed and structured the method of application of the doctrine of forum non conveniens in Amchem. It built on the existing jurisprudence, and in particular on the judgment of the House of Lords in Spiliada Maritime Corp. v. Cansulex Ltd., [1987] 1 A.C. 460. The doctrine tempers the consequences of a strict application of the rules governing the assumption of jurisdiction. As those rules are, at their core, based on establishing the existence of objective factual connections, their use by the courts might give rise to concerns about their potential rigidity and lack of consideration for the actual circumstances of the parties. When it is invoked, the doctrine of forum non conveniens requires a court to go beyond a strict application of the test governing the recognition and assumption of jurisdiction. It is based on a recognition that a common law court retains a residual power to decline to exercise its jurisdiction in appropriate, but limited, circumstances in order to assure fairness to the parties and the efficient resolution of the dispute. The court can stay proceedings brought before it on the basis of the doctrine. [108] Regarding the burden imposed on a party asking for a stay on the basis of forum non conveniens, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established. It was used in Spiliada and Amchem. On the other hand, it has not always been used consistently and does not appear in the CJPTA or any of the statutes based on the CJPTA, which simply require that the party moving for a stay establish that there is a "more appropriate forum" elsewhere. Nor is this expression found in art. 3135 of the Civil Code of Québec, which refers instead to the exceptional nature of the power conferred on a Quebec authority to decline jurisdiction: ". . . it may exceptionally and on an application by a party, decline jurisdiction . . ."
2012	Éditions Écosociété Inc. v. Banro Corp.	4/18/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8005/index.do	Éditions Écosociété Inc. v. Banro Corp., 2012 SCC 18, [2012] 1 S.C.R. 636	LeBel J.	unanimous	Ontario	International law	R		Defamation Act 2005 (Qld.), s. 11(3).	lower-level statute	Australia	[59] The approach adopted by McRuer C.J.H.C. is consonant with the one recently adopted in Australia (see for example the Defamation Act 2005 (Qld.)). Prior to 2005, the choice of law rule for the tort of defamation in Australia was lex loci delicti, as in Canada. In 2004, acting on the recommendations of the Australian Law Reform Commission, the Attorneys General of Australia's States and Territories agreed to enact model provisions which included a defamation-specific choice of law rule. In cases where a matter is published in more than one Australian jurisdictional area, the rule establishes that the applicable law is that of the jurisdictional area most closely connected to the harm occasioned by the publication as a whole. In determining which jurisdictional area has the closest connection with the harm, courts may take the following factors into account: (a) the place at the time of publication where the plaintiff was ordinarily resident or, in the case of a corporation that may assert a cause of action for defamation, the place where the corporation had its principal place of business at that time; and (b) the extent of publication in each relevant Australian jurisdictional area; and (c) the extent of harm sustained by the plaintiff in each relevant Australian jurisdictional area; and (d) any other matter that the court considers relevant. (Defamation Act 2005, s. 11(3))
2012	Fundy Settlement v. Canada	4/12/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8001/index.do	Fundy Settlement v. Canada, 2012 SCC 14, [2012] 1 S.C.R. 520	The Court	unanimous	Federal Court of Appeal	Taxation	C	referred to	Unit Construction Co. v. Bullock, [1960] A.C. 351	SC	UK (HL)	[9] In general, the central management and control of a corporation will be exercised where its board of directors exercises its responsibilities. However, as Sharlow J.A. pointed out (at para. 56), where the facts are that the central management and control is exercised by a shareholder who is resident and making decisions in another country, the corporation will be found to be resident where the shareholder resides. (See Unit Construction Co. v. Bullock, [1960] A.C. 351 (H.L.).)
2012	Doré v. Barreau du Québec	3/22/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7998/index.do	Doré v. Barreau du Québec, 2012 SCC 12, [2012] 1 S.C.R. 395	Abella J.	unanimous	Quebec	Administrative law Professional law	C	referred to	Attorney-General v. Times Newspapers Ltd., [1974] A.C. 273	SC	UK (HL)	[63] But in dealing with the appropriate boundaries of civility, the severity of the conduct must be interpreted in light of the expressive rights guaranteed by the Charter , and, in particular, the public benefit in ensuring the right of lawyers to express themselves about the justice system in general and judges in particular (MacKenzie, at p. 26-1; R. v. Kopyto (1987), 62 O.R. (2d) 449 (C.A.); and Attorney-General v. Times Newspapers Ltd., [1974] A.C. 273 (H.L.)).
2012	Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)	3/16/2012	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7996/index.do	Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission), 2012 SCC 10, [2012] 1 S.C.R. 364	Cromwell J.	unanimous	Nova Scotia	Administrative law	C	referred to	R. v. Tottenham and District Rent Tribunal, Ex parte Northfield (Highgate) Ltd., [1957] 1 Q.B. 103	lower-level court	UK	[30] A majority of this Court answered the question in the negative and restored the order of the judge at first instance prohibiting the board from continuing with the inquiry. On the subject of prematurity, Martland J., writing for the majority, quoted with approval from R. v. Tottenham and District Rent Tribunal, Ex parte Northfield (Highgate) Ltd., [1957] 1 Q.B. 103. There, Lord Goddard C.J. had addressed the question of when it was appropriate for a court to grant prohibition in an ongoing administrative proceeding on the basis of a point the tribunal had not yet considered. He stated that it would be impossible and not at all desirable to lay down any definite rule as to when a person is to go to the tribunal or come here for prohibition where the objection is that the tribunal has no jurisdiction. . . . For myself, I would say that where there is a clear question of law not depending upon particular facts . . . there is no reason why the applicants should not come direct to this court for prohibition rather than wait to see if the decision goes against them. . . . [Emphasis added; p. 108.]

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2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do?q=%22++In+Australia%2C+a+period+of+discussion+between+the+Commonwealth%22	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	C	referred to	Re Wakim; Ex parte McNally, [1999] HCA 27, 198 C.L.R. 51	SC	Australia	[50] In Australia, a period of discussion between the Commonwealth and the states culminated, in the early 1990s, in a cooperative scheme for corporate and securities law characterized by cross-vesting of jurisdiction. This national scheme faced constitutional setbacks following judgments of the High Court (Re Wakim; Ex parte McNally, [1999] HCA 27, 198 C.L.R. 511; R. v. Hughes, [2000] HCA 22, 202 C.L.R. 535). In the wake of the constitutional uncertainty that followed, all states agreed to refer sufficient powers to the Commonwealth to enact corporate and securities law, a process authorized by the Australian Constitution. Since 2001, the national scheme of securities regulation that presently exists in Australia is premised on powers referred by the states to the Commonwealth.
2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do?q=%22++In+Australia%2C+a+period+of+discussion+between+the+Commonwealth%22	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	C	referred to	R. v. Hughes, [2000] HCA 22, 202 C.L.R. 535	SC	Australia	[50] In Australia, a period of discussion between the Commonwealth and the states culminated, in the early 1990s, in a cooperative scheme for corporate and securities law characterized by cross-vesting of jurisdiction. This national scheme faced constitutional setbacks following judgments of the High Court (Re Wakim; Ex parte McNally, [1999] HCA 27, 198 C.L.R. 511; R. v. Hughes, [2000] HCA 22, 202 C.L.R. 535). In the wake of the constitutional uncertainty that followed, all states agreed to refer sufficient powers to the Commonwealth to enact corporate and securities law, a process authorized by the Australian Constitution. Since 2001, the national scheme of securities regulation that presently exists in Australia is premised on powers referred by the states to the Commonwealth.
2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do?q=%22++In+Australia%2C+a+period+of+discussion+between+the+Commonwealth%22	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	R		Basic Law (F.R.G.), art. 72(1), (2).	constitution	Germany	[49] The German Constitution provides that the Länder may enact securities laws, but that the Federation may exercise its legislative power, "if and to the extent that . . . the maintenance of legal or economic unity renders federal regulation necessary in the national interest" (Basic Law, art. 72(1) and (2)). This division of responsibility has led to a three-tiered supervisory system. The federally empowered regulatory agency dominates the first tier of regulation. The Länder have a consultative role in the selection of the agency president, maintain control offices for securities trading and establish stock exchange regulatory agencies which exercise control over the registration or dissolution of a stock exchange located within their territory. Each stock exchange has a Trading Surveillance Office, whose task is to independently monitor the trading and settlement of trades at the exchange.
2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do?q=%22++In+Australia%2C+a+period+of+discussion+between+the+Commonwealth%22	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	R		Securities Act of 1933, s. 18 [now 15 U.S.C. § 77r].	statute	US	[52] In 1996, the U.S. Congress passed the National Securities Markets Improvement Act of 1996, Pub. L. 104-290, § 102, 110 Stat. 3416, 3417, which amended s. 18 of the Securities Act of 1933 (now 15 U.S.C. § 77r), and effectively pre-empted state securities law as it applied to the great majority of United States issuers. However, this pre-emption did not exclude state participation in securities regulation. Securities are typically subject to "local regulation in the state where the issuer is headquartered, the state from which any offering materials are dispatched or where any oral offers are made, the state where the offerees have their domicile, and the state to which offering materials are sent" (J. Macey, An Analysis of the Canadian Federal Government's Initiative to Create a National Securities Regulator (2010), Reference Record, vol. XII, 37, at pp. 87-88). Local regulation manifests itself most prominently in the areas of local enforcement and policy.
2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do?q=%22++In+Australia%2C+a+period+of+discussion+between+the+Commonwealth%22	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	R		National Securities Markets Improvement Act of 1996, Pub. L. 104-290, § 102, 110 Stat. 3416, 3417 [amending Securities Act of 1933, s. 18 (now 15 U.S.C. § 77r)].	statute	US	[52] In 1996, the U.S. Congress passed the National Securities Markets Improvement Act of 1996, Pub. L. 104-290, § 102, 110 Stat. 3416, 3417, which amended s. 18 of the Securities Act of 1933 (now 15 U.S.C. § 77r), and effectively pre-empted state securities law as it applied to the great majority of United States issuers. However, this pre-emption did not exclude state participation in securities regulation. Securities are typically subject to "local regulation in the state where the issuer is headquartered, the state from which any offering materials are dispatched or where any oral offers are made, the state where the offerees have their domicile, and the state to which offering materials are sent" (J. Macey, An Analysis of the Canadian Federal Government's Initiative to Create a National Securities Regulator (2010), Reference Record, vol. XII, 37, at pp. 87-88). Local regulation manifests itself most prominently in the areas of local enforcement and policy.
2011	Reference re Securities Act	12/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7984/index.do	REFERENCE RE SECURITIES ACT, 2011 SCC 66, [2011] 3 S.C.R. 837	The Court	unanimous	Canada	Constitutional law	R		United States Constitution, arts. I, § 8, cl. 3, VI, cl. 2.	constitution	US	[51] The Commerce Clause in the United States Constitution gives the federal government the power to "regulate commerce . . . among the several states" (art. I, § 8, cl. 3). Owing to this language, while states may regulate all aspects of securities trading within their jurisdiction, the federal government may choose to regulate virtually all aspects of interstate securities trading. In the event of conflict, U.S. constitutional law has long recognized that state laws are of no effect and are "pre-empted" by federal law, owing to the Supremacy Clause in art. VI, cl. 2, of the Constitution.
2011	R. v. Sarrazin	11/4/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7970/index.do?q=%22I+acknowledge+that+there+is+authority+from+the+highest+courts+of+Australia+and+the+United+Kingdom%22	R. v. Sarrazin, 2011 SCC 54, [2011] 3 S.C.R. 505	Cromwell J.	dissenting	Ontario	Criminal law	C	D	Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414	SC	Australia	[50] I acknowledge that there is authority from the highest courts of Australia and the United Kingdom to the effect that failure to instruct on manslaughter will almost always be fatal to a conviction for murder, even when the instructions on the offence of murder were impeccable: see, e.g., Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414; Bullard v. The Queen, [1957] A.C. 635 (P.C.); R. v. Coutts, [2006] UKHL 39, [2006] 4 All E.R. 353. This Court has on at least one occasion referred with approval to this approach: Jackson, at p. 593. However, my respectful view is that the reasoning underlying this approach is inconsistent and faulty and should not be followed, especially when the issue before the jury does not involve the difficult distinction between the mental states for murder and manslaughter. [51] To begin, while the results of this line of authority are consistent, the reasoning underlying it is not. One explanation as to why the jury's finding should not be given weight is that "a jury room might not be a place of undeviating intellectual and logical rigour": Gilbert, per Callinan J., at para. 96. Thus, absent knowledge about the possibility of conviction for a lesser offence, the jury may have convicted "out of a reluctance to see the defendant get clean away with what, on any view, was disgraceful conduct": R. v. Maxwell (1990), 91 Cr. App. R. 61 (H.L.), at p. 68. As Moldaver J.A. put it in his dissenting reasons in the present case, "the palatability of a potential verdict may have played a role in the jury's decision": 2010 ONCA 577, 268 O.A.C. 200, at para. 162.
2011	R. v. Sarrazin	11/4/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7970/index.do?q=%22I+acknowledge+that+there+is+authority+from+the+highest+courts+of+Australia+and+the+United+Kingdom%22	R. v. Sarrazin, 2011 SCC 54, [2011] 3 S.C.R. 505	Cromwell J.	dissenting	Ontario	Criminal law	C	D	Bullard v. The Queen, [1957] A.C. 635	SC	UK (PC)	[50] I acknowledge that there is authority from the highest courts of Australia and the United Kingdom to the effect that failure to instruct on manslaughter will almost always be fatal to a conviction for murder, even when the instructions on the offence of murder were impeccable: see, e.g., Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414; Bullard v. The Queen, [1957] A.C. 635 (P.C.); R. v. Coutts, [2006] UKHL 39, [2006] 4 All E.R. 353. This Court has on at least one occasion referred with approval to this approach: Jackson, at p. 593. However, my respectful view is that the reasoning underlying this approach is inconsistent and faulty and should not be followed, especially when the issue before the jury does not involve the difficult distinction between the mental states for murder and manslaughter.

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2011	R. v. Sarrazin	11/4/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7970/index.do?q=%22I+acknowledge+that+there+is+authority+from+the+highest+courts+of+Australia+and+the+United+Kingdom%22	R. v. Sarrazin, 2011 SCC 54, [2011] 3 S.C.R. 505	Cromwell J.	dissenting	Ontario	Criminal law	C	D	R. v. Coutts, [2006] UKHL 39, [2006] 4 All E.R. 353	SC	UK (HL)	[50] I acknowledge that there is authority from the highest courts of Australia and the United Kingdom to the effect that failure to instruct on manslaughter will almost always be fatal to a conviction for murder, even when the instructions on the offence of murder were impeccable: see, e.g., Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414; Bullard v. The Queen, [1957] A.C. 635 (P.C.); R. v. Coutts, [2006] UKHL 39, [2006] 4 All E.R. 353. This Court has on at least one occasion referred with approval to this approach: Jackson, at p. 593. However, my respectful view is that the reasoning underlying this approach is inconsistent and faulty and should not be followed, especially when the issue before the jury does not involve the difficult distinction between the mental states for murder and manslaughter. [55] A second approach taken in these authorities is simply to assert that the trial judge's failure to give legal instructions on an available lesser, alternative verdict that should have been left with the jury is an injustice: see, e.g., Coutts, per Lord Hutton, at paras. 56 and 61. This approach is not based on an assumption that the jury may have chosen perhaps subconsciously to ignore the instructions they were given in order to avoid an unpalatable verdict. Respectfully, however, this second line of reasoning is simply the assertion of a conclusion that the omitted instruction gave rise to an injustice. It does not explain why the jury's unambiguous finding, which, as a matter of law and logic, is untainted by error, cannot be relied on to show, in the particular circumstances, that the omission or misdirection was harmless.
2011	R. v. Sarrazin	11/4/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7970/index.do	R. v. Sarrazin, 2011 SCC 54, [2011] 3 S.C.R. 505	Cromwell J.	dissenting	Ontario	Criminal law	C	D	R. v. Maxwell (1990), 91 Cr. App. R. 61.	SC	UK (HL)	[51] To begin, while the results of this line of authority are consistent, the reasoning underlying it is not. One explanation as to why the jury's finding should not be given weight is that "a jury room might not be a place of undeviating intellectual and logical rigour": Gilbert, per Callinan J., at para. 96. Thus, absent knowledge about the possibility of conviction for a lesser offence, the jury may have convicted "out of a reluctance to see the defendant get clean away with what, on any view, was disgraceful conduct": R. v. Maxwell (1990), 91 Cr. App. R. 61 (H.L.), at p. 68. As Moldaver J.A. put it in his dissenting reasons in the present case, "the palatability of a potential verdict may have played a role in the jury's decision": 2010 ONCA 577, 268 O.A.C. 200, at para. 162.
2011	R. v. Sarrazin	11/4/2011	https://scc-csc.le	R. v. Sarrazin, 2011 SCC 54, [2011] 3 S.C.R. 505	Binnie J.	majority	Ontario	Criminal law	C	referred to	Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414	SC	Australia	[36] Such a verdict would be quite wrong if, in the jury's view, the respondents acted with murderous intent, and the troubling issue was whether Noël's death was caused by their conduct. As Callinan J. observed in Gilbert v. The Queen, [2000] HCA 15, 201 C.L.R. 414, "It is contrary to human experience that in situations in which a choice of decisions may be made, what is chosen will be unaffected by the variety of the choices offered, particularly when, as here, a particular choice was not the only or inevitable choice" (para. 101). In the present case, although the jury had the option of a verdict of manslaughter or no verdict at all, they were not provided with the choice of attempted murder which would have corresponded with an important defence argument.
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342	lower-level court	UK	[84] The courts have begun incrementally to impose limitations on the nature and types of actions that can attract liability for defamation at common law. To understand this evolution, it will be helpful to look broadly at cases from both the United States and other common law jurisdictions, such as England and Australia. I note that in considering the U.S. cases, we must be mindful of the impact of the First Amendment on the protection of expression in the United States, and of certain significant statutory limits on liability (see comments to this effect: Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342 (Q.B.), at pp. 343-44; Dow Jones & Co. v. Gutnick, [2002] HCA 56, 210 C.L.R. 575, at para. 52). [88] This requirement of a deliberate act has already been applied in the context of the Internet. In Godfrey, the defendant Internet service provider ("ISP") had received a "posting", which it stored on its news server. The plaintiff had notified the ISP that the posting was defamatory and requested that it be removed, but the defendant had allowed it to remain on its servers until it automatically expired 10 days later. The court held that the ISP's failure to act, once it had become aware of the defamatory information over which it had control, constituted an act of publication once an Internet subscriber had accessed the posting. In the circumstances of the case, the ISP's failure to act amounted to a deliberate act of approval, adoption, promotion or ratification of the defamatory information.
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Dow Jones & Co. v. Gutnick, [2002] HCA 56, 210 C.L.R. 575	SC	Australia	[84] The courts have begun incrementally to impose limitations on the nature and types of actions that can attract liability for defamation at common law. To understand this evolution, it will be helpful to look broadly at cases from both the United States and other common law jurisdictions, such as England and Australia. I note that in considering the U.S. cases, we must be mindful of the impact of the First Amendment on the protection of expression in the United States, and of certain significant statutory limits on liability (see comments to this effect: Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342 (Q.B.), at pp. 343-44; Dow Jones & Co. v. Gutnick, [2002] HCA 56, 210 C.L.R. 575, at para. 52).
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2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Urbanchich v. Drummoyne Municipal Council (1991), Aust. Torts Rep. ¶81-127	lower-level court	Australia	[86] A deliberate act may occur in a variety of circumstances. In Byrne v. Deane, [1937] 1 K.B. 818 (C.A.), the defendants, proprietors of a golf club, were found to have published the words contained on a piece of paper that was posted on premises over which they held complete control. The defendants admitted to having seen the paper, but denied having written it or put it there. Although the words were ultimately found not to be defamatory, Greene L.J., concurring on the issue of publication, concluded that there are circumstances in which, by refraining from removing or obliterating defamatory information, a person might in fact be publishing it (at p. 838): The test it appears to me is this: having regard to all the facts of the case is the proper inference that by not removing the defamatory matter the defendant really made himself responsible for its continued presence in the place where it had been put? (See also Hellar v. Bianco, 244 P.2d 757 (Cal. Dist. Ct. App. 1952); Tacket v. General Motors Corp., 836 F.2d 1042 (7th Cir. 1987); Urbanchich v. Drummoyne Municipal Council (1991), Aust. Torts Rep. ¶81-127 (N.S.W.S.C.).)
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Frawley v. State of New South Wales, [2007] NSWSC 1379 (AustLII)	lower-level court	Australia	[87] Byrne and its progeny are consistent with the requirement that any finding of publication be grounded in a deliberate act. If a defendant was made aware (or had reason to be aware) of defamatory information over which he or she had sufficient control but decided to do nothing about it, this nonfeasance might amount to a deliberate act of approval, adoption, promotion, or ratification of the defamatory information (see, e.g., Frawley v. State of New South Wales, [2007] NSWSC 1379 (AustLII)). The inference is not automatic, but will depend on an assessment of the totality of the circumstances. In Underhill v. Corser, [2010] EWHC 1195 (BAILII) (Q.B.), the defendant, who was treasurer and a board member of a charity, had been aware that an editorial levelling accusations against the plaintiff would be published, but took no action and gave no further thought to the matter. Although Tugendhat J. found that the defendant could have prevented the publication of the editorial, which the plaintiff alleged to be defamatory, he distinguished Byrne, concluding that the defendant's role as a board member was different from that of the proprietors in Byrne (para. 110).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Underhill v. Corser, [2010] EWHC 1195 (BAILII)	lower-level court	UK	[87] Byrne and its progeny are consistent with the requirement that any finding of publication be grounded in a deliberate act. If a defendant was made aware (or had reason to be aware) of defamatory information over which he or she had sufficient control but decided to do nothing about it, this nonfeasance might amount to a deliberate act of approval, adoption, promotion, or ratification of the defamatory information (see, e.g., Frawley v. State of New South Wales, [2007] NSWSC 1379 (AustLII)). The inference is not automatic, but will depend on an assessment of the totality of the circumstances. In Underhill v. Corser, [2010] EWHC 1195 (BAILII) (Q.B.), the defendant, who was treasurer and a board member of a charity, had been aware that an editorial levelling accusations against the plaintiff would be published, but took no action and gave no further thought to the matter. Although Tugendhat J. found that the defendant could have prevented the publication of the editorial, which the plaintiff alleged to be defamatory, he distinguished Byrne, concluding that the defendant's role as a board member was different from that of the proprietors in Byrne (para. 110).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Islam Expo Ltd. v. The Spectator (1828) Ltd., [2010] EWHC 2011 (BAILII)	lower-level court	UK	[104] In the English case of Islam Expo Ltd. v. The Spectator (1828) Ltd., [2010] EWHC 2011 (BAILII) (Q.B.), the issue was whether the words complained of were capable of referring to the claimant. The allegedly defamatory information in that case was an on-line text containing four hyperlinks. In concluding that the words complained of were capable of referring to the claimant, the court regarded the hyperlinked information as if it was incorporated into the message containing the hyperlinks. At a conceptual level, I see no difference between looking at the hyperlinked information to identify the defamed person and looking at it to find the defamatory words. I agree with Tugendhat J.'s statement in Islam Expo that the principles are the same.
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Jameel v. Wall Street Journal Europe SPRL, [2006] UKHL 44, [2007] 1 A.C. 359	SC	UK (HL)	[115] Even when the innocent dissemination defence is not available to hyperlinkers, other defences may apply, such as those of fair comment (WIC) and of responsible communication on matters of public interest (Grant). In Grant, the Court, quoting Jameel v. Wall Street Journal Europe SPRL, [2006] UKHL 44, [2007] 1 A.C. 359, at para. 54, made the latter defence "available to anyone who publishes material of public interest in any medium" (para. 96). Moreover, it defined the concept of "public interest" expansively (at para. 106): Public interest is not confined to publications on government and political matters, as it is in Australia and New Zealand. Nor is it necessary that the plaintiff be a "public figure", as in the American jurisprudence since Sullivan [New York Times Co. v. Sullivan, 376 U.S. 254 (1964)]. Both qualifications cast the public interest too narrowly. The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence.
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	R		Communications Decency Act of 1996, 47 U.S.C. §230 (1996).	statute	US	[103] By exempting ISPs from liability for their passive conduct, U.S. legislators have, in the Communications Decency Act of 1996, 47 U.S.C. §230 (1996), relied on the same criterion of deliberateness that exists in the common law of defamation. Nowhere does the American legislation suggest that those who deliberately create hyperlinks to defamatory material should be protected from liability. The cases cited by my colleague (at para. 28 of her reasons) all deal with the immunity enjoyed by ISPs and Web site operators with respect to defamatory content posted on line (Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997); Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006); Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157 (9th Cir. 2008)).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Bunt v. Tilley, [2006] EWHC 407, [2006] 3 All E.R. 336	lower-level court	UK	[89] In Bunt v. Tilley, [2006] EWHC 407, [2006] 3 All E.R. 336 (Q.B.), the defendant ISPs were found not to be publishers because, even though they provided services, their role in the publication process was a passive one. This aspect of the decision in Bunt is a welcome development and should be incorporated into the Canadian common law. Those whose services are used to facilitate the communication of defamatory information may be shielded from responsibility for publication if they played a "passive instrumental role" in that process (para. 23).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Metropolitan International Schools Ltd. v. Designtechnica Corpn., [2009] EWHC 1765, [2011] 1 W.L.R. 1743	lower-level court	UK	[90] A case that illustrates the nature of activities engaged in by a person who plays the role of a mere conduit is Metropolitan International Schools Ltd. v. Designtechnica Corpn., [2009] EWHC 1765, [2011] 1 W.L.R. 1743 (Q.B.). In that case, the question was whether Google Inc. could be found to be the publisher of the search result "snippets" that were generated automatically by its search engine in response to search terms entered by users. Eady J. found that there was no publication, because Google Inc. played a passive instrumental role in facilitating the appearance of the snippets on the users' screens (paras. 50-51).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Deschamps J.	concurring in the results	British Columbia	Torts	C	referred to	Klein v. Biben, 296 N.Y. 638 (1946)	lower-level court	US	[72] Saunders J.A. (Bauman J.A. concurring) wrote the reasons of the majority on the issue of whether publication could be inferred from the circumstances of the case. In her view, it could not. Accepting the bilateral nature of publication, she found that the hyperlinks did not satisfy the requirements of the first component of the definition of that term. She relied on the same jurisprudence as Kelleher J. in support of the proposition that merely referring to defamatory information without repeating it does not constitute publication (para. 81, citing Carter; MacFadden v. Anthony, 117 N.Y.S.2d 520 (Sup. Ct. 1952); Klein v. Biben, 296 N.Y. 638 (1946)). However, the circumstances of a case can demonstrate that a particular hyperlink invited or encouraged a reader to view the hyperlinked site, or that the information on that site was endorsed (para. 84). The majority held that there were no such circumstances in the instant case and that the way Mr. Newton presented the hyperlinks to potential users was "most comparable to a footnote for a reader, or a card index in a library" (para. 89). On the second component of publication, Saunders J.A. expressed the opinion that the bare number of 1,788 hits on Mr. Newton's article was insufficient to support an inference that at least one person other than Mr. Crookes had clicked on the hyperlinks and read the allegedly defamatory information (para. 92).
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2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Abella J.	majority	British Columbia	Torts	C	referred to	Zeran v. America Online, Inc., 129 F.3d 327 (1997)	lower-level court	US	[28] These features — that a person who refers to other content generally does not participate in its creation or development — serve to insulate from liability those involved in Internet communications in the United States: see Communications Decency Act of 1996, 47 U.S.C. §230 (1996); see also Jack M. Balkin, "The Future of Free Expression in a Digital Age" (2009), 36 Pepp. L. Rev. 427, at pp. 433-34; Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997); Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006); Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157 (9th Cir. 2008).
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2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Abella J.	majority	British Columbia	Torts	C	referred to	Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157 (2008)	lower-level court	US	[28] These features — that a person who refers to other content generally does not participate in its creation or development — serve to insulate from liability those involved in Internet communications in the United States: see Communications Decency Act of 1996, 47 U.S.C. §230 (1996); see also Jack M. Balkin, "The Future of Free Expression in a Digital Age" (2009), 36 Pepp. L. Rev. 427, at pp. 433-34; Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997); Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006); Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157 (9th Cir. 2008).
2011	Crookes v. Newton	10/19/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do	Crookes v. Newton, 2011 SCC 47, [2011] 3 S.C.R. 269	Abella J.	majority	British Columbia	Torts	C	referred to	Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)	SC	US	[33] Interpreting the publication rule to exclude mere references not only accords with a more sophisticated appreciation of Charter values, but also with the dramatic transformation in the technology of communications. See June Ross, "The Common Law of Defamation Fails to Enter the Age of the Charter" (1996), 35 Alta. L. Rev. 117; see also Jeremy Streeter, "The 'Deception Exception': A New Approach to Section 2(b) Values and Its Impact on Defamation Law" (2003), 61 U.T. Fac. L. Rev. 79; Denis W. Boivin, "Accommodating Freedom of Expression and Reputation in the Common Law of Defamation" (1996-1997), 22 Queen's L.J. 229; Lewis N. Klar, Tort Law (4th ed. 2008), at pp. 746-47; Robert Danay, "The Medium is not the Message: Reconciling Reputation and Free Expression in Cases of Internet Defamation" (2010), 56 McGill L.J. 1; the Hon. Frank Iacobucci, "Recent Developments Concerning Freedom of Speech and Privacy in the Context of Global Communications Technology" (1999), 48 U.N.B.L.J. 189; Reno v. American Civil Liberties Union, 521 U.S. 844 (1997), at p. 870.

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2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	[38] In my view, the facts pleaded do not bring either claim within a settled category of negligent misrepresentation. The law of negligent misrepresentation has thus far not recognized liability in the kinds of relationships at issue in these cases. The error of the tobacco companies lies in assuming that the relationships disclosed by the pleadings between Canada and the tobacco companies on the one hand and between Canada and consumers on the other are like other relationships that have been held to give rise to liability for negligent misrepresentation. In fact, they differ in important ways. It is sufficient at this point to note that the tobacco companies have not been able to point to any case where a government has been held liable in negligent misrepresentation for statements made to an industry. To determine whether such a cause of action has a reasonable prospect of success, we must therefore consider whether the general requirements for liability in tort are met, on the test set out by the House of Lords in Anns v. Merton London Borough Council, [1978] A.C. 728, and somewhat reformulated but consistently applied by this Court, most notably in Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537. [59] In my view, this argument misconceives the reliance necessary for negligent misrepresentation under the test in Hercules Managements. When the jurisprudence refers to "reasonable reliance" in the context of negligent misrepresentation, it asks whether it was reasonable for the listener to rely on the speaker's statement as accurate, not whether it was reasonable to believe that the speaker is guaranteeing the accuracy of its statement. It is not plain and obvious that it was unreasonable for the tobacco companies to rely on Canada's statements about the advantages of light or mild cigarettes. In my view, Canada's argument that it was acting as a regulator does not relate to reasonable reliance, although it exposes policy concerns that should be considered at stage two of the Anns/Cooper test: Hercules Managements, at para. 41. [75] To complicate matters, the concepts of discretion and policy overlap and are sometimes used interchangeably. Thus Lord Wilberforce in Anns, [1978] A.C. 728, at p. 754, [illegible]
2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	referred to	Hedley Byrne & Co. v. Heller & Partners, Ltd., [1963] 2 All E.R. 575	SC	UK (HL)	[21] [illegible] valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before Donoghue v. Stevenson, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before Hedley Byrne & Co. v. Heller & Partners, Ltd., [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like the one at issue in Donoghue v. Stevenson. Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [35] The law first recognized a tort action for negligent misrepresentation in Hedley Byrne. Prior to this, parties were confined to contractual remedies for misrepresentations. Hedley Byrne represented a break with this tradition, allowing a claim for economic loss in tort for misrepresentations made in the absence of a contract between the parties. In the decades that have followed, liability for negligent misrepresentation has been imposed in a variety of situations where the relationship between the parties disclosed sufficient proximity and foreseeability, and policy considerations did not negate liability.
2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	referred to	X v. Bedfordshire County Council, [1995] 3 All E.R. 353	SC	UK (HL)	[79] The elusiveness of a workable test to define policy decisions protected from judicial review is captured by the history of the issue in various courts. I begin with the House of Lords. The House initially adopted the view that all discretionary decisions of government are immune, unless they are irrational: Dorset Yacht. It then moved on to a two-stage test that asked first whether the decision was discretionary and, if so, rational; and asked second whether it was a core policy decision, in which case it was entirely exempt from judicial scrutiny: X v. Bedfordshire County Council, [1995] 3 All E.R. 353. Within a year of adopting this two-stage test, the House abandoned it with a ringing declamation of the policy/operational distinction as unworkable in difficult cases, a point said to be evidenced by the Canadian jurisprudence: Stovin v. Wise, [1996] A.C. 923 (H.L.), per Lord Hoffmann. In its most recent foray into the subject, the House of Lords affirmed that both the policy/operational distinction and the discretionary decision approach are valuable tools for discerning which government decisions attract tort liability, but held that the final test is a "justiciability" test: Barrett v. Enfield London Borough Council, [2001] 2 A.C. 550. The ultimate question on this test is whether the court is institutionally capable of deciding on the question, or "whether the court should accept that it has no role to play" (p. 571). Thus at the end of the long judicial voyage the traveller arrives at a test that essentially restates the question. When should the court hold that a government decision is protected from negligence liability? When the court concludes that the matter is one for the government and not the courts.
2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	referred to	Stovin v. Wise, [1996] A.C. 923	SC	UK (HL)	[79] The elusiveness of a workable test to define policy decisions protected from judicial review is captured by the history of the issue in various courts. I begin with the House of Lords. The House initially adopted the view that all discretionary decisions of government are immune, unless they are irrational: Dorset Yacht. It then moved on to a two-stage test that asked first whether the decision was discretionary and, if so, rational; and asked second whether it was a core policy decision, in which case it was entirely exempt from judicial scrutiny: X v. Bedfordshire County Council, [1995] 3 All E.R. 353. Within a year of adopting this two-stage test, the House abandoned it with a ringing declamation of the policy/operational distinction as unworkable in difficult cases, a point said to be evidenced by the Canadian jurisprudence: Stovin v. Wise, [1996] A.C. 923 (H.L.), per Lord Hoffmann. In its most recent foray into the subject, the House of Lords affirmed that both the policy/operational distinction and the discretionary decision approach are valuable tools for discerning which government decisions attract tort liability, but held that the final test is a "justiciability" test: Barrett v. Enfield London Borough Council, [2001] 2 A.C. 550. The ultimate question on this test is whether the court is institutionally capable of deciding on the question, or "whether the court should accept that it has no role to play" (p. 571). Thus at the end of the long judicial voyage the traveller arrives at a test that essentially restates the question. When should the court hold that a government decision is protected from negligence liability? When the court concludes that the matter is one for the government and not the courts.
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2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	referred to	Berkovitz v. United States, 486 U.S. 531 (1988)	SC	US	[82] Without detailing the complex history of the American jurisprudence on the issue, it suffices to say that the cases have narrowed the concept of discretion in the FTCA by reference to the concept of policy. Some cases develop this analysis by distinguishing between policy and operational decisions: e.g., Dalehite v. United States, 346 U.S. 15 (1953). The Supreme Court of the United States has since distanced itself from the approach of defining a true policy decision negatively as "not operational", in favour of an approach that asks whether the impugned state conduct was based on public policy considerations. In United States v. Gaubert, 499 U.S. 315 (1991), White J. faulted the Court of Appeals for relying on "a nonexistent dichotomy between discretionary functions and operational activities" (p. 326). He held that the "discretionary function exception" of the FTCA "protects only governmental actions and decisions based on considerations of public policy" (at p. 323, citing Berkovitz v. United States, 486 U.S. 531 (1988), at p. 537 (emphasis added)), such as those involving social, economic and political considerations: see also United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines), 467 U.S. 797 (1984).
2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	C	referred to	United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines), 467 U.S. 797 (1984	SC	US	[82] Without detailing the complex history of the American jurisprudence on the issue, it suffices to say that the cases have narrowed the concept of discretion in the FTCA by reference to the concept of policy. Some cases develop this analysis by distinguishing between policy and operational decisions: e.g., Dalehite v. United States, 346 U.S. 15 (1953). The Supreme Court of the United States has since distanced itself from the approach of defining a true policy decision negatively as "not operational", in favour of an approach that asks whether the impugned state conduct was based on public policy considerations. In United States v. Gaubert, 499 U.S. 315 (1991), White J. faulted the Court of Appeals for relying on "a nonexistent dichotomy between discretionary functions and operational activities" (p. 326). He held that the "discretionary function exception" of the FTCA "protects only governmental actions and decisions based on considerations of public policy" (at p. 323, citing Berkovitz v. United States, 486 U.S. 531 (1988), at p. 537 (emphasis added)), such as those involving social, economic and political considerations: see also United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines), 467 U.S. 797 (1984).
2011	R. v. Imperial Tobacco Canada Ltd.	7/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do	R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42, [2011] 3 S.C.R. 45	McLachlin C.J.	unanimous	British Columbia	Civil procedure Torts	R		Federal Tort Claims Act, 28 U.S.C. §§2680(a), (h).	statute	US	[81] In the United States, the liability of the federal government is governed by the Federal Tort Claims Act of 1946, 28 U.S.C. ("FTCA"), which waived sovereign immunity for torts, but created an exemption for discretionary decisions. Section 2680(a) excludes liability in tort for [a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused. Significantly, s. 2680(h) of the FTCA exempts the federal government from any claim of misrepresentation, either intentional or negligent: Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), at p. 430; United States v. Neustadt, 366 U.S. 696 (1961).
2011	R. v. J.A.	5/27/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7942/index.do	R. v. J.A., 2011 SCC 28, [2011] 2 S.C.R. 440	Fish J.	dissenting	Ontario	Criminal law	R		Sexual Offences Act 2003 (U.K.), 2003, c. 42, s. 75.	statute	UK	[142] This is the approach taken in the United Kingdom. Section 75 of the Sexual Offences Act 2003 (U.K.), 2003, c. 42, creates a rebuttable presumption of non-consent where "the complainant was asleep or otherwise unconscious" (s. 75(2)(d)). The same presumption is made applicable to other specified situations. [143] One commentator has argued that "[t]he imposition of an evidential presumption in these circumstances is not unreasonable", because "consent is unlikely to be present and it seems fair rebuttably to presume that it was not". Conversely, he argues that "a conclusive presumption about the absence of consent" where the complainant is asleep or unconscious "would have been Draconian" (see R. Card, Sexual Offences: The New Law (2004), at pp. 43 and 44; see also the United Kingdom House of Commons, Home Affairs Committee, Sexual Offences Bill: Fifth Report of Session 2002-03, HC 639 (2003), at para. 31).
2011	Masterpiece Inc. v. Alavida Lifestyles Inc.	5/26/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7941/index.do	Masterpiece Inc. v. Alavida Lifestyles Inc., 2011 SCC 27, [2011] 2 S.C.R. 387	Rothstein J.	majority	Federal Court of Appeal	Intellectual Property	C	considered	esure Insurance Ltd. v. Direct Line Insurance plc, 2008 EWCA Civ 842, [2008] R.P.C. 34	lower-level court	UK	[84] However, considering a trade-mark as a whole does not mean that a dominant component in a mark which would affect the overall impression of an average consumer should be ignored: see esure Insurance Ltd. v. Direct Line Insurance plc, 2008 EWCA Civ 842, [2008] R.P.C. 34, at para. 45, per Arden L.J. This is because, while the consumer looks at the mark as a whole, some aspect of the mark may be particularly striking. That will be because that aspect is the most distinctive part of the whole trade-mark. In this case, contrary to the view of the expert, the most distinctive and dominant component of the marks in issue is in all cases the word "Masterpiece" because it provides the content and punch of the trade-mark. The word "Living" is bland by comparison.
2011	Masterpiece Inc. v. Alavida Lifestyles Inc.	5/26/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7941/index.do	Masterpiece Inc. v. Alavida Lifestyles Inc., 2011 SCC 27, [2011] 2 S.C.R. 387	Rothstein J.	majority	Federal Court of Appeal	Intellectual Property	C	considered	General Electric Co. v. The General Electric Co. Ltd., [1972] All E.R. 507	lower-level court	UK	[88] In view of these and other difficulties with the expert evidence in this case, I think it may be useful to comment generally on the use of expert evidence in a confusion case. In doing so, I have found guidance in the observations of Lord Diplock in General Electric Co. v. The General Electric Co. Ltd., [1972] 2 All E.R. 507 (H.L.). He distinguished between goods sold in a specialized market of sophisticated consumers engaged in a particular trade, e.g., large industrial electrical machinery, on the one hand, and those sold to the general public, on the other. Where the market is specialized, evidence about the special knowledge or sophistication of the targeted consumers may be essential to determining when confusion would be likely to arise. However, where goods are sold to the general public for ordinary use, he explained, at p. 515: . . . the question whether such buyers would be likely to be deceived or confused by the use of the trade mark is a 'jury question'. By that I mean that if the issue had now, as formerly, to be tried by a jury, who as members of the general public would themselves be potential buyers of the goods, they would be required not only to consider any evidence of other members of the public which had been adduced but also to use their own common sense and to consider whether they would themselves be likely to be deceived or confused. [92] I would endorse these comments about expert evidence and follow the approach of Spence J. in Ultravite, the House of Lords in General Electric and the English Court of Appeal in esure. In cases of wares or services being marketed to the general public, such as retirement residences, judges should consider the marks at issue, each as a whole, but having regard to the dominant or most striking or unique feature of the trade-mark. They should use their own common sense, excluding influences of their "own idiosyncratic knowledge or temperament" to determine whether the casual consumer would be likely to be confused.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2011	Alberta v. Elder Advocates of Alberta Society	5/22/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7938/index.do	Alberta v. Elder Advocates of Alberta Society, 2011 SCC 24, [2011] 2 S.C.R. 261	McLachlin C.J.	unanimous	Alberta	Civil procedure Trust	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.)	SC	UK (HL)	[66] The first and central question is whether the pleadings, assuming the facts alleged to be true, support a duty of care on Alberta to members of the plaintiff class. This requires us to determine first whether Alberta and the class members were in a relationship that gave rise to a prima facie duty of care, based on foreseeability and proximity. If a prima facie duty of care is established, the second step is to ask whether it is negated by policy considerations: see Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.); City of Kamloops v. Nielsen, [1984] 2 S.C.R. 2; Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, at para. 30; and Reference re Broome v. Prince Edward Island, 2010 SCC 11, [2010] 1 S.C.R. 360, at para. 14. [66] The first and central question is whether the pleadings, assuming the facts alleged to be true, support a duty of care on Alberta to members of the plaintiff class. This requires us to determine first whether Alberta and the class members were in a relationship that gave rise to a prima facie duty of care, based on foreseeability and proximity. If a prima facie duty of care is established, the second step is to ask whether it is negated by policy considerations: see Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.); City of Kamloops v. Nielsen, [1984] 2 S.C.R. 2; Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, at para. 30; and Reference re Broome v. Prince Edward Island, 2010 SCC 11, [2010] 1 S.C.R. 360, at para. 14. [67] The claim raised in this case has not been previously recognized as giving rise to a duty of care. Therefore, we must examine whether it meets the foregoing requirements for imposing a duty of care in negligence: Childs v. Desormeaux, 2006 SCC 18, [2006] 1 S.C.R. 643, at para. 15. [68] In this case, as in Broome, the plaintiff class relies on provincial statutory obligations as the source of a private duty of care. The allegation, in essence, is that statutory and regulatory duties brought Alberta into a relationship of proximity with members of the class, whom it was reasonably foreseeable would be affected by failure to discharge these duties in a non-negligent manner. The Cooper analysis applies to claims grounded in statutory duties. As the Court, per Cromwell J., stated in Broome, at para. 13: [The Anns/Kamloops] test is the appropriate one even though the appellants mainly rely on statutory duties. Such duties do not generally, in and of themselves, give rise to private law duties of care. The Anns/Kamloops test determines whether public as well as private actors owe a private law duty of care to individuals enabling them to sue the public actors in a civil suit . . . . [69] Determining whether a duty of care lies on the [73] I therefore conclude that, assuming the facts pleaded to be true, the negligence claim is bound to fail at the first step of the Anns/Cooper inquiry. Absent a statutory obligation to do the things that the plaintiffs claim were done negligently, the necessary relationship of proximity between Alberta and the claimants cannot be made out. [74] Were the pleadings to satisfy the first step of the Anns/Cooper test, they would fail at the second step, which asks whether the prima facie duty of care is negated by policy considerations. Where the defendant is a public body, inferring a private duty of care from statutory duties may be difficult, and must respect the particular constitutional role of those institutions: Welbridge Holdings Ltd. v. Greater Winnipeg, [1971] S.C.R. 957, per Laskin J., as he then was, for the Court. Related to this concern is the fear of virtually unlimited exposure of the government to private claims, which may tax public resources and chill government intervention. It is arguable that to impose a duty of care on the plaintiff class on the facts pleaded would open the door to a claim in negligence by any patient in the health care system with an entitlement to receive funding for health services, whether primary or extended. This raises the spectre of unlimited liability to an unlimited class, decried by Cardozo C.J. in Ultramares Corp. v. Touche, 174 N.E. 441 (N.Y. 1931), at p. 444: see Design Services Ltd. v. Canada, 2008 SCC 22, [2008] 1 S.C.R. 737, at paras. 59-66.
2011	i Trade Finance Inc. v. Bank of Montreal	5/20/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7940/index.do	i Trade Finance Inc. v. Bank of Montreal, 2011 SCC 26, [2011] 2 S.C.R. 360	Deschamps J.	unanimous	Ontario	Commercial law	C	referred to	Barclays Bank Ltd. v. W.J. Simms Son & Cooke (Southern) Ltd., [1979] 3 All E.R. 522	lower-level court	UK	[21] The argument of i Trade is that it advanced the funds to Webworx under a mistake of fact and accordingly has a prima facie right to recover them on the basis of the principles set out in B.M.P. Global Distribution Inc. v. Bank of Nova Scotia, 2009 SCC 15, [2009] 1 S.C.R. 504, and Barclays Bank Ltd. v. W.J. Simms Son & Cooke (Southern) Ltd., [1979] 3 All E.R. 522 (Q.B.).
2011	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.	5/11/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7937/index.do	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., 2011 SCC 23, [2011] 2 S.C.R. 175	Rothstein J.	unanimous	British Columbia	Commercial law Torts	C	discussed	TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976), rev'g 512 F.2d 324 (1975)	SC	US	[41] A materiality standard is a legislated and regulatory balancing between too much and too little disclosure. As the Supreme Court of the United States cautioned in TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976), at pp. 448-49: . . . if the standard of materiality is unnecessarily low, not only may the corporation and its management be subjected to liability for insignificant omissions or misstatements, but also management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information — a result that is hardly conducive to informed decisionmaking. [43] Potential investors are indeed vulnerable to the superior knowledge of an issuer as to what need and need not be disclosed. That is the reason for legislated disclosure obligations in a securities context. However, the jurisprudence has recognized that it is not in the interests of investors to be buried "in an avalanche of trivial information" that will impair decision making (TSC Industries, at p. 448). As I will explain, the materiality standard calls for the disclosure of information that a reasonable investor would consider important in making an investment decision. (4) The Test for Materiality [44] The Real Estate Act does not define what is meant by the term "material" when it is used in the context of the "material false statement" required for liability under s. 75. The parties submit that in interpreting materiality under s. 75, the Court should adopt the approach set out by the Supreme Court of the United States in TSC Industries. In that case, the materiality of an omitted fact in a proxy solicitation context was determined based on whether there was a substantial likelihood that the disclosure of the omitted fact would have assumed actual significance in the deliberations of a reasonable investor. [45] The materiality test was described by the U.S. Supreme Court in TSC Industries: . . . An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. This standard is fully consistent with Mills' general description of materiality as a requirement that "the defect have a significant propensity to affect the voting process." It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available. [Emphasis in original; p. 449.] The U.S. Supreme Court characterized materiality "as a mixed question of law and fact, involving as it does the application of a legal standard to a particular set of facts" (p. 450). [46] The TSC Industries test is not a new concept in Canadian securities law. The test has been adopted by a number of Canadian appellate courts: see Sparling v. Royal Trustco Ltd. (1984), 6 D.L.R. (4th) 682 (Ont. C.A.), aff'd [1986] 2 S.C.R. 537; Harris v. Universal Explorations Ltd. (1982), 17 B.L.R. 135 (Alta. C.A.); and Inmet Mining Corp. v. Homestake Canada Inc., 2003 BCCA 610, 189 B.C.A.C. 251. [47] A disclosure statement under the Real Estate Act is analogous to the proxy solicitation in TSC Industries. The analogy exists because
2011	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.	5/11/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7937/index.do	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., 2011 SCC 23, [2011] 2 S.C.R. 175	Rothstein J.	unanimous	British Columbia	Commercial law Torts	C	referred to	Gerstle v. Gamble-Skogmo, Inc., 478 F.2d 1281 (1973)	lower-level court	US	[49] In order to define the appropriate threshold as to "just how significant a fact must be" (TSC Industries, at p. 445) to a reasonable investor before it becomes material, the court imposed a standard that requires that there must be a "substantial likelihood" that an omitted fact "would" be considered important. This standard was imposed rather than the lesser standard which would require disclosure if an omitted fact "might" have been considered important. In adopting the "would" standard, the U.S. Supreme Court approved of the words of Chief Judge Friendly of the U.S. Second Circuit Court of Appeals in Gerstle v. Gamble-Skogmo, Inc., 478 F.2d 1281 (1973), where he wrote: We think that, in a context such as this, the "might have been" standard . . . sets somewhat too low a threshold; the very fact that negligence suffices to invoke liability argues for a realistic standard of materiality. . . . While the difference between "might" and "would" may seem gossamer, the former is too suggestive of mere possibility, however unlikely. When account is taken of the heavy damages that may be imposed, a standard tending toward probability rather than toward mere possibility is more appropriate. [p. 1302]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2011	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.	5/11/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7937/index.do	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., 2011 SCC 23, [2011] 2 S.C.R. 175	Rothstein J.	unanimous	British Columbia	Commercial law Torts	C	referred to	Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970)	SC	US	[45] The materiality test was described by the U.S. Supreme Court in TSC Industries: . . . An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. This standard is fully consistent with Mills' general description of materiality as a requirement that "the defect have a significant propensity to affect the voting process." It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available. [Emphasis in original; p. 449.] The U.S. Supreme Court characterized materiality "as a mixed question of law and fact, involving as it does the application of a legal standard to a particular set of facts" (p. 450). [50] At the same time, the U.S. Supreme Court clarified that a shareholder is not required to prove that the omitted fact would have caused a reasonable investor to change his or her vote. What is required is proof of a substantial likelihood that the omitted fact would have assumed actual significance in the deliberations of a reasonable shareholder. The standard was seen as consistent with the court's description of materiality in its earlier decision in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), that the defect or omission "have a significant [illegible]
2011	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.	5/11/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7937/index.do	Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., 2011 SCC 23, [2011] 2 S.C.R. 175	Rothstein J.	unanimous	British Columbia	Commercial law Torts	C	referred to	Basic Inc. v. Levinson, 485 U.S. 224 (1988)	SC	US	[52] Finally, the U.S. Supreme Court indicated that the importance of an omitted fact must be considered in the light of whether it would be viewed by a reasonable investor as having "significantly altered the 'total mix' of information made available". In certain situations, evidence of the information made available may be such that common sense inferences will be sufficient to establish materiality. In other cases, where there is evidence that supports competing inferences, a court may be required to carry out a more complex analysis to determine what the reasonable investor would have considered important. For the majority of cases, materiality is a contextual matter, involving the application of a legal standard to specific facts, that must be determined in light of all of the information that was made available to an investor. Canadian and American authorities and commentary on materiality indicate that assessing materiality is a "fact-specific inquiry" (Basic Inc. v. Levinson, 485 U.S. 224 (1988), at p. 240). Materiality is "to be determined on a case-by-case basis" (p. 250) in light of all of the relevant circumstances.
2011	Ontario (Attorney General) v. Fraser	4/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7934/index.do	Ontario (Attorney General) v. Fraser, 2011 SCC 20, [2011] 2 S.C.R. 3	Rothstein J.	concurring in the results	Ontario	Constitutional law	C	referred to	Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)	SC	US	[136] The Supreme Court of the United States has also grappled with identifying the appropriate principles governing when courts should overrule precedent. In Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992), O'Connor, Kennedy and Souter JJ., writing for a majority of the court on this point, held that when the court considers whether to overrule an earlier case, "its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case" (p. 854). To this end, they articulated four factors to be considered in deciding whether to overrule precedent, at pp. 854-55: 1. Has the rule proved to be intolerable because it defies workability? 2. Is the rule subject to a reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation? 3. Have related principles of law developed as to have left the old rule no more than a remnant of abandoned doctrine? 4. Have facts so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification? [141] First, the error in Health Services concerns a question of constitutional law. Thus, not only does it go to one of the foundational principles of our legal system, but it is not susceptible to being corrected in a lasting way by the legislative branch. While s. 33 of the Charter may allow Parliament or the legislatures to suspend, temporarily, the force of this Court's ruling, history over the last two decades demonstrates that resort to s. 33 by legislatures has been exceedingly rare. Health Services will, if left to stand, set out abiding principles of constitutional law. Only the Court may correct this error in fundamental principle. As noted in Planned Parenthood, it is "common wisdom that the rule of stare decisis is not an 'inexorable command,' and certainly it is not such in every constitutional case" (p. 854). The jurisprudence of this Court contains similar observations. Because the Charter involves [illegible]
2011	Ontario (Attorney General) v. Fraser	4/29/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7934/index.do	Ontario (Attorney General) v. Fraser, 2011 SCC 20, [2011] 2 S.C.R. 3	Rothstein J.	concurring in the results	Ontario	Constitutional law	C	referred to	Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)	SC	US	[138] If a precedent has overruled prior cases, two sets of precedents exist, an original precedent and a new precedent, although one has been overruled. In such cases it will be more important to carefully scrutinize the new precedent to determine if it has strayed from sound prior decisions and whether it would be preferable to return to the original, and more sound, decisions. In Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995), O'Connor J. confronted this type of situation. She stated, at p. 231: Remaining true to an "intrinsically sounder" doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete. Thus, where there exist earlier precedents from which the precedent at issue itself departed, it may be justifiable, based on the values underlying stare decisis, for the Court to return to the earlier precedents.
2011	British Columbia (Attorney General) v. Malik	4/21/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7932/index.do	British Columbia (Attorney General) v. Malik, 2011 SCC 18, [2011] 1 S.C.R. 657	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Yousif v. Salama, [1980] 3 All E.R. 405	lower-level court	UK	[31] An issue was raised in the court below whether Anton Piller orders were available in British Columbia to preserve evidence relevant to a dispute as opposed to preserving property that is the subject matter of the dispute. Celanese Canada was an appeal from Ontario, and a difference was noted in wording between r. 46(1) of the British Columbia Supreme Court Rules, which deals with preservation of "property that is the subject matter of a proceeding or as to which a question may arise", and r. 45.01 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, which deals somewhat more broadly with the preservation of "property in question in a proceeding or relevant to an issue in a proceeding". I agree with Tysoe J.A. that Anton Piller orders for the preservation of evidence are available in British Columbia under the inherent jurisdiction of the Superior Court, which indeed is the source identified by Lord Denning in the eponymous case of Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55 (C.A.), and endorsed in Yousif v. Salama, [1980] 3 All E.R. 405 (C.A.). Accordingly, the particular wording of British Columbia's r. 46(1) does not assist the respondents.
2011	British Columbia (Attorney General) v. Malik	4/21/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7932/index.do	British Columbia (Attorney General) v. Malik, 2011 SCC 18, [2011] 1 S.C.R. 657	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Arthur J.S. Hall & Co. v. Simons, [2000] U.K.H.L. 38, [2002] 1 A.C. 615	SC	UK (HL)	[44] The Province suggests that the Court of Appeal was influenced — although not expressly referring to it — by the so-called rule in Hollington v. F. Hewthorn & Co., [1943] 1 K.B. 587 (C.A.). In that case, in which damages were claimed arising out of a motor vehicle accident, the English Court of Appeal ruled inadmissible in the subsequent civil action a certificate of conviction of the defendant driver for careless driving because "on the trial of the issue in the civil court, the opinion of the criminal court is equally irrelevant" (p. 595). In its country of origin this rule is "generally thought to have taken the technicalities of the matter much too far" (Arthur J.S. Hall & Co. v. Simons, [2000] U.K.H.L. 38, [2002] 1 A.C. 615, at p. 702, per Lord Hoffman). The editor of Cross and Tapper on Evidence (12th ed. 2010) agrees. After dismissing Hollington v. F. Hewthorn & Co. as a bundle of "indefensible technicalities" (p. 109), he comments that the "House of Lords might at some stage reconsider the matter in the light of the modern emphasis on fairness and the abuse of process, especially where the prejudiced party had a full opportunity to contest the finding against him in the earlier proceedings" (p. 110). The editors of the Sopinka text appear to share the same view (§19.158). To similar effect, see Jorgensen v. News Media (Auckland) Ltd., [1969] N.Z.L.R. 961 (C.A.), at p. 980, citing, at p. 971, Harvey v. The King, [1901] A.C. 601 (P.C.), and at p. 974, McCormick on Evidence: Probably the trend of evolution will be toward the admission generally against a present party of any judgment or finding in a former civil or criminal case if the party had an opportunity to defend. The principles on which is founded the hearsay exception for official written statements would justify this extension. In this appeal we are concerned only with the effect, if any, to be given to Hollington v. F. Hewthorn & Co. in interlocutory proceedings. In my view the "rule" simply has no application at this stage of proceedings in British Columbia. In addition to the general considerations already referred to, r. 51(10)(a) of the British Columbia Supreme Court Rules expressly permits the admission of hearsay on an interlocutory application (as does replacement r. 22-2(13), which came into force on July 1, 2010 (Supreme Court Civil Rules, B.C. Reg. 168/2009)).

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2011	Seidel v. TELUS Communications Inc.	3/18/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7927/index.do	Seidel v. TELUS Communications Inc., 2011 SCC 15, [2011] 1 S.C.R. 531	LeBel and Deschamps JJ.	dissenting	British Columbia	Arbitration Civil law	C	D	Ting v. AT&T, 319 F.3d 1126 (2003)	lower-level court	US	[172] Furthermore, whether an arbitration clause in a consumer contract is unfair or unconscionable must always be determined on a case-by-case basis in light of the relevant facts. This Court has in fact acknowledged that, "under certain circumstances, arbitration may actually be an appropriate or preferable forum for the adjudication of consumer disputes" (Dell, at para. 223, per Bastarache and LeBel JJ., dissenting, but not on this point). Ms. Seidel nevertheless urges the Court to follow the decisions of a number of American courts, which have held that pre-dispute arbitration agreements, particularly when coupled with a class action waiver, are void by virtue of the unconscionability doctrine in contract law (see, e.g., Ting v. AT&T, 319 F.3d 1126 (9th Cir. 2003); Szetela v. Discover Bank, 118 Cal.Rptr.2d 862 (Ct. App. 2002)). In Canada, an approach to this issue based on the unconscionability doctrine has not been adopted, however, and this Court has accepted the reality of standard form contracts in the consumer context. The courts have instead left the question whether arbitration is appropriate for particular categories of disputes to the discretion of the legislatures.
2011	Seidel v. TELUS Communications Inc.	3/18/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7927/index.do	Seidel v. TELUS Communications Inc., 2011 SCC 15, [2011] 1 S.C.R. 531	LeBel and Deschamps JJ.	dissenting	British Columbia	Arbitration Civil law	C	D	Szetela v. Discover Bank, 118 Cal.Rptr.2d 862 (2002).	lower-level court	US	[172] Furthermore, whether an arbitration clause in a consumer contract is unfair or unconscionable must always be determined on a case-by-case basis in light of the relevant facts. This Court has in fact acknowledged that, "under certain circumstances, arbitration may actually be an appropriate or preferable forum for the adjudication of consumer disputes" (Dell, at para. 223, per Bastarache and LeBel JJ., dissenting, but not on this point). Ms. Seidel nevertheless urges the Court to follow the decisions of a number of American courts, which have held that pre-dispute arbitration agreements, particularly when coupled with a class action waiver, are void by virtue of the unconscionability doctrine in contract law (see, e.g., Ting v. AT&T, 319 F.3d 1126 (9th Cir. 2003); Szetela v. Discover Bank, 118 Cal.Rptr.2d 862 (Ct. App. 2002)). In Canada, an approach to this issue based on the unconscionability doctrine has not been adopted, however, and this Court has accepted the reality of standard form contracts in the consumer context. The courts have instead left the question whether arbitration is appropriate for particular categories of disputes to the discretion of the legislatures.
2011	Kerr v. Baranow	2/18/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7922/index.do	Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269	Cromwell J.	unanimous	British Columbia	Family law	C	referred to	Gissing v. Gissing, [1970] 2 All E.R. 780	SC	UK (HL)	[21] That brings me to the "common intention" resulting trust. It figured prominently in the majority judgment in Murdoch v. Murdoch, [1975] 1 S.C.R. 423. Quoting from Lord Diplock's speech in Gissing v. Gissing, [1970] 2 All E.R. 780 (H.L.), at pp. 789 and 793, Martland J. held for the majority that, absent a financial contribution to the acquisition of the contested property, a resulting trust could only arise "where the court is satisfied by the words or conduct of the parties that it was their common intention that the beneficial interest was not to belong solely to the spouse in whom the legal estate was vested but was to be shared between them in some proportion or other": Murdoch, at p. 438. [27] Third, the "common intention" resulting trust in Canada evolved from a misreading of some imprecise language in early authorities from the House of Lords. While much has been written on this topic, it is sufficient for my purposes to note, as did Dickson J. in Pettkus, at p. 842, that the principles upon which the common intention resulting trust jurisprudence developed are found in the House of Lords decisions in Pettitt v. Pettitt, [1970] A.C. 777, and Gissing. However, no clear majority opinion emerged in those cases and four of the five Law Lords in Gissing spoke of "resulting, implied or constructive trusts" without distinction. The passages that have been most influential in Canada on this point, those authored by Lord Diplock, in fact relate to constructive rather than resulting trusts: see, e.g., Waters', at pp. 430-35; Oosterhoff, at pp. 642-43. I find persuasive Professor Waters' comments, specifically approved by Dickson J. in Pettkus, that where the search for common intention becomes simply a vehicle for reaching what the court perceives to be a just result, "[i]t is in fact a constructive trust approach masquerading as a resulting trust approach": D. Waters, Comment (1975), 53 Can. Bar Rev. 366, at p. 368.
2011	Kerr v. Baranow	2/18/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7922/index.do	Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269	Cromwell J.	unanimous	British Columbia	Family law	C	referred to	Pettitt v. Pettitt, [1970] A.C. 777	SC	UK (HL)	[27] Third, the "common intention" resulting trust in Canada evolved from a misreading of some imprecise language in early authorities from the House of Lords. While much has been written on this topic, it is sufficient for my purposes to note, as did Dickson J. in Pettkus, at p. 842, that the principles upon which the common intention resulting trust jurisprudence developed are found in the House of Lords decisions in Pettitt v. Pettitt, [1970] A.C. 777, and Gissing. However, no clear majority opinion emerged in those cases and four of the five Law Lords in Gissing spoke of "resulting, implied or constructive trusts" without distinction. The passages that have been most influential in Canada on this point, those authored by Lord Diplock, in fact relate to constructive rather than resulting trusts: see, e.g., Waters', at pp. 430-35; Oosterhoff, at pp. 642-43. I find persuasive Professor Waters' comments, specifically approved by Dickson J. in Pettkus, that where the search for common intention becomes simply a vehicle for reaching what the court perceives to be a just result, "[i]t is in fact a constructive trust approach masquerading as a resulting trust approach": D. Waters, Comment (1975), 53 Can. Bar Rev. 366, at p. 368.
2011	Kerr v. Baranow	2/18/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7922/index.do	Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269	Cromwell J.	unanimous	British Columbia	Family law	C	referred to	Nance v. British Columbia Electric Railway Co., [1951] A.C. 601	SC	UK (PC)	[158] The main focus of the appeal was on whether the award ought to have been calculated on a quantum meruit basis. Very little was argued before this Court regarding the way the trial judge approached her calculation of a proportionate share of the parties' accumulated wealth. I conclude that the trial judge's approach was reasonable in the circumstances, but I stress that I do not hold out her approach as necessarily being a template for future cases. Within the legal principles I have outlined, there may be many ways in which an award may be quantified reasonably. I prefer not to make any more general statements about the quantification process in the context of this appeal, except this. Provided that the correct legal principles are applied, and the findings of fact are not tainted by clear and determinative error, a trial judge's assessment of damages is treated with considerable deference on appeal: see, e.g., Nance v. British Columbia Electric Railway Co., [1951] A.C. 601 (P.C.). A reasoned and careful exercise of judgment by the trial judge as to the appropriate monetary award to remedy an unjust enrichment should be treated with the same deference. There are two final specific points that I must address.
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127	SC	UK (HL)	[20] The Canadian approach is part of a trend that can be observed in many democracies, including England (Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.); Jameel v. Wall Street Journal Europe Sprl, [2006] UKHL 44, [2007] 1 A.C. 359), Australia (Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1 (H.C.); Lange v. Australian Broadcasting Corp. (1997), 189 C.L.R. 520 (H.C.)), New Zealand (Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.)), the United States (New York Times Co. v. Sullivan, 376 U.S. 254 (1964)) and Germany (BVerfGE 82, 272, June 26, 1990, Stern-Strauß case; BVerfGE 93, 266, October 10, 1995, Soldiers are murderers case). This phenomenon can also be seen in the decisions of the European Court of Human Rights (Bladet Tromsø and Stensaas v. Norway (GC), No. 21980/93, ECHR 1999-III; Colombani v. France, No. 51279/99, ECHR 2002-V). In France, while freedom of expression has been protected by passing a special penal statute, recent cases have recognized that this was a system distinct from the system of civil liability found in the French Civil Code (Cass. ass. plén., July 12, 2000, Bull. civ., No. 8).
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2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Cass. crim., January 29, 2008, Bull. crim., No. 23	SC	FRance	[62] In France, apart from certain statutory mechanisms whose singularity limits their usefulness for comparative purposes, the Loi sur la presse requires a personal interest and personal damage in order to claim compensation. When comments are made about a group, these requirements are satisfied if the group is [TRANSLATION] "small enough that each member can feel affected" (Cass. crim., January 29, 2008, Bull. crim., No. 23, at p. 94). The Court of Cassation, for example, has found defamation where comments were made about a medical team made up of ten surgeons (Cass. crim., December 6, 1994, Dr. pénal 1995, comm. 93, obs. M. Véron). It also found that four members of a political action committee had been sufficiently covered by comments referring to the committee (Cass. crim., January 16, 1969, Bull. crim., No. 35). However, it dismissed an action in defamation where the impugned comments concerned Catholic clergy in general (Cass. crim., November 22, 1934, D.P. 1936.1.27, note M. Nast).
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Cass. crim., December 6, 1994, Dr. pénal 1995, comm. 93, obs. M. Véron	SC	FRance	[62] In France, apart from certain statutory mechanisms whose singularity limits their usefulness for comparative purposes, the Loi sur la presse requires a personal interest and personal damage in order to claim compensation. When comments are made about a group, these requirements are satisfied if the group is [TRANSLATION] "small enough that each member can feel affected" (Cass. crim., January 29, 2008, Bull. crim., No. 23, at p. 94). The Court of Cassation, for example, has found defamation where comments were made about a medical team made up of ten surgeons (Cass. crim., December 6, 1994, Dr. pénal 1995, comm. 93, obs. M. Véron). It also found that four members of a political action committee had been sufficiently covered by comments referring to the committee (Cass. crim., January 16, 1969, Bull. crim., No. 35). However, it dismissed an action in defamation where the impugned comments concerned Catholic clergy in general (Cass. crim., November 22, 1934, D.P. 1936.1.27, note M. Nast).
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Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	O'Brien v. Williamson Daily News, 735 F. Supp. 218 (1990)	lower-level court	US	[63] In the common law, the comments must have been made "of and concerning" the plaintiff (Knupffer v. London Express Newspaper, Ltd., [1944] A.C. 116 (H.L.), at p. 120; Butler v. Southam Inc., 2001 NSCA 121, 197 N.S.R. (2d) 97, at para. 17; Restatement of the Law, Second, Torts 2d (1977), vol. 3, § 564). This corresponds to the personal nature of injury in the civil law. The size of the group is an important consideration (Butler v. Southam, at para. 62; Bai v. Sing Tao Daily Ltd. (2003), 226 D.L.R. (4th) 477 (Ont. C.A.), at para. 15). For example, in Knupffer, the British House of Lords held that a member of a group of about 2,000 Russian immigrants could not bring an action in defamation based on an article written about the group. As well, in the United States, no cause of action was found to arise from articles attacking a group of 27 teachers (O'Brien v. Williamson Daily News, 735 F. Supp. 218 (E.D. Ky. 1990)), comments made about 382 saleswomen (Neiman-Marcus v. Lait, 13 F.R.D. 311 (S.D.N.Y. 1952)) or allegations made about 637 fishermen (Adams v. WFTV Inc., 24 Med. L. Rptr. 1350 (Fla. Cir. Ct. 1995), aff'd 691 So.2d 557 (Fla. Dist. Ct. App. 1997)). On the other hand, the Alberta Court of Queen's Bench found that an article concerning correctional officers from the Fort Saskatchewan Correctional Centre, of whom there were about 200, was defamatory (A.U.P.E. v. Edmonton Sun (1986), 49 Alta. L.R. (2d) 141). [72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936)).
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Neiman-Marcus v. Lait, 13 F.R.D. 311 (1952)	lower-level court	US	[63] In the common law, the comments must have been made "of and concerning" the plaintiff (Knupffer v. London Express Newspaper, Ltd., [1944] A.C. 116 (H.L.), at p. 120; Butler v. Southam Inc., 2001 NSCA 121, 197 N.S.R. (2d) 97, at para. 17; Restatement of the Law, Second, Torts 2d (1977), vol. 3, § 564). This corresponds to the personal nature of injury in the civil law. The size of the group is an important consideration (Butler v. Southam, at para. 62; Bai v. Sing Tao Daily Ltd. (2003), 226 D.L.R. (4th) 477 (Ont. C.A.), at para. 15). For example, in Knupffer, the British House of Lords held that a member of a group of about 2,000 Russian immigrants could not bring an action in defamation based on an article written about the group. As well, in the United States, no cause of action was found to arise from articles attacking a group of 27 teachers (O'Brien v. Williamson Daily News, 735 F. Supp. 218 (E.D. Ky. 1990)), comments made about 382 saleswomen (Neiman-Marcus v. Lait, 13 F.R.D. 311 (S.D.N.Y. 1952)) or allegations made about 637 fishermen (Adams v. WFTV Inc., 24 Med. L. Rptr. 1350 (Fla. Cir. Ct. 1995), aff'd 691 So.2d 557 (Fla. Dist. Ct. App. 1997)). On the other hand, the Alberta Court of Queen's Bench found that an article concerning correctional officers from the Fort Saskatchewan Correctional Centre, of whom there were about 200, was defamatory (A.U.P.E. v. Edmonton Sun (1986), 49 Alta. L.R. (2d) 141). [72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936)).
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2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	McCullough v. Cities Service Co., 676 P.2d 833 (1984)	lower-level court	US	[64] However, the size of the group is not a decisive factor and must be balanced with other considerations. There is no maximum size beyond which the members of a group no longer have a cause of action in defamation. The personal nature of injury can be determined only through a contextual analysis. In the common law, this multi-factored approach involves assessing the "intensity of suspicion" the comments could create in the mind of a sensible person (Butler v. Southam, at para. 56, and Gauthier v. Toronto Star Daily Newspapers Ltd. (2004), 188 O.A.C. 211, leave to appeal refused, [2005] 1 S.C.R. ix), and it is used even in the United States, where the size of the group is more important than anywhere else. (See, for example, McCullough v. Cities Service Co., 676 P.2d 833 (Okla. 1984); Fawcett Publications, Inc. v. Morris, 377 P.2d 42 (Okla. 1962), at pp. 51-52.)
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Fawcett Publications, Inc. v. Morris, 377 P.2d 42 (1962)	lower-level court	US	[64] However, the size of the group is not a decisive factor and must be balanced with other considerations. There is no maximum size beyond which the members of a group no longer have a cause of action in defamation. The personal nature of injury can be determined only through a contextual analysis. In the common law, this multi-factored approach involves assessing the "intensity of suspicion" the comments could create in the mind of a sensible person (Butler v. Southam, at para. 56, and Gauthier v. Toronto Star Daily Newspapers Ltd. (2004), 188 O.A.C. 211, leave to appeal refused, [2005] 1 S.C.R. ix), and it is used even in the United States, where the size of the group is more important than anywhere else. (See, for example, McCullough v. Cities Service Co., 676 P.2d 833 (Okla. 1984); Fawcett Publications, Inc. v. Morris, 377 P.2d 42 (Okla. 1962), at pp. 51-52.) [70] A person who is a well-known member of a group is more likely to suffer damage to his or her reputation as a result of comments made about the group. In Fawcett Publications, a football player brought an action in defamation based on allegations that the members of the team, which had 60 to 70 players, had used amphetamines. He was successful on the ground, inter alia, that he was "well known and identified in connection with the group" (p. 51). Likewise, in Trahan, the Superior Court took note of the fact that the plaintiffs were known as fur traders in the area in reaching the conclusion that they had been defamed by allegations of abuse in the fur trade.
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Jackson v. TCN Channel 9, [2001] NSWCA 108 (AustLII)	lower-level court	Australia	[65] In general, the more strictly organized and homogeneous the group, the easier it will be to establish that the injury is personal to each member of the group. In Jackson v. TCN Channel 9, [2001] NSWCA 108 (AustLII), a case which involved determining whether a television program referring to outlaw bike gangs was defamatory, an Australian Court of Appeal found that the group's structure was a significant factor: While "all lawyers" are members of the same profession, they are not members of a cohesive and disciplined group with a command structure such as a gang. The statement about "all lawyers" is an obvious over-generalisation which no reasonable reader or listener would understand applied or was intended to apply literally to every single member of the group. On the other hand outlaw bik[er] gangs of the type described in the programme would only attract and retain members who accepted and were willing to conform to the prevailing culture and ethos of the gang. In my judgment the statements made in this programme are akin to statements about organised groups such as the SS, the Ku Klux Klan or the Mafia, rather than statements such as: "all lawyers are thieves". It would be well open to a jury to conclude that general statements made about groups such as those applied, and would be understood to apply, to every member of those groups.
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Cass. crim., September 16, 2003, Bull. crim., No. 161	SC	FRance	[71] The judge must also consider the words, gestures or images used to convey the message in order to determine the real target of the attacks. The precision or generality of the allegations will influence the analysis of the personal nature of the injury. The more general, evasive and vague the allegations, the more difficult it will be to go behind the screen of the group. For example, attacks on a doctrine, policy, opinion or religion must be distinguished from attacks on the persons supporting it, since proving personal injury will be complicated in the former situation. In Zhang, the Quebec Court of Appeal explained the necessary distinction as follows: [TRANSLATION] [W]hile it was the prerogative of the author of the articles to level criticism, even vehement criticism, at Li Hongzhi's doctrine and the way it was practised by Falun Gong followers, the authors were guilty of defamation when they accused certain persons of criminal offences and perverse acts without any proof. [para. 13] Similarly, in France, the Court of Cassation held that a document challenging right-wing extremism in general and associating it with criminal and racist purposes was not defamatory, because it [TRANSLATION] "contained no imputation or allegation of a specific fact about a specific natural or legal person" (Cass. crim., May 26, 1987, Bull. crim., No. 217, at p. 597). It also held that criticism of a type of agricultural production affected only the profession as a whole and left its members' consciences intact (Cass. crim., September 16, 2003, Bull. crim., No. 161).
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Farrington v. Leigh, Times Law Report, December 10, 1987	lower-level court	UK	[72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936)).

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2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1977)	lower-level court	US	[72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936))
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Algarin v. Town of Wallkill, 421 F.3d 137 (2005)	lower-level court	US	[72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936))
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Gross v. Cantor, 270 N.Y. 93 (1936)	lower-level court	US	[72] Moreover, where allegations apply to only one segment of a group, it will be more difficult for them to reflect personally on all members of the group. This occurs where the comments include an expression such as "some", "a few", "several", "most" or "all but one". Nonetheless, an action in defamation can sometimes be brought by one, some or all members of the group in such situations, since what is required is not certainty that the allegation relates to each member, but a suspicion that takes root in the mind of the ordinary person. In Farrington v. Leigh (December 4, 1987, reported in the Times Law Report of December 10, 1987), which involved statements made about two of the seven police officers on a team, the English Court of Appeal found that the statements could tarnish each team member's reputation, because each of them might be suspected of having committed unlawful acts. In the United States, the courts have dismissed actions in defamation where the impugned comments concerned one of about twenty police officers (Arcand v. Evening Call Publishing Co., 567 F.2d 1163 (1st Cir. 1977)) or less than the majority of police officers (Algarin v. Town of Wallkill, 421 F.3d 137 (2nd Cir. 2005)), but they have allowed actions where the allegations concerned "most" of 25 salesmen (Neiman-Marcus) and "all save one" of 12 New York radio critics (Gross v. Cantor, 270 N.Y. 93 (1936))
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	C	referred to	Farrell v. Triangle Publications, Inc., 159 A.2d 734 (1960)	lower-level court	US	[73] As the Nova Scotia Court of Appeal stated in Butler v. Southam, "the more serious or inflammatory the allegation, the wider may be its sting" (para. 68). In Farrell v. Triangle Publications, Inc., 159 A.2d 734 (1960), the Pennsylvania Supreme Court held that an article accusing 13 municipal commissioners and other persons of criminal behaviour was not defamatory. Reversing that decision of the trial court, the Court of Appeal of the same state allowed the action in defamation on the following basis: . . . readers . . . who, prior to the defamatory article, had not known the identity of all of the township's commissioners, were impelled by the scandalous nature of the charges to make inquiry and find out who the commissioners were — a process which would almost inevitably lead to connecting the plaintiff's name with the alleged corruption in office. [pp. 738-39]
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	R		Civil Code (France).	statute	FRance	[20] The Canadian approach is part of a trend that can be observed in many democracies, including England (Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.); Jameel v. Wall Street Journal Europe Sprl, [2006] UKHL 44, [2007] 1 A.C. 359), Australia (Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1 (H.C.); Lange v. Australian Broadcasting Corp. (1997), 189 C.L.R. 520 (H.C.)), New Zealand (Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.)), the United States (New York Times Co. v. Sullivan, 376 U.S. 254 (1964)) and Germany (BVerfGE 82, 272, June 26, 1990, Stern-Strauß case; BVerfGE 93, 266, October 10, 1995, Soldiers are murderers case). This phenomenon can also be seen in the decisions of the European Court of Human Rights (Bladet Tromsø and Stensaas v. Norway (GC), No. 21980/93, ECHR 1999-III; Colombani v. France, No. 51279/99, ECHR 2002-V). In France, while freedom of expression has been protected by passing a special penal statute, recent cases have recognized that this was a system distinct from the system of civil liability found in the French Civil Code (Cass. ass. plén., July 12, 2000, Bull. civ., No. 8).
2011	Bou Malhab v. Diffusion Métromédia CMR inc.	2/17/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7921/index.do	Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214	Deschamps J.	majority	Quebec	Civil procedure Torts	R		Loi sur la presse (France)	statute	France	[34] In France, a standard of acceptable conduct is used to assess damage to honour and reputation within the meaning of the Loi sur la presse (N. Mallet-Poujol, "Diffamations et injures", in B. Beignier, B. de Lamy and E. Dreyer, eds., Traité de droit de la presse et des médias (2009), 441, at p. 450). To assess the wrongfulness of conduct in actions based on the general law of civil liability, the reasonable person standard is used, as in our law. French commentators and courts have said that a reasonable person is more than moderately prudent and informed but less than highly prudent and informed. A reasonable person approves of average behaviour, that is, the behaviour of the majority of people, only if it is rational and consistent with the nature of things (P. Jourdain, "Notion de faute: contenu commun à toutes les fautes", Juris-Classeur Responsabilité civile et Assurances (2002), fasc. 120-1, No. 106). [62] In France, apart from certain statutory mechanisms whose singularity limits their usefulness for comparative purposes, the Loi sur la presse requires a personal interest and personal damage in order to claim compensation. When comments are made about a group, these requirements are satisfied if the group is [TRANSLATION] "small enough that each member can feel affected" (Cass. crim., January 29, 2008, Bull. crim., No. 23, at p. 94). The Court of Cassation, for example, has found defamation where comments were made about a medical team made up of ten surgeons (Cass. crim., December 6, 1994, Dr. pénal 1995, comm. 93, obs. M. Véron). It also found that four members of a political action committee had been sufficiently covered by comments referring to the committee (Cass. crim., January 16, 1969, Bull. crim., No. 35). However, it dismissed an action in defamation where the impugned comments concerned Catholic clergy in general (Cass. crim., November 22, 1934, D.P. 1936.1.27, note M. Ninot)
2011	Canadian Broadcasting Corp. v. Canada (Attorney General)	1/28/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7914/index.do	Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2, [2011] 1 S.C.R. 19	Deschamps J.	unanimous	Quebec	Constitutional law	C	referred to	Morris v. Crown Office, [1970] 1 All E.R. 1079	lower-level court	UK	[94] When the salutary and the negative effects of the impugned measures are balanced, it must be concluded that the former outweigh the latter. In the court context, freedom of expression, like all other fundamental rights, must be reconciled with the fair administration of justice. As Salmon L.J. wrote in Morris v. Crown Office, [1970] 1 All E.R. 1079 (C.A.), at pp. 1086-87 (quoted with approval by Dickson C.J. in B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 S.C.R. 214, at p. 249): Every member of the public has an inalienable right that our courts shall be left free to administer justice without obstruction or interference from whatever quarter it may come. Take away that right and freedom of speech together with all the other freedoms would wither and die, for in the long run it is the courts of justice which are the last bastion of individual liberty. Like litigants, the media have an interest in contributing to the fair administration of the judicial system. An approach under which only the immediate interests of a few journalists indifferent to the proper functioning of the courts are taken into account would not foster freedom of the press. The press would be far less useful if, in seeking to fulfil its function of reporting information of public interest, it were to compromise the serenity of hearings and the search for the truth. The presence of journalists would then be not only ineffectual, but harmful.
2011	Canadian Broadcasting Corp. v. Canada (Attorney General)	1/28/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7914/index.do	Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2, [2011] 1 S.C.R. 19	Deschamps J.	unanimous	Quebec	Constitutional law	R		Code de procédure pénale (France), art. 308.	statute	France	[96] In addition, a number of countries have adopted measures that are similar to or even stricter than the measures being challenged in the case at bar. For example, in the United Kingdom it is prohibited to take any photograph or even to make any sketch in court of any participant in legal proceedings, including in the building and its precincts, and to broadcast recordings of judicial proceedings (Criminal Justice Act, 1925 (U.K.), 15 & 16 Geo. 5, c. 86, s. 41; Contempt of Court Act 1981 (U.K.), 1981, c. 49, s. 9). France also prohibits the use in courtrooms of any device for recording or broadcasting sound (Code de procédure pénale, art. 308). This national, indeed international, consensus confirms that measures intended to regulate the work of the media in courthouses are necessary to maintain the fair administration of justice.
2011	Canadian Broadcasting Corp. v. Canada (Attorney General)	1/28/2011	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7914/index.do	Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2, [2011] 1 S.C.R. 19	Deschamps J.	unanimous	Quebec	Constitutional law	R		Contempt of Court Act 1981 (U.K.), 1981, c. 49, s. 9.	statute	UK	[96] In addition, a number of countries have adopted measures that are similar to or even stricter than the measures being challenged in the case at bar. For example, in the United Kingdom it is prohibited to take any photograph or even to make any sketch in court of any participant in legal proceedings, including in the building and its precincts, and to broadcast recordings of judicial proceedings (Criminal Justice Act, 1925 (U.K.), 15 & 16 Geo. 5, c. 86, s. 41; Contempt of Court Act 1981 (U.K.), 1981, c. 49, s. 9). France also prohibits the use in courtrooms of any device for recording or broadcasting sound (Code de procédure pénale, art. 308). This national, indeed international, consensus confirms that measures intended to regulate the work of the media in courthouses are necessary to maintain the fair administration of justice.
2010	Canada (Attorney General) v. TeleZone Inc.	12/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7906/index.do	Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62, [2010] 3 S.C.R. 585	Binnie J.	unanimous	Ontario	Courts	C	referred to	Roy v. Kensington and Chelsea and Westminster Family Practitioner Committee, [1992] 1 A.C. 624	SC	UK (HL)	[77] In the U.K., a similar position has been expressed by the House of Lords in Roy v. Kensington and Chelsea and Westminster Family Practitioner Committee, [1992] 1 A.C. 624, per Lord Bridge, at pp. 628-29: . . . where a litigant asserts his entitlement to a subsisting right in private law, whether by way of claim or defence, the circumstance that the existence and extent of the private right asserted may incidentally involve the examination of a public law issue cannot prevent the litigant from seeking to establish his right by action commenced by writ or originating summons, any more than it can prevent him from setting up his private law right in proceedings brought against him. It is generally true here, as it is in the U.K., that a plaintiff is not required to bring an application for judicial review so long as private rights are legitimately engaged by the action. Under the English authorities, as in Canada, there is a special concern where the availability of judicial review depends on special leave, or is restricted by an abbreviated limitation period, or where the relief available on judicial review is discretionary (Roy, per Lord Lowry, at p. 654). See also P. P. Craig, Administrative Law (6th ed. 2008), at p. 869. These considerations echo the concerns already canvassed in rejecting the Grenier approach.

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2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	R. (Yogathas) v. Secretary of State for the Home Department, [2002] UKHL 36, [2003] 1 A.C. 920	SC	UK (HL)	[50] Under the Refugee Convention, refugee status depends on the circumstances at the time the inquiry is made; it is not dependent on formal findings. As one author puts it, "it is one's de facto circumstances, not the official validation of those circumstances, that gives rise to Convention refugee status": James C. Hathaway, The Rights of Refugees Under International Law (2005), at pp. 158 and 278. It follows that the rights flowing from the individual's situation as a refugee are temporal in the sense that they exist while the risk exists but end when the risk has ended. Thus, like other obligations under the Refugee Convention, the duty of non-refoulement is "entirely a function of the existence of a risk of being persecuted [and] it does not compel a state to allow a refugee to remain in its territory if and when that risk has ended": Hathaway, at p. 302; R. (Yogathas) v. Secretary of State for the Home Department, [2002] UKHL 36, [2003] 1 A.C. 920, per Lord Scott of Foscote, at para. 106. The relevant time for assessment of risk is at the time of proposed removal: Hathaway, at p. 920; Wouters, at p. 99. This temporal understanding of refugee status under the Refugee Convention does not support the "binding effect" approach to earlier formal findings of refugee status.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	Hilali v. Central Court of Criminal Proceedings No. 5 of the National Court, Madrid, [2006] EWHC 1239 (Admin.), [2006] 4 All E.R. 435	lower-level court	UK	[94] It is true that there is English and Australian authority for the view that the protection afforded by the comparable provisions in those jurisdictions is limited to protection against prejudice in the trial or punishment of the person sought: see, e.g., Clive Nicholls, Clare Montgomery and Julian B. Knowles, The Law of Extradition and Mutual Assistance (2nd ed. 2007), at §5.44-5.53; Hilali v. Central Court of Criminal Proceedings No. 5 of the National Court, Madrid, [2006] EWHC 1239 (Admin.), [2006] 4 All E.R. 435 (Q.B., Div. Ct.); Aughterson, at pp. 111-15; Republic of Croatia v. Snedden, [2010] HCA 14, 265 A.L.R. 621. However, this approach reflects significant differences in drafting between those provisions, on one hand, and the Extradition Convention and s. 44(1) (b) on the other.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	Republic of Croatia v. Snedden, [2010] HCA 14, 265 A.L.R. 621	SC	Australia	[94] It is true that there is English and Australian authority for the view that the protection afforded by the comparable provisions in those jurisdictions is limited to protection against prejudice in the trial or punishment of the person sought: see, e.g., Clive Nicholls, Clare Montgomery and Julian B. Knowles, The Law of Extradition and Mutual Assistance (2nd ed. 2007), at §5.44-5.53; Hilali v. Central Court of Criminal Proceedings No. 5 of the National Court, Madrid, [2006] EWHC 1239 (Admin.), [2006] 4 All E.R. 435 (Q.B., Div. Ct.); Aughterson, at pp. 111-15; Republic of Croatia v. Snedden, [2010] HCA 14, 265 A.L.R. 621. However, this approach reflects significant differences in drafting between those provisions, on one hand, and the Extradition Convention and s. 44(1) (b) on the other.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	R. v. Secretary of State for the Home Department ex p. Sivakumaran, [1988] 1 A.C. 958	lower-level court	UK	[100] Commentators are generally in agreement that the thresholds under Articles 1 and 33 of the Refugee Convention are the same — in other words, that all refugees under the Refugee Convention benefit from Article 33 non-refoulement protection notwithstanding the difference in wording between Article 1 and Article 33: see, e.g., Goodwin-Gill and McAdam, at p. 234; Wouters, at pp. 56-57; Hathaway, at pp. 304-5; Jari Pirjola, "Shadows in Paradise — Exploring Non-Refoulement as an Open Concept" (2007), 19 Int'l J. Refugee L. 639, at p. 645. The commentators' position is supported by judicial decisions in the United Kingdom, Australia and New Zealand: see, e.g., R. v. Secretary of State for the Home Department ex p. Sivakumaran, [1988] 1 A.C. 958, at p. 1001; M38/2002 v. Minister for Immigration and Multicultural and Indigenous Affairs, [2003] FCAFC 131, 199 A.L.R. 290, at para. 38; Zaoui v. Attorney-General (No. 2), [2005] 1 N.Z.L.R. 690 (C.A.), at para. 36.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	M38/2002 v. Minister for Immigration and Multicultural and Indigenous Affairs, [2003] FCAFC 131, 199 A.L.R. 290	lower-level court	Australia	[100] Commentators are generally in agreement that the thresholds under Articles 1 and 33 of the Refugee Convention are the same — in other words, that all refugees under the Refugee Convention benefit from Article 33 non-refoulement protection notwithstanding the difference in wording between Article 1 and Article 33: see, e.g., Goodwin-Gill and McAdam, at p. 234; Wouters, at pp. 56-57; Hathaway, at pp. 304-5; Jari Pirjola, "Shadows in Paradise — Exploring Non-Refoulement as an Open Concept" (2007), 19 Int'l J. Refugee L. 639, at p. 645. The commentators' position is supported by judicial decisions in the United Kingdom, Australia and New Zealand: see, e.g., R. v. Secretary of State for the Home Department ex p. Sivakumaran, [1988] 1 A.C. 958, at p. 1001; M38/2002 v. Minister for Immigration and Multicultural and Indigenous Affairs, [2003] FCAFC 131, 199 A.L.R. 290, at para. 38; Zaoui v. Attorney-General (No. 2), [2005] 1 N.Z.L.R. 690 (C.A.), at para. 36.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	Zaoui v. Attorney-General (No. 2), [2005] 1 N.Z.L.R. 690	lower-level court	New Zealand	[100] Commentators are generally in agreement that the thresholds under Articles 1 and 33 of the Refugee Convention are the same — in other words, that all refugees under the Refugee Convention benefit from Article 33 non-refoulement protection notwithstanding the difference in wording between Article 1 and Article 33: see, e.g., Goodwin-Gill and McAdam, at p. 234; Wouters, at pp. 56-57; Hathaway, at pp. 304-5; Jari Pirjola, "Shadows in Paradise — Exploring Non-Refoulement as an Open Concept" (2007), 19 Int'l J. Refugee L. 639, at p. 645. The commentators' position is supported by judicial decisions in the United Kingdom, Australia and New Zealand: see, e.g., R. v. Secretary of State for the Home Department ex p. Sivakumaran, [1988] 1 A.C. 958, at p. 1001; M38/2002 v. Minister for Immigration and Multicultural and Indigenous Affairs, [2003] FCAFC 131, 199 A.L.R. 290, at para. 38; Zaoui v. Attorney-General (No. 2), [2005] 1 N.Z.L.R. 690 (C.A.), at para. 36.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	C	referred to	Immigration and Naturalization Service v. Cardoza-Fonseca, 480 U.S. 421 (1987)	SC	US	[101] There are however, opinions to the contrary in the United States. For example, in Immigration and Naturalization Service v. Cardoza-Fonseca, 480 U.S. 421 (1987), in the course of interpreting the U.S. domestic law tests for withholding of deportation and granting asylum as a refugee, a majority of the Supreme Court opined that Article 33.1 of the Refugee Convention does not extend non-refoulement protection to everyone who meets the definition of refugee: p. 440. This view, however, was not accepted by three members of the court. Given the fundamental human rights character of the Refugee Convention and the centrality to refugee law of the principle of non-refoulement, I, with respect, find the views of the commentators and the judicial opinions from other jurisdictions to which I have referred more persuasive on this point.
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	R		Extradition Act 1988 (Austr.), No. 4 of 1988, s. 7(c).	statute	Australia	[95] The English provisions focus more specifically on discrimination in the context of the trial and punishment than do the Extradition Convention or s. 44(1) (b). After addressing in s. 13(a) of the Extradition Act 2003 (U.K.), c. 41, extradition sought for a discriminatory purpose, s. 13(b) is directed to situations in which the person sought, if extradited, "might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, [etc.]". The Australian provision, s. 7(c) of the Extradition Act 1988, No. 4, similarly makes an explicit link between discrimination and prejudice at trial or in relation to punishment: ". . . the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, religion [etc.]".
2010	Németh v. Canada (Justice)	11/25/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do	Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281	Cromwell J.	unanimous	Quebec	Criminal law	R		Extradition Act 2003 (U.K.), c. 41, s. 13(a), (b).	statute	UK	[95] The English provisions focus more specifically on discrimination in the context of the trial and punishment than do the Extradition Convention or s. 44(1) (b). After addressing in s. 13(a) of the Extradition Act 2003 (U.K.), c. 41, extradition sought for a discriminatory purpose, s. 13(b) is directed to situations in which the person sought, if extradited, "might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, [etc.]". The Australian provision, s. 7(c) of the Extradition Act 1988, No. 4, similarly makes an explicit link between discrimination and prejudice at trial or in relation to punishment: ". . . the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his or her race, religion [etc.]".
2010	R. v. Gomboc	11/24/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7898/index.do	R. v. Gomboc, 2010 SCC 55, [2010] 3 S.C.R. 211	McLachlin C.J. and Fish J.	dissenting	Alberta	Constitutional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[144] In order to demonstrate that the search was authorized by law, the Crown must show common law or legislative authorization. The Crown attempts to show common law authorization by relying upon the ancillary police powers doctrine articulated in R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.). To succeed, the Crown must show that (1) the search "fell within the general scope of the duties of a police officer under statute or common law", and (2) the "interference with liberty [was] necessary for the carrying out of the particular police duty and [was] reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference": Dedman v. The Queen, [1985] 2 S.C.R. 2, at p. 35. [145] Without commenting on whether the first branch of the Waterfield test is satisfied, the warrantless use of the DRA in this case fails the second branch of the test. The search was not shown to be reasonably necessary to the police activity, as the police unit in this case has demonstrated by virtue of its general policy of applying for warrants before attaching DRAs to transformers located on private property. This is not a case like Kang-Brown where police used a sniffer dog to detect drugs in the bag of a suspicious-looking person at a bus station. A police "stop and search", by virtue of its exigent nature, provides a more compelling reason for expanding common law police powers than a situation like the present where a warrant can be obtained in a timely fashion with appropriate grounds.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2010	Globe and Mail v. Canada (Attorney General)	10/22/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7883/index.do	Globe and Mail v. Canada (Attorney General), 2010 SCC 41, [2010] 2 S.C.R. 592	LeBel J.	unanimous	Quebec	Constitutional law	C	referred to	Attorney-General v. Mulholland, [1963] 2 Q.B. 477	lower-level court	UK	[58] The first two considerations are related: the stage of the proceedings, and the centrality of the issue to the dispute between the parties. With respect to the stage of the proceedings, several points may be observed. On the one hand, the early stage of the proceedings — such as the examination for discovery stage in this case — might militate in favour of recognizing the privilege. The case will be at its preliminary stages only, and will yet to have reached the stage of determining the liability or the rights of the parties. This is a variation on the U.K. "newspaper rule" (Attorney-General v. Mulholland, [1963] 2 Q.B. 477), whereby journalists are allowed to protect their sources during the discovery stage, because at this point the procedural equities do not outweigh the freedom of the press, but may be required to disclose at trial. On the other hand, given the overall exploratory aims of examinations for discovery and the confidentiality with which they are cloaked, in principle, the testimony may be capable of providing a more complete picture of the case and have the potential to resolve certain issues prior to going to trial. This would militate in favour of not recognizing the privilege at this stage.
2010	Globe and Mail v. Canada (Attorney General)	10/22/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7883/index.do	Globe and Mail v. Canada (Attorney General), 2010 SCC 41, [2010] 2 S.C.R. 592	LeBel J.	unanimous	Quebec	Constitutional law	C	referred to	Secretary of State for Defence v. Guardian Newspapers Ltd., [1985] 1 A.C. 339	SC	UK (HL)	[62] A crucial consideration in any court's determination of whether the privilege has been made out will be whether the facts, information or testimony are available by any other means. As the Court recognized in National Post, "[t]he 'alternate sources' principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K." (para. 66). Indeed, courts in the United Kingdom have endorsed this necessity requirement, and held that mere administrative convenience is insufficient (Secretary of State for Defence v. Guardian Newspapers Ltd., [1985] 1 A.C. 339; In re An Inquiry under the Company Securities (Insider Dealing) Act 1985, [1988] 1 A.C. 660; Cross and Tapper on Evidence (11th ed. 2007), at p. 501).
2010	Globe and Mail v. Canada (Attorney General)	10/22/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7883/index.do	Globe and Mail v. Canada (Attorney General), 2010 SCC 41, [2010] 2 S.C.R. 592	LeBel J.	unanimous	Quebec	Constitutional law	C	referred to	In re An Inquiry under the Company Securities (Insider Dealing) Act 1985, [1988] 1 A.C. 660	SC	UK (HL)	[62] A crucial consideration in any court's determination of whether the privilege has been made out will be whether the facts, information or testimony are available by any other means. As the Court recognized in National Post, "[t]he 'alternate sources' principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K." (para. 66). Indeed, courts in the United Kingdom have endorsed this necessity requirement, and held that mere administrative convenience is insufficient (Secretary of State for Defence v. Guardian Newspapers Ltd., [1985] 1 A.C. 339; In re An Inquiry under the Company Securities (Insider Dealing) Act 1985, [1988] 1 A.C. 660; Cross and Tapper on Evidence (11th ed. 2007), at p. 501).
2010	Globe and Mail v. Canada (Attorney General)	10/22/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7883/index.do	Globe and Mail v. Canada (Attorney General), 2010 SCC 41, [2010] 2 S.C.R. 592	LeBel J.	unanimous	Quebec	Constitutional law	C	referred to	Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979)	SC	US	[85] Such a legal policy is consistent with what has come to be known as the U.S. "Daily Mail principle". In Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), the United States Supreme Court held that if a newspaper obtains truthful information about a matter of public importance, and does so in a lawful manner, then, absent a higher order public interest, the state cannot punish the publication of that information. This principle was extended, in Bartnicki v. Vopper, 532 U.S. 514 (2001), to situations where the published information about an important public issue had been unlawfully intercepted, and where the press knew or ought to have known that the information had been intercepted by a third party, but had not participated in the interception. Justice Stevens, for the majority, held that "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern" (p. 535).
2010	Globe and Mail v. Canada (Attorney General)	10/22/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7883/index.do	Globe and Mail v. Canada (Attorney General), 2010 SCC 41, [2010] 2 S.C.R. 592	LeBel J.	unanimous	Quebec	Constitutional law	C	referred to	Bartnicki v. Vopper, 532 U.S. 514 (2001)	SC	US	[85] Such a legal policy is consistent with what has come to be known as the U.S. "Daily Mail principle". In Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), the United States Supreme Court held that if a newspaper obtains truthful information about a matter of public importance, and does so in a lawful manner, then, absent a higher order public interest, the state cannot punish the publication of that information. This principle was extended, in Bartnicki v. Vopper, 532 U.S. 514 (2001), to situations where the published information about an important public issue had been unlawfully intercepted, and where the press knew or ought to have known that the information had been intercepted by a third party, but had not participated in the interception. Justice Stevens, for the majority, held that "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern" (p. 535).
2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	Kuwait Airways Corp. v. Iraqi Airways Co., [2008] EWHC 2039 (BAILII)	lower-level court	UK	[2] At the time of the invasion and occupation of Kuwait, the Iraqi government ordered its national airline, the Iraqi Airways Company ("IAC"), to appropriate the appellant's aircraft, equipment and parts inventory. After the war, KAC recovered only some of its aircraft. The remainder of its equipment had been destroyed or had disappeared. KAC brought an action against IAC in the United Kingdom for damages in respect of losses sustained as a result of the appropriation of its property following the invasion. The United Kingdom courts agreed to hear the matter. After lengthy and difficult proceedings, as well as many developments that need not be described here, the courts accepted KAC's position that IAC was not entitled to state immunity under the legislation of the United Kingdom, and ordered IAC to pay amounts totalling over one billion Canadian dollars to KAC. In accordance with English civil procedure, KAC applied and was granted leave to have the Republic of Iraq joined as a second defendant in order to claim from it the costs of the actions that had been brought in the United Kingdom, which totalled approximately $84 million in Canadian currency. On July 16, 2008, Steel J. of the High Court of Justice, Queen's Bench Division, Commercial Court, granted the application and ordered Iraq to pay the amount claimed by KAC (Kuwait Airways Corp. v. Iraqi Airways Co., [2008] EWHC 2039 (BAILII) (T.C.C.)). Although KAC's application was not opposed before him, Steel J., at KAC's invitation, considered the issue of whether Iraq was entitled to immunity under the State Immunity Act 1978 (U.K.), 1978, c. 33, holding, on the basis of the commercial exception provided for in that Act, that it was not. According to Steel J., Iraq controlled, funded and supervised IAC's defence throughout the proceedings against IAC. The proceedings were marked by perjury and by tactics on the part of IAC and Iraq that were intended to deceive the British courts. Steel J. held that Iraq's acts in controlling IAC's defence were not sovereign acts, but instead fell within the commercial exception to the principle of state immunity under the State Immunity Act 1978
2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	Kuwait Airways Corp. v. Iraqi Airways Co., [2003] EWHC 31, [2003] 1 Lloyd's L.R. 448	lower-level court	UK	[10] Steel J.'s judgment was rendered in 2008, and it flowed from two actions for perjury brought by KAC against IAC after the C.C.Q. came into force (Kuwait Airways Corp. v. Iraqi Airways Co., [2003] EWHC 31, [2003] 1 Lloyd's L.R. 448; Kuwait Airways Corp. v. Iraqi Airways Co., [2005] EWHC 2524 (BAILII)). Contrary to the respondent's submission, the relevant date for determining which code applies is not that on which the litigation between these two parties began. Iraq's involvement and the order against Iraq are solely the result of the fraudulent acts in issue in the perjury actions. Thus, Book Ten of the C.C.Q. — arts. 3076 to 3168 — applies to the legal situation before this Court and governs the application for recognition filed in the Quebec courts by KAC. Having resolved this issue, I will now consider whether the SIA is applicable.
2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	Kuwait Airways Corp. v. Iraqi Airways Co., [2005] EWHC 2524 (BAILII)	lower-level court	UK	[10] Steel J.'s judgment was rendered in 2008, and it flowed from two actions for perjury brought by KAC against IAC after the C.C.Q. came into force (Kuwait Airways Corp. v. Iraqi Airways Co., [2003] EWHC 31, [2003] 1 Lloyd's L.R. 448; Kuwait Airways Corp. v. Iraqi Airways Co., [2005] EWHC 2524 (BAILII)). Contrary to the respondent's submission, the relevant date for determining which code applies is not that on which the litigation between these two parties began. Iraq's involvement and the order against Iraq are solely the result of the fraudulent acts in issue in the perjury actions. Thus, Book Ten of the C.C.Q. — arts. 3076 to 3168 — applies to the legal situation before this Court and governs the application for recognition filed in the Quebec courts by KAC. Having resolved this issue, I will now consider whether the SIA is applicable.

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2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	Kuwait Airways Corp. v. Iraqi Airways Co., [1995] 3 All E.R. 694	SC	UK (HL)	[29] In the United Kingdom, the courts ask whether the act in question could be performed by a private individual. Lord Goff of Chieveley recommended the use of this test in one of the decisions related to the litigation between KAC and IAC on which the instant case is based. Relying on an earlier opinion of Lord Wilberforce in I Congreso del Partido, [1983] A.C. 244, at pp. 262, 267 and 269, he found that the proper test would be not what the state's objective is in performing the act, but whether the act could be performed by a private citizen (Kuwait Airways Corp. v. Iraqi Airways Co., [1995] 3 All E.R. 694, at pp. 704-5). In the United States, the Supreme Court described the sovereign acts protected by state immunity as those performed in the exercise of the powers peculiar to sovereigns: Under the restrictive, as opposed to the "absolute," theory of foreign sovereign immunity, a state is immune from the jurisdiction of foreign courts as to its sovereign or public acts (jure imperii), but not as to those that are private or commercial in character (jure gestionis). . . . We explained in Weltover, supra, at 614 (quoting Dunhill, supra, at 704), that a state engages in commercial activity under the restrictive theory where it exercises "'only those powers that can also be exercised by private citizens,'" as distinct from those "'powers peculiar to sovereigns.'" Put differently, a foreign state engages in commercial activity for purposes of the restrictive theory only where it acts "in the manner of a private player within" the market. [35] The Quebec Superior Court and the Quebec Court of Appeal found that, owing to the nature of Iraq's acts, state immunity applies and the commercial activity exception does not. But Steel J.'s findings of fact lead to a different legal characterization. It is true that the acts alleged against Iraq that resulted in the litigation were carried out by a state for the benefit of a state-owned corporation. However, the specific acts in issue here are instead those performed by Iraq in the course of the proceedings in the United Kingdom courts. When all is said and done, the subject of the litigation was the seizure of the aircraft by Iraq. The original appropriation of the aircraft was a sovereign act, but the subsequent retention and use of the aircraft by IAC were commercial acts: Kuwait Airways Corp. v. Iraqi Airways Co. (1995), at p. 711. The English litigation, in which the respondent intervened to defend IAC, concerned the retention of the aircraft. There was no connection between that commercial litigation and the initial sovereign act of seizing the aircraft. As a result, Iraq could not rely on the state immunity provided for in s. 3 of the SIA . The respondent's exception to dismiss the application for recognition should have been dismissed. This conclusion means that it will not be necessary to discuss the issue of immunity from execution raised at first instance with respect to certain property the respondent allegedly owns in Montréal.
2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	Saudi Arabia v. Nelson, 507 U.S. 349 (1993)	SC	US	[29] In the United Kingdom, the courts ask whether the act in question could be performed by a private individual. Lord Goff of Chieveley recommended the use of this test in one of the decisions related to the litigation between KAC and IAC on which the instant case is based. Relying on an earlier opinion of Lord Wilberforce in I Congreso del Partido, [1983] A.C. 244, at pp. 262, 267 and 269, he found that the proper test would be not what the state's objective is in performing the act, but whether the act could be performed by a private citizen (Kuwait Airways Corp. v. Iraqi Airways Co., [1995] 3 All E.R. 694, at pp. 704-5). In the United States, the Supreme Court described the sovereign acts protected by state immunity as those performed in the exercise of the powers peculiar to sovereigns: Under the restrictive, as opposed to the "absolute," theory of foreign sovereign immunity, a state is immune from the jurisdiction of foreign courts as to its sovereign or public acts (jure imperii), but not as to those that are private or commercial in character (jure gestionis). . . . We explained in Weltover, supra, at 614 (quoting Dunhill, supra, at 704), that a state engages in commercial activity under the restrictive theory where it exercises "'only those powers that can also be exercised by private citizens,'" as distinct from those "'powers peculiar to sovereigns.'" Put differently, a foreign state engages in commercial activity for purposes of the restrictive theory only where it acts "in the manner of a private player within" the market. (Saudi Arabia v. Nelson, 507 U.S. 349 (1993), at pp. 359-60)
2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do?q=%22At+the+time+of+the+invasion+and+occupation+of+Kuwait%2C+%22	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	C	referred to	State Immunity Act 1978 (U.K.), 1978, c. 33, s. 3.	statute	UK	[2] At the time of the invasion and occupation of Kuwait, the Iraqi government ordered its national airline, the Iraqi Airways Company ("IAC"), to appropriate the appellant's aircraft, equipment and parts inventory. After the war, KAC recovered only some of its aircraft. The remainder of its equipment had been destroyed or had disappeared. KAC brought an action against IAC in the United Kingdom for damages in respect of losses sustained as a result of the appropriation of its property following the invasion. The United Kingdom courts agreed to hear the matter. After lengthy and difficult proceedings, as well as many developments that need not be described here, the courts accepted KAC's position that IAC was not entitled to state immunity under the legislation of the United Kingdom, and ordered IAC to pay amounts totalling over one billion Canadian dollars to KAC. In accordance with English civil procedure, KAC applied and was granted leave to have the Republic of Iraq joined as a second defendant in order to claim from it the costs of the actions that had been brought in the United Kingdom, which totalled approximately $84 million in Canadian currency. On July 16, 2008, Steel J. of the High Court of Justice, Queen's Bench Division, Commercial Court, granted the application and ordered Iraq to pay the amount claimed by KAC (Kuwait Airways Corp. v. Iraqi Airways Co., [2008] EWHC 2039 (BAILII) (T.C.C.)). Although KAC's application was not opposed before him, Steel J., at KAC's invitation, considered the issue of whether Iraq was entitled to immunity under the State Immunity Act 1978 (U.K.), 1978, c. 33, holding, on the basis of the commercial exception provided for in that Act, that it was not. According to Steel J., Iraq controlled, funded and supervised IAC's defence throughout the proceedings against IAC. The proceedings were marked by perjury and by tactics on the part of IAC and Iraq that were intended to deceive the British courts. Steel J. held that Iraq's acts in controlling IAC's defence were not sovereign acts, but instead fell within the commercial exception to the principle of state immunity under the State Immunity Act 1978. [14] The SIA was based on similar legislation that had been enacted a few years earlier in the United States (the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C.) and the United Kingdom (the State Immunity Act 1978). Parliament's intention in enacting it was to clarify the law on the immunities to which sovereign states are entitled in Canadian courts, as the courts themselves had wavered between absolute and restrictive theories with respect to this principle (C. Emanuelli, Droit international public, at pp. 334-35). [25] This exception can be found, although worded differently, in the U.S. and English laws on which the SIA is based. Thus, s. 3(1)(a) of the State Immunity Act 1978, enacted by the Parliament of the United Kingdom, provides for a commercial exception: 3. — (1) A State is not immune as respects proceedings relating to — (a) a commercial transaction entered into by the State; The term "commercial transaction", which delimits the scope of this exception, is defined quite broadly in s. 3(3):

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2010	Kuwait Airways Corp. v. Iraq	10/21/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7882/index.do	Kuwait Airways Corp. v. Iraq, 2010 SCC 40, [2010] 2 S.C.R. 571	LeBel J.	unanimous	Quebec	International law	R		Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891, 28 U.S.C. §§ 1603, 1605(a)(2).	statute	US	[26] In the United States, § 1605(a)(2) of the Foreign Sovereign Immunities Act of 1976 also provides for a commercial activity exception: (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case — . . . (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States; The US legislation also contains a definition of "commercial activity": § 1603. Definitions For purposes of this chapter — (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	LeBel and Fish JJ.	dissenting	British Columbia	Constitutional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[191] We note that this expansion of police powers occurs at the expense of Charter rights. More importantly, it is being accomplished without subjecting the potential police power to the rigours of the s. 1 justification process, or even the Dedman/Waterfield test for the recognition of police powers at common law (R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.), and Dedman v. The Queen, [1985] 2 S.C.R. 2). What is more, "this kind of judicial intervention would pre-empt any serious Charter review of the limits, as the limits would arise out of initiatives of the courts themselves" (R. v. Orbanski, 2005 SCC 37, [2005] 2 S.C.R. 3, at para. 81 (per LeBel J., Fish J. concurring)). Indeed, the Chief Justice and Charron J. subject the limits they impose on s. 10 (b) to no legal or constitutional scrutiny whatsoever.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	LeBel and Fish JJ.	dissenting	British Columbia	Constitutional law	C	D	Miranda v. Arizona, 384 U.S. 436 (1966)	SC	US	[198] Concerns similar to those expressed by our colleagues were also expressed some 50 years ago in the United States, prior to and after the judgment of the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436 (1966). Critics argued that if detainees could insist on having their lawyers present during their interrogations, the police would no longer be able to obtain confessions, thereby hindering their ability to solve crimes and secure convictions. [199] Five decades of empirical research have determined that those early fears were unfounded. Studies addressing the impact of Miranda have generally suggested that: (1) police officers began complying with Miranda immediately after it became law; (2) Miranda has not reduced the percentage of admissions and confessions made to officers; and (3) Miranda has not decreased the percentage of charges laid by prosecutors or their success in prosecuting cases. See, for example, Evelle J. Younger, "Results of a Survey Conducted in the District Attorney's Office of Los Angeles County Regarding the Effect of the Miranda Decision upon the Prosecution of Felony Cases" (1966-1967), 5 Am. Crim. L.Q. 32; Stephen J. Schulhofer, "Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs" (1996), 90 Nw. U. L. Rev. 500, at p. 547. [199] Five decades of empirical research have determined that those early fears were unfounded. Studies addressing the impact of Miranda have generally suggested that: (1) police officers began complying with Miranda immediately after it became law; (2) Miranda has not reduced the percentage of admissions and confessions made to officers; and (3) Miranda has not decreased the percentage of charges laid by prosecutors or their success in prosecuting cases. See, for example, Evelle J. Younger, "Results of a Survey Conducted in the District Attorney's Office of Los Angeles County Regarding the Effect of the Miranda Decision upon the Prosecution of Felony Cases" (1966-1967), 5 Am. Crim. L.Q. 32; Stephen J. Schulhofer, "Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs" (1996), 90 Nw. U. L. Rev. 500, at p. 547. [200] Those early findings have remained essentially undisturbed. The consensus, save a few dissenting voices, is that Miranda's effect on both the rates of confession and conviction has been negligible. The rate of confession has remained relatively stable, with only a small (one to two percent) drop post-Miranda. Similarly, in a recent large-scale study, Prof. Schulhofer concluded that "[f]or all practical purposes, Miranda's empirically detectable net damage to law enforcement is zero" (p. 547). None of the commentaries referenced by our colleagues contradict these findings. Indeed, two of the mentioned authors find that Miranda has inadequately achieved its intended protection of defendants subjected to custodial interrogation. As Ronald J. Allen explains: If the atmosphere of the jail house is so compelling, if it is powerful enough to overbear the will to compel confessions to serious felonies by even innocent people, why will it not compel waivers of the abstract legal rights contained in the Miranda warnings? In the absence of an explanation of such matters, one would predict exactly what close to forty years of experience have demonstrated, which is that Miranda did not make much of a difference.

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2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	Binnie J.	dissenting	British Columbia	Constitutional law	C	D	Miranda v. Arizona, 384 U.S. 436 (1966)	SC	US	[101] The appellant invokes Miranda v. Arizona, 384 U.S. 436 (1966), at p. 469, where the U.S. Supreme Court adopted the sweeping proposition: The circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. [Emphasis added.] While LeBel and Fish JJ. say that they "are not advocating the adoption of the American rules under Miranda" (para. 201), they are clear in their view that "early fears" raised by Miranda proved to be "unfounded" (para. 199). Whatever may be my colleagues' eventual position (if any) on having counsel present during custodial interrogations, my own view is that adoption of the Miranda rule would seriously overshoot the purpose of s. 10 (b) in the Canadian context, with its different structure of checks and balances. The need for caution not to overshoot the purpose of s. 10 (b) was emphasized in a somewhat different context by Lamer J. in R. v. Smith, [1989] 2 S.C.R. 368, at p. 385: This limit on the rights of an arrested or detained person is essential because without it, it would be possible to delay needlessly and with impunity an investigation and even, in certain cases, to allow for an essential piece of evidence to be lost, destroyed or rendered impossible to obtain. The rights set out in the Charter , and in particular the right to retain and instruct counsel, are not absolute and unlimited rights. They must be exercised in a way that is reconcilable with the needs of society. An arrested or detained person cannot be permitted to hinder the work of the police by acting in a manner such that the police cannot adequately carry out their tasks. [Emphasis added.] No doubt, a defence counsel sitting mute in the interrogation room would be better informed than one who is excluded, but the potential "to delay needlessly and with impunity" cannot be doubted by anyone who has experienced the disruptive force of even a moderately aggressive lawyer in a civil examination for discovery (a proceeding that is also un-refereed). Of course, the detainee (unlike the civil litigant) has a right to silence, but there is no corresponding obligation of silence placed on defence counsel. My colleagues LeBel and Fish JJ. rightly observe that police interrogations in a criminal case are not analogous to a civil examination for discovery (para. 173). Yes, the settings are different, but the potential for disruption is comparable.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	Binnie J.	dissenting	British Columbia	Constitutional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[110] In the recent case of R. v. Waugh, 2010 ONCA 100, 251 C.C.C. (3d) 139, a police officer decided that he had the power to impound a motor vehicle he believed to be uninsured. He had no statutory authority to do so. The correctness of the police decision to seize the car, accordingly, fell to be decided under the Dedman/Waterfield test (R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.)), which incorporates two rather vague criteria, namely (1) did the police conduct in question fall within the "general scope of any duty imposed by statute or recognized at common law", and (2) did such conduct "albeit within the general scope of such a duty, involv[e] an unjustifiable use of powers associated with the duty" (para. 26)? Blair J.A., for the Ontario Court of Appeal, conceded that: the common law has never explicitly recognized the authority of the police to tow a vehicle as deriving from their general police duties. However, I see no reason why that should not be the case provided the Dedman/Waterfield test is met in the circumstances and provided the police act reasonably and prudently. Here, in my view, the test is met and the police acted reasonably and prudently. [para. 27] (There's that "reasonably" word linked to police judgment again!) The Dedman/Waterfield test poses quite an abstract assessment for the police to make when deciding if they can seize a motor vehicle (Waugh), or blockade the parking lot of a strip club based on a 9-1-1 gun call (Clayton), or initiate a random road stop without statutory authority (Dedman), or detain someone on the street for questioning even if the police possess no reasonable and probable grounds to believe that the person was involved in criminal activity (R. v. Mann, 2004 SCC 52, [2004] 3 S.C.R. 59). In all these cases, the police made the initial determination of their previously unrecognized powers, and the courts held that the police got it right. [114] I cannot think that the police assessment of whether a detainee's request to consult counsel falls within the purpose of s. 10 (b) — access to proper legal assistance — is any more difficult than whether setting up a random road stop falls within the general concept of police "duty". Nor is determining whether access to counsel is justified by the objective circumstances of the interrogation any more difficult to assess than whether the existence of the police power to blockade the parking lot of a strip club is "unjustifiable". In Clayton, moreover, a majority of the Court held that police powers thus defined will necessarily be "consistent with Charter values" because justification for the police conduct under the Dedman/Waterfield test focusses on "whether the interference with liberty is necessary given the extent of the risk and the liberty at stake, and no more intrusive to liberty than reasonably necessary to address the risk" (para. 21 (emphasis added)). If the police are handed the task of making such on-the-spot judgment calls "reasonably necessary" in relation to previously unrecognized police powers, why is it beyond police capacity to assess their responsibilities in the course of a custodial interrogation? Why are general criteria satisfactory for police to assess their powers but "so vague" as to be "impractical" in relation to their duty to respect a detainee's right to counsel? The answer is that police are quite capable of making both types of judgment calls in the first instance.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	Binnie J.	dissenting	British Columbia	Constitutional law	R		Crimes Act 1914 (Austl.), Part IC, ss. 23G, 23L.	statute	Australia	[103] Of course, nothing prevents Parliament from regulating the presence of counsel at a police interrogation, but in jurisdictions where this has been done, the legislature has generally taken care to spell out the applicable circumstances, e.g. the Australian Commonwealth Crimes Act 1914, Part IC, ss. 23G and 23L; the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002, s. 123; the Queensland Police Powers and Responsibilities Act 2000; the English Police and Criminal Evidence Act 1984, 1984, c. 60, ss. 58 and 66; and related Practice Codes (including Code C — Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers), and the English Criminal Justice and Public Order Act 1994, 1994, c. 33. Our Parliament and/or the provincial legislatures have not seen fit to introduce similar measures within their respective areas of jurisdiction.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	Binnie J.	dissenting	British Columbia	Constitutional law	R		Criminal Justice and Public Order Act 1994 (U.K.), 1994, c. 33.	statute	UK	[103] Of course, nothing prevents Parliament from regulating the presence of counsel at a police interrogation, but in jurisdictions where this has been done, the legislature has generally taken care to spell out the applicable circumstances, e.g. the Australian Commonwealth Crimes Act 1914, Part IC, ss. 23G and 23L; the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002, s. 123; the Queensland Police Powers and Responsibilities Act 2000; the English Police and Criminal Evidence Act 1984, 1984, c. 60, ss. 58 and 66; and related Practice Codes (including Code C — Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers), and the English Criminal Justice and Public Order Act 1994, 1994, c. 33. Our Parliament and/or the provincial legislatures have not seen fit to introduce similar measures within their respective areas of jurisdiction.
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2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	McLachlin C.J. and Charron J.	majority	British Columbia	Constitutional law	C	referred to	Miranda v. Arizona, 384 U.S. 436 (1966)	SC	US	[37] Mr. Sinclair argues that other countries recognize a right to have counsel present throughout a police interview (see Miranda v. Arizona, 384 U.S. 436 (1966), and Escobedo v. Illinois, 378 U.S. 478 (1964)), and that Canada should do the same. He relies on academic commentary. See L. Stuesser "The Accused's Right to Silence: No Doesn't Mean No" (2002), 29 Man. L.J. 149, at p. 150. [38] We are not persuaded that the Miranda rule should be transplanted in Canadian soil. The scope of s. 10 (b) of the Charter must be defined by reference to its language; the right to silence; the common law confessions rule; and the public interest in effective law enforcement in the Canadian context. Adopting procedural protections from other jurisdictions in a piecemeal fashion risks upsetting the balance that has been struck by Canadian courts and legislatures. [38] We are not persuaded that the Miranda rule should be transplanted in Canadian soil. The scope of s. 10 (b) of the Charter must be defined by reference to its language; the right to silence; the common law confessions rule; and the public interest in effective law enforcement in the Canadian context. Adopting procedural protections from other jurisdictions in a piecemeal fashion risks upsetting the balance that has been struck by Canadian courts and legislatures. [39] Significant differences exist between the Canadian and American regimes. Miranda came about in response to abusive police tactics then prevalent in the U.S., and applies in the context of a host of other rules that are less favourable to the accused than their equivalents in Canada. For example, Miranda applies only to persons "in custody". Custody, for these purposes, means "'formal arrest or restraint on freedom of movement' [to] the degree associated with a formal arrest": California v. Beheler, 463 U.S. 1121 (1983), at p. 1125; Yarborough v. Alvarado, 541 U.S. 652 (2004). The Canadian understanding of psychological detention triggering s. 10 (b) is more expansive: R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 44. Moreover, breach of the Miranda rule does not prohibit use at trial of the detainee's evidence for the purpose of impeaching the accused's testimony at trial (Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975)), nor prohibit the introduction at trial of real derivative evidence (United States v. Patane, 542 U.S. 630 (2004)). By contrast, Canadian rules on the admissibility of evidence obtained in violation of s. 10 (b) are much more favourable to the accused: see R. v. Calder, [1996] 1 S.C.R. 660; R. v. Noël, 2002 SCC 67, [2002] 3 S.C.R. 433, at para. 55; Grant, at paras. 116-28. [40] Additionally, the empirical research on Miranda has not reached a definitive conclusion as to the nature or magnitude of its effects. Some have posited that it has had a detrimental effect on law enforcement. Others have vigorously contested such empirical conclusions. See generally, e.g., P. G. Cassell, "Miranda's Social Costs: An Empirical Reassessment" (1996), 90 Nw. U. L. Rev. 387; P. G. Cassell and R. Fowles, "Handcuffing the Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement" (1997-1998), 50 Stan. L. Rev. 1055; S. J. Schulhofer, "Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs" (1996), 90 Nw. U. L. Rev. 500. Whatever the merit of these arguments, the existence of such a controversy should signal caution in relying on any empirical conclusions about Miranda in departing from our own constitutional traditions.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	McLachlin C.J. and Charron J.	majority	British Columbia	Constitutional law	C	referred to	Escobedo v. Illinois, 378 U.S. 478 (1964)	SC	US	[37] Mr. Sinclair argues that other countries recognize a right to have counsel present throughout a police interview (see Miranda v. Arizona, 384 U.S. 436 (1966), and Escobedo v. Illinois, 378 U.S. 478 (1964)), and that Canada should do the same. He relies on academic commentary. See L. Stuesser "The Accused's Right to Silence: No Doesn't Mean No" (2002), 29 Man. L.J. 149, at p. 150.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	McLachlin C.J. and Charron J.	majority	British Columbia	Constitutional law	C	referred to	California v. Beheler, 463 U.S. 1121 (1983)	SC	US	[39] Significant differences exist between the Canadian and American regimes. Miranda came about in response to abusive police tactics then prevalent in the U.S., and applies in the context of a host of other rules that are less favourable to the accused than their equivalents in Canada. For example, Miranda applies only to persons "in custody". Custody, for these purposes, means "'formal arrest or restraint on freedom of movement' [to] the degree associated with a formal arrest": California v. Beheler, 463 U.S. 1121 (1983), at p. 1125; Yarborough v. Alvarado, 541 U.S. 652 (2004). The Canadian understanding of psychological detention triggering s. 10 (b) is more expansive: R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 44. Moreover, breach of the Miranda rule does not prohibit use at trial of the detainee's evidence for the purpose of impeaching the accused's testimony at trial (Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975)), nor prohibit the introduction at trial of real derivative evidence (United States v. Patane, 542 U.S. 630 (2004)). By contrast, Canadian rules on the admissibility of evidence obtained in violation of s. 10 (b) are much more favourable to the accused: see R. v. Calder, [1996] 1 S.C.R. 660; R. v. Noël, 2002 SCC 67, [2002] 3 S.C.R. 433, at para. 55; Grant, at paras. 116-28.
2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	McLachlin C.J. and Charron J.	majority	British Columbia	Constitutional law	C	referred to	Yarborough v. Alvarado, 541 U.S. 652 (2004)	SC	US	[39] Significant differences exist between the Canadian and American regimes. Miranda came about in response to abusive police tactics then prevalent in the U.S., and applies in the context of a host of other rules that are less favourable to the accused than their equivalents in Canada. For example, Miranda applies only to persons "in custody". Custody, for these purposes, means "'formal arrest or restraint on freedom of movement' [to] the degree associated with a formal arrest": California v. Beheler, 463 U.S. 1121 (1983), at p. 1125; Yarborough v. Alvarado, 541 U.S. 652 (2004). The Canadian understanding of psychological detention triggering s. 10 (b) is more expansive: R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 44. Moreover, breach of the Miranda rule does not prohibit use at trial of the detainee's evidence for the purpose of impeaching the accused's testimony at trial (Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975)), nor prohibit the introduction at trial of real derivative evidence (United States v. Patane, 542 U.S. 630 (2004)). By contrast, Canadian rules on the admissibility of evidence obtained in violation of s. 10 (b) are much more favourable to the accused: see R. v. Calder, [1996] 1 S.C.R. 660; R. v. Noël, 2002 SCC 67, [2002] 3 S.C.R. 433, at para. 55; Grant, at paras. 116-28.
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2010	R. v. Sinclair	10/8/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7877/index.do	R. v. Sinclair, 2010 SCC 35, [2010] 2 S.C.R. 310	McLachlin C.J. and Charron J.	majority	British Columbia	Constitutional law	C	referred to	United States v. Patane, 542 U.S. 630 (2004)	SC	US	[39] Significant differences exist between the Canadian and American regimes. Miranda came about in response to abusive police tactics then prevalent in the U.S., and applies in the context of a host of other rules that are less favourable to the accused than their equivalents in Canada. For example, Miranda applies only to persons "in custody". Custody, for these purposes, means "'formal arrest or restraint on freedom of movement' [to] the degree associated with a formal arrest": California v. Beheler, 463 U.S. 1121 (1983), at p. 1125; Yarborough v. Alvarado, 541 U.S. 652 (2004). The Canadian understanding of psychological detention triggering s. 10 (b) is more expansive: R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 44. Moreover, breach of the Miranda rule does not prohibit use at trial of the detainee's evidence for the purpose of impeaching the accused's testimony at trial (Harris v. New York, 401 U.S. 222 (1971); Oregon v. Hass, 420 U.S. 714 (1975)), nor prohibit the introduction at trial of real derivative evidence (United States v. Patane, 542 U.S. 630 (2004)). By contrast, Canadian rules on the admissibility of evidence obtained in violation of s. 10 (b) are much more favourable to the accused: see R. v. Calder, [1996] 1 S.C.R. 660; R. v. Noël, 2002 SCC 67, [2002] 3 S.C.R. 433, at para. 55; Grant, at paras. 116-28.

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2010	Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada	9/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7874/index.do	Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada, 2010 SCC 33, [2010] 2 S.C.R.245	Rothstein J.	unanimous	British Columbia	Insurance	C	referred to	American Family Mutual Insurance Co. v. American Girl, Inc., 673 N.W.2d 65 (2004)	lower-level court	US	[57] Had there been any ambiguity in the language of clause (Z), interpretive principles lead to the same result. In accordance with the rule of contra proferentem, the "work performed" exclusion should be interpreted narrowly — this favours limiting the exclusion to only damage caused by Progressive to its own work. Further, this result appears to support the reasonable expectations of the parties. In purchasing the Broad Form Extension Endorsement, Progressive would have expected to receive something different from the standard CGL form. To give clause (Z) the same meaning as the standard form clause would deprive the replacement of any meaning. Indeed, coverage for work completed by subcontractors seems to be the purpose of upgrading to the Broad Form Extension (see American Family Mutual Insurance Co. v. American Girl, Inc., 673 N.W.2d 65 (Wis. 2004), at para. 68; see also M. Audet, "Broad Form Completed Operations: An extension of coverage or a trap?" (1984), 51:10 Canadian Underwriter 36, at p. 38; Annotated Commercial General Liability Policy, vol. 2, at p. 22-11).
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Dunlea v. Attorney-General, [2000] NZCA 84, [2000] 3 N.Z.L.R. 136	lower-level court	New Zealand	[22] The term "damages" conveniently describes the remedy sought in this case. However, it should always be borne in mind that these are not private law damages, but the distinct remedy of constitutional damages. As Thomas J. notes in Dunlea v. Attorney-General, [2000] NZCA 84, [2000] 3 N.Z.L.R. 136, at para. 81, a case dealing with New Zealand's Bill of Rights Act 1990, an action for public law damages "is not a private law action in the nature of a tort claim for which the state is vicariously liable but [a distinct] public law action directly against the state for which the state is primarily liable". In accordance with s. 32 of the Charter, this is equally so in the Canadian constitutional context. The nature of the remedy is to require the state (or society writ large) to compensate an individual for breaches of the individual's constitutional rights. An action for public law damages — including constitutional damages — lies against the state and not against individual actors. Actions against individual actors should be pursued in accordance with existing causes of action. However, the underlying policy considerations that are engaged when awarding private law damages against state actors may be relevant when awarding public law damages directly against the state. Such considerations may be appropriately kept in mind. [27] Compensation has been cited by Lord Woolf C.J. (speaking of the European Convention of Human Rights) as "fundamental". In most cases, it is the most prominent of the three functions that Charter damages may serve. The goal is to compensate the claimant for the loss caused by the Charter breach; "[t]he applicant should, in so far as this is possible, be placed in the same position as if his Convention rights had not been infringed": Anufrijeva v. Southwark London Borough Council, [2003] EWCA Civ 1406, [2004] Q.B. 1124, at para. 59, per Lord Woolf C.J. Compensation focuses on the claimant's personal loss: physical, psychological and pecuniary. To these types of loss must be added harm to the claimant's intangible interests. In the public law damages context, courts have variously recognized this harm as distress, humiliation, embarrassment, and anxiety: Dunlea; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Taunoa v. Attorney-General, [2007] NZSC 70, [2008] 1 N.Z.L.R. 429. Often the harm to intangible interests effected by a breach of rights will merge with psychological harm. But a resilient claimant whose intangible interests are harmed should not be precluded from recovering damages simply because she cannot prove a substantial psychological injury.
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Anufrijeva v. Southwark London Borough Council, [2003] EWCA Civ 1406, [2004] Q.B. 1124	lower-level court	UK	[27] Compensation has been cited by Lord Woolf C.J. (speaking of the European Convention of Human Rights) as "fundamental". In most cases, it is the most prominent of the three functions that Charter damages may serve. The goal is to compensate the claimant for the loss caused by the Charter breach; "[t]he applicant should, in so far as this is possible, be placed in the same position as if his Convention rights had not been infringed": Anufrijeva v. Southwark London Borough Council, [2003] EWCA Civ 1406, [2004] Q.B. 1124, at para. 59, per Lord Woolf C.J. Compensation focuses on the claimant's personal loss: physical, psychological and pecuniary. To these types of loss must be added harm to the claimant's intangible interests. In the public law damages context, courts have variously recognized this harm as distress, humiliation, embarrassment, and anxiety: Dunlea; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Taunoa v. Attorney-General, [2007] NZSC 70, [2008] 1 N.Z.L.R. 429. Often the harm to intangible interests effected by a breach of rights will merge with psychological harm. But a resilient claimant whose intangible interests are harmed should not be precluded from recovering damages simply because she cannot prove a substantial psychological injury. [30] In most cases, all three objects will be present. Harm to the claimant will evoke the need for compensation. Vindication and deterrence will support the compensatory function and bolster the appropriateness of an award of damages. However, the fact that the claimant has not suffered personal loss does not preclude damages where the objectives of vindication or deterrence clearly call for an award. Indeed, the view that constitutional damages are available only for pecuniary or physical loss has been widely rejected in other constitutional democracies: see, e.g., Anufrijeva; Fose; Taunoa; Smith; and Ramanoop.
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)	SC	US	[27] Compensation has been cited by Lord Woolf C.J. (speaking of the European Convention of Human Rights) as "fundamental". In most cases, it is the most prominent of the three functions that Charter damages may serve. The goal is to compensate the claimant for the loss caused by the Charter breach; "[t]he applicant should, in so far as this is possible, be placed in the same position as if his Convention rights had not been infringed": Anufrijeva v. Southwark London Borough Council, [2003] EWCA Civ 1406, [2004] Q.B. 1124, at para. 59, per Lord Woolf C.J. Compensation focuses on the claimant's personal loss: physical, psychological and pecuniary. To these types of loss must be added harm to the claimant's intangible interests. In the public law damages context, courts have variously recognized this harm as distress, humiliation, embarrassment, and anxiety: Dunlea; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Taunoa v. Attorney-General, [2007] NZSC 70, [2008] 1 N.Z.L.R. 429. Often the harm to intangible interests effected by a breach of rights will merge with psychological harm. But a resilient claimant whose intangible interests are harmed should not be precluded from recovering damages simply because she cannot prove a substantial psychological injury.
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Taunoa v. Attorney-General, [2007] NZSC 70, [2008] 1 N.Z.L.R. 429	SC	New Zealand	[27] Compensation has been cited by Lord Woolf C.J. (speaking of the European Convention of Human Rights) as "fundamental". In most cases, it is the most prominent of the three functions that Charter damages may serve. The goal is to compensate the claimant for the loss caused by the Charter breach; "[t]he applicant should, in so far as this is possible, be placed in the same position as if his Convention rights had not been infringed": Anufrijeva v. Southwark London Borough Council, [2003] EWCA Civ 1406, [2004] Q.B. 1124, at para. 59, per Lord Woolf C.J. Compensation focuses on the claimant's personal loss: physical, psychological and pecuniary. To these types of loss must be added harm to the claimant's intangible interests. In the public law damages context, courts have variously recognized this harm as distress, humiliation, embarrassment, and anxiety: Dunlea; Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Taunoa v. Attorney-General, [2007] NZSC 70, [2008] 1 N.Z.L.R. 429. Often the harm to intangible interests effected by a breach of rights will merge with psychological harm. But a resilient claimant whose intangible interests are harmed should not be precluded from recovering damages simply because she cannot prove a substantial psychological injury. [29] Finally, deterrence of future breaches of the right has also been widely recognized as a valid object of public law damages: e.g., Attorney General of Trinidad and Tobago v. Ramanoop, [2005] UKPC 15, [2006] 1 A.C. 328, at para. 19; Taunoa, at para. 259; Fose, at para. 96; Smith v. Wade, 461 U.S. 30 (1983), at p. 49. Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution. This purpose is similar to the criminal sentencing object of "general deterrence", which holds that the example provided by the punishment imposed on a particular offender will dissuade potential criminals from engaging in criminal activity. When general deterrence is factored in the determination of the sentence, the offender is punished more severely, not because he or she deserves it, but because the court decides to send a message to others who may be inclined to engage in similar criminal activity: R. v. B.W.P., 2006 SCC 27, [2006] 1 S.C.R. 941. Similarly, deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future. [37] Declarations of Charter breach may provide an adequate remedy for the Charter breach, particularly where the claimant has suffered no personal damage. Considering declarations in Taunoa, at para. 368, McGrath J. writes: The court's finding of a breach of rights and a declaration to that effect will often not only be appropriate relief but may also in itself be a sufficient remedy in the circumstances to vindicate a plaintiff's right. That will often be the case where no damage has been suffered that would give rise to a claim under private causes of action and, in the circumstances, if there is no need to deter persons in the position of the public officials from behaving in a similar way in the future. If in all the circumstances the court's pronouncement that there has been a breach of rights is a sufficiently appropriate remedy to vindicate the right and afford redress then, subject to any questions of costs, that will be sufficient to meet the primary remedial objective. [56] A final word on exemplary or punitive damages. In Mackin, Justice Gonthier speculated that "[i]n theory, a plaintiff could seek compensatory and punitive damages by way of 'appropriate and just' remedy under s. 24(1) of the Charter ": para. 79. The reality is that public law damages, in serving the objects of vindication and deterrence, may assume a punitive aspect. Nevertheless, it is worth noting a general reluctance in the international community to award purely punitive damages: see Taunoa, at paras. 319-21.
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Attorney General of Trinidad and Tobago v. Ramanoop, [2005] UKPC 15, [2006] 1 A.C. 328	SC	UK (PC)	[29] Finally, deterrence of future breaches of the right has also been widely recognized as a valid object of public law damages: e.g., Attorney General of Trinidad and Tobago v. Ramanoop, [2005] UKPC 15, [2006] 1 A.C. 328, at para. 19; Taunoa, at para. 259; Fose, at para. 96; Smith v. Wade, 461 U.S. 30 (1983), at p. 49. Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution. This purpose is similar to the criminal sentencing object of "general deterrence", which holds that the example provided by the punishment imposed on a particular offender will dissuade potential criminals from engaging in criminal activity. When general deterrence is factored in the determination of the sentence, the offender is punished more severely, not because he or she deserves it, but because the court decides to send a message to others who may be inclined to engage in similar criminal activity: R. v. B.W.P., 2006 SCC 27, [2006] 1 S.C.R. 941. Similarly, deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future.

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2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Smith v. Wade, 461 U.S. 30 (1983)	SC	US	[29] Finally, deterrence of future breaches of the right has also been widely recognized as a valid object of public law damages: e.g., Attorney General of Trinidad and Tobago v. Ramanoop, [2005] UKPC 15, [2006] 1 A.C. 328, at para. 19; Taunoa, at para. 259; Fose, at para. 96; Smith v. Wade, 461 U.S. 30 (1983), at p. 49. Deterrence, like vindication, has a societal purpose. Deterrence seeks to regulate government behaviour, generally, in order to achieve compliance with the Constitution. This purpose is similar to the criminal sentencing object of "general deterrence", which holds that the example provided by the punishment imposed on a particular offender will dissuade potential criminals from engaging in criminal activity. When general deterrence is factored in the determination of the sentence, the offender is punished more severely, not because he or she deserves it, but because the court decides to send a message to others who may be inclined to engage in similar criminal activity: R. v. B.W.P., 2006 SCC 27, [2006] 1 S.C.R. 941. Similarly, deterrence as an object of Charter damages is not aimed at deterring the specific wrongdoer, but rather at influencing government behaviour in order to secure state compliance with the Charter in the future.
2010	Vancouver (City) v. Ward	7/23/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7868/index.do	Vancouver (City) v. Ward, 2010 SCC 27, [2010] 2 S.C.R. 28	McLachlin C.J.	unanimous	British Columbia	Constitutional law	C	referred to	Simpson v. Attorney-General, [1994] 3 N.Z.L.R. 667	lower-level court	New Zealand	[36] The existence of a potential claim in tort does not therefore bar a claimant from obtaining damages under the Charter. Tort law and the Charter are distinct legal avenues. However, a concurrent action in tort, or other private law claim, bars s. 24(1) damages if the result would be double compensation: Simpson v. Attorney-General, [1994] 3 N.Z.L.R. 667 (C.A.), at p. 678.
2010	Ontario (Public Safety and Security) v. Criminal Lawyers' Association	6/17/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7864/index.do	Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23, [2010] 1 S.C.R. 815	McLachlin C.J. and Abella J.	unanimous	Ontario	Access to information Constitutional law	C	referred to	R. v. Metropolitan Police Comr., Ex parte Blackburn, [1968] 1 All E.R. 763	lower-level court	UK	[44] We turn first to records prepared in the course of law enforcement, which are dealt with under s. 14 of the Act. As jurisprudence surrounding concepts such as informer privilege and prosecutorial discretion attests, there is a strong public interest in protecting documents related to law enforcement: R. v. Basi, 2009 SCC 52, [2009] 3 S.C.R. 389; R. v. Metropolitan Police Comr., Ex parte Blackburn, [1968] 1 All E.R. 763 (C.A.), at p. 769, cited in R. v. Campbell, [1999] 1 S.C.R. 565, at para. 33; R. v. Power, [1994] 1 S.C.R. 601, at p. 623, per L'Heureux-Dubé J.; R. v. Regan, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 64, per LeBel J.; Krieger v. Law Society of Alberta, 2002 SCC 65, [2002] 3 S.C.R. 372, at para. 32; R. v. Beaudry, 2007 SCC 5, [2007] 1 S.C.R. 190, at para. 48, per Charron J. Section 14 of the Act reflects this. The legislature in s. 14(1) has in effect declared that disclosure of records described in subsets (a) to (l) would be so detrimental to the public interest that it presumptively cannot be countenanced.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Ashworth Hospital Authority v. MGN Ltd., [2002] UKHL 29, [2002] 1 W.L.R. 2033	SC	UK (HL)	[113] The United Kingdom, Europe, Australia and South Africa are at various stages of development in terms of recognizing a journalist-source privilege but, like the United States, appear to apply a balancing approach (see X Ltd. v. Morgan-Grampian Ltd., [1991] 1 A.C. 1 (H.L.); Ashworth Hospital Authority v. MGN Ltd., [2002] UKHL 29, [2002] 1 W.L.R. 2033; E.C.H.R., Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II; Peter Bartlett, "Australia", in Charles J. Glasser Jr., ed., International Libel and Privacy Handbook (2nd ed. 2009), 66, at p. 77; South Africa, Criminal Procedure Act, No. 51 of 1977, ss. 189 and 205; Janice Brabyn, "Protection Against Judicially Compelled Disclosure of the Identity of News Gatherers' Confidential Sources in Common Law Jurisdictions" (2006), 69 Mod. L. Rev. 895, at pp. 925-27). [120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Branzburg v. Hayes, 408 U.S. 665 (1972)	SC	US	[108] Its inherent complexity is perhaps best exposed by the opinions in Branzburg v. Hayes, 408 U.S. 665 (1972). In this landmark decision, the Supreme Court of the United States dealt with journalist-source privilege for the first time, refusing to recognize any constitutional or common law privilege that would allow a reporter to refuse to reveal confidential information to a grand jury. The grand jury in the United States reviews all relevant evidence to determine whether someone should be charged with a crime and, accordingly, has broad investigatory powers. [111] American cases decided after Branzburg appear to have preferred Stewart J.'s case-by-case approach, balancing the interests of the press against other societal interests such as crime prevention, prosecution and investigation (see In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (D.C. Cir. 2005); New York Times Co. v. Gonzales, 459 F.3d 160 (2d Cir. 2006); Eric M. Freedman, "Reconstructing Journalists' Privilege" (2008), 29 Cardozo L. Rev. 1381, at pp. 1384-85; Joel M. Gora, "The Source of the Problem of Sources: The First Amendment Fails the Fourth Estate" (2008), 29 Cardozo L. Rev. 1399, at p. 1405). [119] In the United States, approximately three dozen states have enacted press "shield laws" protecting the relationship between a news reporter and his or her source. All but one of the remaining states judicially recognize some form of journalist-source privilege. While the scope of the protection varies from state to state, most of these protective laws offer some form of qualified privilege to reporters consistent with the three-part test suggested by Stewart J. in Branzburg, that is, source information is protected unless the party seeking disclosure can establish that (i) the information is relevant; (ii) the information is unavailable through other sources; and (iii) a compelling public interest exists for the disclosure of the information (CRS Report for Congress, Journalists' Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes, June 27, 2007, at pp. CRS-1 and CRS-2). A bill to provide such protection at the federal level (the Free Flow of Information Act of 2009, H.R. 985) was passed by the House of Representatives in March 2009 and is currently before the Senate. Similar legislative protection exists in the United Kingdom, Australia, Austria, France, Germany, Japan, Norway and Sweden (see Kyu Ho Youm, "International and Comparative Law on the Journalist's Privilege: The Randal Case as a Lesson for the American Press" (2006), 1 J. Int'l Media & Ent. L. 1; Article 19 and Interights, Briefing Paper on Protection of Journalists' Sources: Freedom of Expression Litigation Project, May 1998 (online)). [147] In her dissenting reasons in Lessard, McLachlin J. was alert to the potential for interference with freedom of the press. She pointed out that the "prospect of seizure of press material in future cases without the imposition of conditions to protect press freedom and the identity of informants . . . creates the chilling effect" (p. 453). Her proposed approach, like the balancing suggested by Stewart J. in Branzburg and in complete harmony with the fourth criterion in Wigmore, required that there be an absence of available alternative sources for the required information sought, and sufficient significance to that information to justify the interference with press freedom.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII)	international	ECHR	[123] Similarly, in the recent case of Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII), the European Court of Human Rights warned: While . . . the applicants in the present case were not required to disclose documents which would directly result in the identification of the source but only to disclose documents which might, upon examination, lead to such identification, the Court does not consider this distinction to be crucial. In this regard, the Court emphasises that a chilling effect will arise wherever journalists are seen to assist in the identification of anonymous sources. In the present case, it was sufficient that information or assistance was required under the disclosure order for the purpose of identifying X. [Emphasis added; para. 70.]
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	E.C.H.R., Goodwin v. The United Kingdom judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II	international	ECHR	[113] The United Kingdom, Europe, Australia and South Africa are at various stages of development in terms of recognizing a journalist-source privilege but, like the United States, appear to apply a balancing approach (see X Ltd. v. Morgan-Grampian Ltd., [1991] 1 A.C. 1 (H.L.); Ashworth Hospital Authority v. MGN Ltd., [2002] UKHL 29, [2002] 1 W.L.R. 2033; E.C.H.R., Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II; Peter Bartlett, "Australia", in Charles J. Glasser Jr., ed., International Libel and Privacy Handbook (2nd ed. 2009), 66, at p. 77; South Africa, Criminal Procedure Act, No. 51 of 1977, ss. 189 and 205; Janice Brabyn, "Protection Against Judicially Compelled Disclosure of the Identity of News Gatherers' Confidential Sources in Common Law Jurisdictions" (2006), 69 Mod. L. Rev. 895, at pp. 925-27). [120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	John v. Express Newspapers, [2000] 3 All E.R. 257	lower-level court	UK	[120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (2005)	lower-level court	US	[111] American cases decided after Branzburg appear to have preferred Stewart J.'s case-by-case approach, balancing the interests of the press against other societal interests such as crime prevention, prosecution and investigation (see In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (D.C. Cir. 2005); New York Times Co. v. Gonzales, 459 F.3d 160 (2d Cir. 2006); Eric M. Freedman, "Reconstructing Journalists' Privilege" (2008), 29 Cardozo L. Rev. 1381, at pp. 1384-85; Joel M. Gora, "The Source of the Problem of Sources: The First Amendment Fails the Fourth Estate" (2008), 29 Cardozo L. Rev. 1399, at p. 1405).
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	New York Times Co. v. Gonzales, 459 F.3d 160 (2006)	lower-level court	US	[111] American cases decided after Branzburg appear to have preferred Stewart J.'s case-by-case approach, balancing the interests of the press against other societal interests such as crime prevention, prosecution and investigation (see In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (D.C. Cir. 2005); New York Times Co. v. Gonzales, 459 F.3d 160 (2d Cir. 2006); Eric M. Freedman, "Reconstructing Journalists' Privilege" (2008), 29 Cardozo L. Rev. 1381, at pp. 1384-85; Joel M. Gora, "The Source of the Problem of Sources: The First Amendment Fails the Fourth Estate" (2008), 29 Cardozo L. Rev. 1399, at p. 1405).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	X Ltd. v. Morgan-Grampian Ltd., [1991] 1 A.C. 1	SC	UK (HL)	[113] The United Kingdom, Europe, Australia and South Africa are at various stages of development in terms of recognizing a journalist-source privilege but, like the United States, appear to apply a balancing approach (see X Ltd. v. Morgan-Grampian Ltd., [1991] 1 A.C. 1 (H.L.); Ashworth Hospital Authority v. MGN Ltd., [2002] UKHL 29, [2002] 1 W.L.R. 2033; E.C.H.R., Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II; Peter Bartlett, "Australia", in Charles J. Glasser Jr., ed., International Libel and Privacy Handbook (2nd ed. 2009), 66, at p. 77; South Africa, Criminal Procedure Act, No. 51 of 1977, ss. 189 and 205; Janice Brabyn, "Protection Against Judicially Compelled Disclosure of the Identity of News Gatherers' Confidential Sources in Common Law Jurisdictions" (2006), 69 Mod. L. Rev. 895, at pp. 925-27).
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127	SC	UK (HL)	[120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Ernst v. Belgium (2004), 39 E.H.R.R. 724	international	ECHR	[120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Voskuil v. Netherlands (2007), 24 B.H.R.C. 306	international	ECHR	[120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	C	D	Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden, Judgment of 10 May 1996, NJ 1996/578	SC	Netherland	[120] The importance of confidential sources has also been judicially recognized in John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.), at p. 266; Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.), at p. 200; Ernst v. Belgium (2004), 39 E.H.R.R. 724, at paras. 91-93 and 102-5; Voskuil v. Netherlands (2007), 24 B.H.R.C. 306 (E.C.H.R.), at para. 65; Prosecutor v. Brdjanin and Talic, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No. IT-99-36-AR73.9, 11 December 2002, at paras. 43-44; Van den Biggelaar v. Dohmen/Langenberg, Hoge Raad der Nederlanden (Supreme Court of the Netherlands), 10 May 1996, NJ 1996/578; Bartlett, at p. 77; Goodwin and Ashworth.
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2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	R		28 C.F.R. § 50.10(a) (2009).	document	US	[112] This balancing is the approach that has been adopted by the Department of Justice in the United States in its policy on the issuance of subpoenas to the news media, as codified in the Code of Federal Regulations: . . . the approach in every case [of determining whether to request issuance of a subpoena to a member of the news media] must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice. [28 C.F.R. § 50.10(a) (2009)]
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	R		Criminal Procedure Act (S. Afr.), No. 51 of 1977, ss. 189, 205.	statute	South Africa	[113] The United Kingdom, Europe, Australia and South Africa are at various stages of development in terms of recognizing a journalist-source privilege but, like the United States, appear to apply a balancing approach (see X Ltd. v. Morgan-Grampian Ltd., [1991] 1 A.C. 1 (H.L.); Ashworth Hospital Authority v. MGN Ltd., [2002] UKHL 29, [2002] 1 W.L.R. 2033; E.C.H.R., Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II; Peter Bartlett, "Australia", in Charles J. Glasser Jr., ed., International Libel and Privacy Handbook (2nd ed. 2009), 66, at p. 77; South Africa, Criminal Procedure Act, No. 51 of 1977, ss. 189 and 205; Janice Brabyn, "Protection Against Judicially Compelled Disclosure of the Identity of News Gatherers' Confidential Sources in Common Law Jurisdictions" (2006), 69 Mod. L. Rev. 895, at pp. 925-27).
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	R		general reference		Sweden	[119] In the United States, approximately three dozen states have enacted press "shield laws" protecting the relationship between a news reporter and his or her source. All but one of the remaining states judicially recognize some form of journalist-source privilege. While the scope of the protection varies from state to state, most of these protective laws offer some form of qualified privilege to reporters consistent with the three-part test suggested by Stewart J. in Branzburg, that is, source information is protected unless the party seeking disclosure can establish that (i) the information is relevant; (ii) the information is unavailable through other sources; and (iii) a compelling public interest exists for the disclosure of the information (CRS Report for Congress, Journalists' Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes, June 27, 2007, at pp. CRS-1 and CRS-2). A bill to provide such protection at the federal level (the Free Flow of Information Act of 2009, H.R. 985) was passed by the House of Representatives in March 2009 and is currently before the Senate. Similar legislative protection exists in the United Kingdom, Australia, Austria, France, Germany, Japan, Norway and Sweden (see Kyu Ho Youm, "International and Comparative Law on the Journalist's Privilege: The Randal Case as a Lesson for the American Press" (2006), 1 J. Int'l Media & Ent. L. 1; Article 19 and Interights, Briefing Paper on Protection of Journalists' Sources: Freedom of Expression Litigation Project, May 1998 (online)).
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2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Abella J.	dissenting	Ontario	Constitutional law Criminal law Evidence	R		general reference		Japan	[119] In the United States, approximately three dozen states have enacted press "shield laws" protecting the relationship between a news reporter and his or her source. All but one of the remaining states judicially recognize some form of journalist-source privilege. While the scope of the protection varies from state to state, most of these protective laws offer some form of qualified privilege to reporters consistent with the three-part test suggested by Stewart J. in Branzburg, that is, source information is protected unless the party seeking disclosure can establish that (i) the information is relevant; (ii) the information is unavailable through other sources; and (iii) a compelling public interest exists for the disclosure of the information (CRS Report for Congress, Journalists' Privilege to Withhold Information in Judicial and Other Proceedings: State Shield Statutes, June 27, 2007, at pp. CRS-1 and CRS-2). A bill to provide such protection at the federal level (the Free Flow of Information Act of 2009, H.R. 985) was passed by the House of Representatives in March 2009 and is currently before the Senate. Similar legislative protection exists in the United Kingdom, Australia, Austria, France, Germany, Japan, Norway and Sweden (see Kyu Ho Youm, "International and Comparative Law on the Journalist's Privilege: The Randal Case as a Lesson for the American Press" (2006), 1 J. Int'l Media & Ent. L. 1; Article 19 and Interights, Briefing Paper on Protection of Journalists' Sources: Freedom of Expression Litigation Project, May 1998 (online)).

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2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	C	referred to	Financial Times Ltd. v. Interbrew, [2002] EWCA Civ 274 (BAILII), leave to appeal to the House of Lords denied, 9 July 2002	lower-level court	UK	[66] After the hearing of this appeal, counsel for the appellants provided us with a copy of the recent decision of the European Court of Human Rights in Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII), where a corporate plaintiff was ultimately denied access to confidential source documents. In that case the plaintiff Interbrew, a Belgian brewing company, brought civil proceedings in the United Kingdom to obtain from the media leaked documents that, it claimed, had been doctored with false information to suggest Interbrew was on the brink of making a takeover bid for South African Breweries. The allegedly misleading information was published by the media. Thereafter Interbrew suffered a drop in the value of its shares. Interbrew sought production of the documents from the Financial Times and other newspapers on the basis that it needed to identify the "source" in order to launch a proposed civil action for breach of confidence against the person or persons unknown. The English Court of Appeal upheld the disclosure order on the ground that the "relatively modest leak" was nevertheless intended to "maximize the mischief" ([2002] EWCA Civ. 274 (BAILII), at paras. 54-55 (leave to appeal denied, House of Lords, 9 July 2002)) and thus fell within the "interests of justice" exception to journalistic source privilege under the U.K. Contempt of Court Act 1981. The European Court of Human Rights disagreed. Unlike the plaintiff in the earlier case of Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II, Interbrew had not sought an injunction in the U.K. to prevent publication (i.e. did not avail itself of alternate means to avert the damage). Interbrew had also failed to demonstrate that information about the identity of the person who leaked the documents was unavailable from other sources (para. 69). The "alternate sources" principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K. See, e.g., John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.). It was not even clear in the Financial Post case that the leaked documents were, in fact, "doctored".

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2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	C	referred to	E.C.H.R., Goodwin v. The United Kingdom judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II	international	ECHR	[66] After the hearing of this appeal, counsel for the appellants provided us with a copy of the recent decision of the European Court of Human Rights in Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII), where a corporate plaintiff was ultimately denied access to confidential source documents. In that case the plaintiff Interbrew, a Belgian brewing company, brought civil proceedings in the United Kingdom to obtain from the media leaked documents that, it claimed, had been doctored with false information to suggest Interbrew was on the brink of making a takeover bid for South African Breweries. The allegedly misleading information was published by the media. Thereafter Interbrew suffered a drop in the value of its shares. Interbrew sought production of the documents from the Financial Times and other newspapers on the basis that it needed to identify the "source" in order to launch a proposed civil action for breach of confidence against the person or persons unknown. The English Court of Appeal upheld the disclosure order on the ground that the "relatively modest leak" was nevertheless intended to "maximize the mischief" ([2002] EWCA Civ. 274 (BAILII), at paras. 54-55 (leave to appeal denied, House of Lords, 9 July 2002)) and thus fell within the "interests of justice" exception to journalistic source privilege under the U.K. Contempt of Court Act 1981. The European Court of Human Rights disagreed. Unlike the plaintiff in the earlier case of Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II, Interbrew had not sought an injunction in the U.K. to prevent publication (i.e. did not avail itself of alternate means to avert the damage). Interbrew had also failed to demonstrate that information about the identity of the person who leaked the documents was unavailable from other sources (para. 69). The "alternate sources" principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K. See, e.g., John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.). It was not even clear in the Financial Post case that the leaked documents were, in fact, "doctored". [68] Accordingly, in my view, the Strasbourg jurisprudence is not of much assistance to the appellants. Both Goodwin and Financial Times concerned a leak to the media by corporate whistleblowers of confidential internal documents. Neither involved criminal proceedings. Both involved private actions in the U.K. courts where the corporate plaintiffs, in the view of the European Court of Human Rights, had failed to demonstrate a public interest that outweighed the public interest in free expression. Sanoma is closer to our case. It is true that the European Court locates journalist-source privilege in art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, but that is necessarily so because the Convention is the source of its jurisdiction. For the reasons already stated I would not locate journalist-source protection in s. 2 (b) of the Charter but in the common law of privilege that is supportive of it.
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	C	referred to	John v. Express Newspapers, [2000] 3 All E.R. 257	lower-level court	UK	[66] After the hearing of this appeal, counsel for the appellants provided us with a copy of the recent decision of the European Court of Human Rights in Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII), where a corporate plaintiff was ultimately denied access to confidential source documents. In that case the plaintiff Interbrew, a Belgian brewing company, brought civil proceedings in the United Kingdom to obtain from the media leaked documents that, it claimed, had been doctored with false information to suggest Interbrew was on the brink of making a takeover bid for South African Breweries. The allegedly misleading information was published by the media. Thereafter Interbrew suffered a drop in the value of its shares. Interbrew sought production of the documents from the Financial Times and other newspapers on the basis that it needed to identify the "source" in order to launch a proposed civil action for breach of confidence against the person or persons unknown. The English Court of Appeal upheld the disclosure order on the ground that the "relatively modest leak" was nevertheless intended to "maximize the mischief" ([2002] EWCA Civ. 274 (BAILII), at paras. 54-55 (leave to appeal denied, House of Lords, 9 July 2002)) and thus fell within the "interests of justice" exception to journalistic source privilege under the U.K. Contempt of Court Act 1981. The European Court of Human Rights disagreed. Unlike the plaintiff in the earlier case of Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II, Interbrew had not sought an injunction in the U.K. to prevent publication (i.e. did not avail itself of alternate means to avert the damage). Interbrew had also failed to demonstrate that information about the identity of the person who leaked the documents was unavailable from other sources (para. 69). The "alternate sources" principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K. See, e.g., John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.). It was not even clear in the Financial Post case that the leaked documents were, in fact, "doctored".
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	C	referred to	Sanoma Uitgevers B.V. v. The Netherlands, E.C.H.R., No. 38224/03, 31 March 2009 (online: http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc.en)	international	ECHR	[67] On the other hand in Sanoma Uitgevers B.V. v. The Netherlands, E.C.H.R., No. 38224/03 of 31 March 2009, the court upheld the police seizure of a CD-ROM from the Dutch magazine Autoweek which had photographed an illegal street race on a promise of confidentiality to the participants. The court recognized the potential chilling effect of the seizure and breach of confidentiality but said: . . . it does not follow per se that the authorities are in all such cases prevented from demanding such handover; whether this is so will depend on the facts of the case. In particular, the domestic authorities are not prevented from balancing the conflicting interests served by prosecuting the crimes concerned against those served by the protection of journalistic privilege; relevant considerations will include the nature and seriousness of the crimes in question, the precise nature and content of the information demanded, the existence of alternative possibilities of obtaining the necessary information, and any restraints on the authorities' procurement and use of the materials concerned. [para. 57] This all sounds very much like the fourth Wigmore step. [68] Accordingly, in my view, the Strasbourg jurisprudence is not of much assistance to the appellants. Both Goodwin and Financial Times concerned a leak to the media by corporate whistleblowers of confidential internal documents. Neither involved criminal proceedings. Both involved private actions in the U.K. courts where the corporate plaintiffs, in the view of the European Court of Human Rights, had failed to demonstrate a public interest that outweighed the public interest in free expression. Sanoma is closer to our case. It is true that the European Court locates journalist-source privilege in art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, but that is necessarily so because the Convention is the source of its jurisdiction. For the reasons already stated I would not locate journalist-source protection in s. 2 (b) of the Charter but in
2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	C	referred to	In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (2005)	lower-level court	US	[69] The bottom line is that no journalist can give a source a total assurance of confidentiality. All such arrangements necessarily carry an element of risk that the source's identity will eventually be revealed. In the end, the extent of the risk will only become apparent when all the circumstances in existence at the time the claim for privilege is asserted are known and can be weighed up in the balance. What this means, amongst other things, is that a source who uses anonymity to put information into the public domain maliciously may not in the end avoid a measure of accountability. This much is illustrated by recent events in the United States involving New York Times reporter Judith Miller and the subsequent prosecution of her secret source, vice-presidential aide Lewis "Scooter" Libby, arising out of proceedings subsequent to his "outing" of CIA agent Valerie Plame: In re Grand Jury Subpoena, Judith Miller, 397 F.3d 964 (D.C. Cir. 2005), at pp. 968-72. The simplistic proposition that it is always in the public interest to maintain the confidentiality of secret sources is belied by such events in recent journalistic history.

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2010	R. v. National Post	5/7/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7856/index.do	R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477	Binnie J.	majority	Ontario	Constitutional law Criminal law Evidence	R		Contempt of Court Act 1981 (U.K.), 1981, c. 49, s. 10.	statute	UK	[48] In the United Kingdom, journalistic-secret source privilege is now covered by the Contempt of Court Act 1981 (U.K.), 1981, c. 49. The U.K. Parliament has created a presumptive immunity in defined circumstances, subject to being overridden on enumerated grounds. Section 10 provides that: No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime. Statutes offering similar protections exist in a number of states of the United States. In Australia there exists a "shield law" both at the federal level and in New South Wales. New Zealand enacted such a law in 2006. [66] After the hearing of this appeal, counsel for the appellants provided us with a copy of the recent decision of the European Court of Human Rights in Financial Times Ltd. v. The United Kingdom, [2009] ECHR 2065 (BAILII), where a corporate plaintiff was ultimately denied access to confidential source documents. In that case the plaintiff Interbrew, a Belgian brewing company, brought civil proceedings in the United Kingdom to obtain from the media leaked documents that, it claimed, had been doctored with false information to suggest Interbrew was on the brink of making a takeover bid for South African Breweries. The allegedly misleading information was published by the media. Thereafter Interbrew suffered a drop in the value of its shares. Interbrew sought production of the documents from the Financial Times and other newspapers on the basis that it needed to identify the "source" in order to launch a proposed civil action for breach of confidence against the person or persons unknown. The English Court of Appeal upheld the disclosure order on the ground that the "relatively modest leak" was nevertheless intended to "maximize the mischief" ([2002] EWCA Civ. 274 (BAILII), at paras. 54-55 (leave to appeal denied, House of Lords, 9 July 2002)) and thus fell within the "interests of justice" exception to journalistic source privilege under the U.K. Contempt of Court Act 1981. The European Court of Human Rights disagreed. Unlike the plaintiff in the earlier case of Goodwin v. The United Kingdom, judgment of 27 March 1996, Reports of Judgments and Decisions 1996-II, Interbrew had not sought an injunction in the U.K. to prevent publication (i.e. did not avail itself of alternate means to avert the damage). Interbrew had also failed to demonstrate that information about the identity of the person who leaked the documents was unavailable from other sources (para. 69). The "alternate sources" principle has been part of Canadian law since Re Pacific Press Ltd. and The Queen (1977), 37 C.C.C. (2d) 487 (B.C.S.C.), as it has been in the U.K. See, e.g., John v. Express Newspapers, [2000] 3 All E.R. 257 (C.A.). It was not even clear in the Financial Post case that the leaked documents were, in fact, "doctored".
2010	R. v. Szczerbaniwicz	5/6/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7855/index.do	R. v. Szczerbaniwicz, 2010 SCC 15, [2010] 1 S.C.R. 455	Binnie J.	dissenting	Canada	Criminal law	C	D	Palmer v. The Queen (1971), 55 Cr. App. R. 223	SC	UK (PC)	[35] The prosecution accepts that the appellant was acting in defence of property that was of considerable sentimental importance to him, as Mrs. Szczerbaniwicz fully appreciated at the time. The cases are clear that in these sort of "quick response" situations an accused is not expected to "weigh to a nicety" the exact measure of a defensive action or to stop and reflect upon the precise risk of consequences from such action: R. v. Baxter (1975), 27 C.C.C. (2d) 96 (Ont. C.A.), at p. 111; R. v. Kandola (1993), 80 C.C.C. (3d) 481 (B.C.C.A.), at pp. 489-90, citing Palmer v. The Queen (1971), 55 Cr. App. R. 223 (P.C.), at p. 242. The principle is of long standing: R. v. Ogal (1928), 50 C.C.C. 71 (Alta. S.C., App. Div.); R. v. Preston (1953), 106 C.C.C. 135 (B.C.C.A.), at p. 140, and R. v. Antley, [1964] 2 C.C.C. 142 (Ont. C.A.), at p. 147.
2010	Reference re Broome v. Prince Edward Island	4/1/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7851/index.do	Reference re Broome v. Prince Edward Island, 2010 SCC 11, [2010] 1 S.C.R. 360	Cromwell J.	unanimous	Prince Edward Island	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	[13] That two-stage test was first enunciated in Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), and later accepted and endorsed by this Court in Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2. Since then, the Anns/Kamloops test has been applied by the Court in many cases including Cooper v. Hobart, 2001 SCC 79, [2001] 3 S.C.R. 537, Edwards v. Law Society of Upper Canada, 2001 SCC 80, [2001] 3 S.C.R. 562, Odhavji Estate v. Woodhouse, 2003 SCC 69, [2003] 3 S.C.R. 263, Childs v. Desormeaux, 2006 SCC 18, [2006] 1 S.C.R. 643, Holland v. Saskatchewan, 2008 SCC 42, [2008] 2 S.C.R. 551, and Design Services Ltd. v. Canada, 2008 SCC 22, [2008] 1 S.C.R. 737. This test is the appropriate one even though the appellants mainly rely on statutory duties. Such duties do not generally, in and of themselves, give rise to private law duties of care. The Anns/Kamloops test determines whether public as well as private actors owe a private law duty of care to individuals enabling them to sue the public actors in a civil suit: see, e.g., Ingles v. Tutkaluk Construction Ltd., 2000 SCC 12, [2000] 1 S.C.R. 298, at para. 16; Ryan v. Victoria (City), [1999] 1 S.C.R. 201, at para. 22. [14] The first step under the Anns/Kamloops test is to ask whether the relationship between the appellants and the respondents discloses sufficient foreseeability and proximity to establish a prima facie duty of care. If it does, the analysis moves to the second step which is concerned with whether there are residual policy considerations, transcending the relationship between the parties, that negate the existence of such a duty.
2010	Reference re Broome v. Prince Edward Island	4/1/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7851/index.do	Reference re Broome v. Prince Edward Island, 2010 SCC 11, [2010] 1 S.C.R. 360	Cromwell J.	unanimous	Prince Edward Island	Torts	C	referred to	Carmarthenshire County Council v. Lewis, [1955] 1 All E.R. 565	SC	UK (HL)	[17] While the appellants rely heavily on the relevant statutory provisions, they also point to a number of other considerations which they say establish the necessary proximity between them and the Province. These factors include that the Province provided funding to the Home; that there was a parens patriae duty owed by the Province to the children in the Home; and that there were children in the Home whom the Province had proposed for placement there or for whom it had guardianship while they were residing there. Citing Carmarthenshire County Council v. Lewis, [1955] 1 All E.R. 565 (H.L.), and Ellis v. Home Office, [1953] 2 All E.R. 149 (C.A.), they say that their relationship to the Province is similar to the relationship between teachers and students, or prison officials and prisoners, both categories of cases in which a duty of care has been recognized. The parties place no reliance on any possible distinction between nonfeasance and misfeasance in their submissions on proximity.
2010	Reference re Broome v. Prince Edward Island	4/1/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7851/index.do	Reference re Broome v. Prince Edward Island, 2010 SCC 11, [2010] 1 S.C.R. 360	Cromwell J.	unanimous	Prince Edward Island	Torts	C	referred to	Ellis v. Home Office, [1953] 2 All E.R. 149	lower-level court	UK	[17] While the appellants rely heavily on the relevant statutory provisions, they also point to a number of other considerations which they say establish the necessary proximity between them and the Province. These factors include that the Province provided funding to the Home; that there was a parens patriae duty owed by the Province to the children in the Home; and that there were children in the Home whom the Province had proposed for placement there or for whom it had guardianship while they were residing there. Citing Carmarthenshire County Council v. Lewis, [1955] 1 All E.R. 565 (H.L.), and Ellis v. Home Office, [1953] 2 All E.R. 149 (C.A.), they say that their relationship to the Province is similar to the relationship between teachers and students, or prison officials and prisoners, both categories of cases in which a duty of care has been recognized. The parties place no reliance on any possible distinction between nonfeasance and misfeasance in their submissions on proximity.
2010	R. v. Morelli	3/19/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do	R. v. Morelli, 2010 SCC 8, [2010] 1 S.C.R. 253	Deschamps J.	dissenting	Saskatchewan	Constitutional law Criminal law	C	D	United States v. Terry, 522 F.3d 645 (2008)	lower-level court	US	[173] In child pornography cases, Canadian and American courts have frequently upheld warrants issued months and even years after the occurrence of the facts relied upon for the search. In their decisions, they have relied on various combinations of three elements: the proclivity of offenders to collect child pornography, the application of common sense in light of the nature of the material, and the ability of computer forensics examiners to recover data. For example, in Neveu more than four years had elapsed between the closing of a Web site on which paying subscribers accessed child pornography and the issuance of the warrants. In Neveu, the judge explained his rejection of a staleness argument as follows: Child pornographic images on the other hand, as disclosed in the Information to Obtain, are likely held for much longer periods of time by individuals who purchase them than the items mentioned above. In addition to relying on the opinion to that effect set out in the Information to Obtain herein, the issuing Justice could have also concluded, employing her common sense, that the retention of child pornographic images is likely more analogous to the lawful acquisition and collection of books, C.D.'s, D.V.D.'s, photographs, paintings and such items which offer the prospect of ongoing enjoyment thereby giving them their collectable nature. Collectible items are distinctively different than items which are consumable or acquired for quick resale. [para. 15] Similarly in R. v. Graham, 2007 CarswellPEI 80 (Prov. Ct.), at paras. 27-32, aff'd 2008 PESCAD 7, 277 Nfld. & P.E.I.R. 103, the warrant was initially issued four years after the alleged downloading (although in that case the warrant was quashed on review on other grounds). Examples also abound in the United States: Gourde (four months); Shields, at p. 279 (nine months); Perrine (111 days); United States v. Terry, 522 F.3d 645 (6th Cir. 2008) (five months).
2010	R. v. Morelli	3/19/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do	R. v. Morelli, 2010 SCC 8, [2010] 1 S.C.R. 253	Deschamps J.	dissenting	Saskatchewan	Constitutional law Criminal law	C	D	Illinois v. Gates, 462 U.S. 213 (1983)	lower-level court	US	[129] Determining whether evidence gives rise to a "credibly-based probability" does not involve parsing the facts or assessing them mathematically. Rather, what the judge must do is identify credible facts that make the decision to authorize a search reasonable in view of all the circumstances. I therefore agree with the non-technical, common-sense approach taken by Rehnquist J. (as he then was) in Illinois v. Gates, 462 U.S. 213 (1983): The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. [p. 238]

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2010	R. v. Morelli	3/19/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do	R. v. Morelli, 2010 SCC 8, [2010] 1 S.C.R. 253	Deschamps J.	dissenting	Saskatchewan	Constitutional law Criminal law	C	D	United States v. Gourde, 440 F.3d 1065 (2006)	lower-level court	US	[162] It was neither inappropriate nor erroneous to rely on the information provided by Cpl. Boyce and Cst. Huisman about the propensity of child pornography offenders to collect and hoard such materials. Indeed, this propensity, which seems to be notorious, has been accepted in numerous child pornography cases as part of the factual backdrop giving rise to reasonable and probable grounds for issuing search warrants, and it has also been noted in the academic commentary on child pornography: R. v. Neveu, 2005 NSPC 51, 239 N.S.R. (2d) 59, at paras. 15-17; R. v. Fawthrop (2002), 161 O.A.C. 350, at para. 14; United States v. Gourde, 440 F.3d 1065 (9th Cir. 2006), at pp. 1068 and 1072; United States v. Martin, 426 F.3d 68 (2d Cir. 2006), at pp. 72 and 75; United States v. Shields, 458 F.3d 269 (3rd Cir. 2006), at p. 279; Davidson v. United States, 213 Fed.Appx. 769 (11th Cir. 2006), at p. 771; United States v. Falso, 544 F.3d 110 (2d Cir. 2008); United States v. Perrine, 518 F.3d 1196 (10th Cir. 2008), at p. 1206; M. Taylor and E. Quayle, Child Pornography: An Internet Crime (2003), chapter 7, "The process of collecting". Even if a lay person would not necessarily know that child pornography offenders collect such material, this appears to be something law enforcement officials working in computer technology or vice units encounter frequently. Testimony about this fact cannot therefore be compared to testimony about novel technology or science: R. v. Mohan, [1994] 2 S.C.R. 9; R. v. J.-L.J., 2000 SCC 51, [2000] 2 S.C.R. 600; R. v. Trochym, 2007 SCC 6, [2007] 1 S.C.R. 239. [173] In child pornography cases, Canadian and American courts have frequently upheld warrants issued months and even years after the occurrence of the facts relied upon for the search. In their decisions, they have relied on various combinations of three elements: the proclivity of offenders to collect child pornography, the application of common sense in light of the nature of the material, and the ability of computer forensics examiners to recover data. For example, in Neveu more than four years had elapsed between the closing of a Web site on which paying subscribers accessed child pornography and the issuance of the warrants. In Neveu, the judge explained his rejection of a staleness argument as follows: Child pornographic images on the other hand, as disclosed in the Information to Obtain, are likely held for much longer periods of time by individuals who purchase them than the items mentioned above. In addition to relying on the opinion to that effect set out in the Information to Obtain herein, the issuing Justice could have also concluded, employing her common sense, that the retention of child pornographic images is likely more analogous to the lawful acquisition and collection of books, C.D.'s, D.V.D.'s, photographs, paintings and such items which offer the prospect of ongoing enjoyment thereby giving them their collectable nature. Collectible items are distinctively different than items which are consumable or acquired for quick resale. [para. 15] Similarly in R. v. Graham, 2007 CarswellPEI 80 (Prov. Ct.), at paras. 27-32, aff'd 2008 PESCAD 7, 277 Nfld. & P.E.I.R. 103, the warrant was initially issued four years after the alleged downloading (although in that case the warrant was quashed on review on other grounds). Examples also abound in the United States: Gourde (four months); Shields, at p. 279 (nine months); Perrine (111 days); United States v. Terry, 522 F.3d 645 (6th Cir. 2008) (five months).
2010	R. v. Morelli	3/19/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do	R. v. Morelli, 2010 SCC 8, [2010] 1 S.C.R. 253	Deschamps J.	dissenting	Saskatchewan	Constitutional law Criminal law	C	D	United States v. Martin, 426 F.3d 68 (2005)	lower-level court	US	[127] The concept of "reasonable grounds to believe" has been considered by this Court on numerous occasions. The most frequently cited formulation of the standard as applicable to the context of a search was articulated by Wilson J. in R. v. Debot, [1989] 2 S.C.R. 1140, at p. 1166: The question as to what standard of proof must be met in order to establish reasonable grounds for a search may be disposed of quickly. I agree with Martin J.A. that the appropriate standard is one of "reasonable probability" rather than "proof beyond a reasonable doubt" or "prima facie case". The phrase "reasonable belief" also approximates the requisite standard. See also Baron v. Canada, [1993] 1 S.C.R. 416. [162] It was neither inappropriate nor erroneous to rely on the information provided by Cpl. Boyce and Cst. Huisman about the propensity of child pornography offenders to collect and hoard such materials. Indeed, this propensity, which seems to be notorious, has been accepted in numerous child pornography cases as part of the factual backdrop giving rise to reasonable and probable grounds for issuing search warrants, and it has also been noted in the academic commentary on child pornography: R. v. Neveu, 2005 NSPC 51, 239 N.S.R. (2d) 59, at paras. 15-17; R. v. Fawthrop (2002), 161 O.A.C. 350, at para. 14; United States v. Gourde, 440 F.3d 1065 (9th Cir. 2006), at pp. 1068 and 1072; United States v. Martin, 426 F.3d 68 (2d Cir. 2006), at pp. 72 and 75; United States v. Shields, 458 F.3d 269 (3rd Cir. 2006), at p. 279; Davidson v. United States, 213 Fed.Appx. 769 (11th Cir. 2006), at p. 771; United States v. Falso, 544 F.3d 110 (2d Cir. 2008); United States v. Perrine, 518 F.3d 1196 (10th Cir. 2008), at p. 1206; M. Taylor and E. Quayle, Child Pornography: An Internet Crime (2003), chapter 7, "The process of collecting". Even if a lay person would not necessarily know that child pornography offenders collect such material, this appears to be something law enforcement officials working in computer technology or vice units encounter frequently. Testimony about this fact cannot therefore be compared to testimony about novel technology or science: R. v. Mohan, [1994] 2 S.C.R. 9; R. v. J.-L.J., 2000 SCC 51, [2000] 2 S.C.R. 600; R. v. Trochym, 2007 SCC 6, [2007] 1 S.C.R. 239.
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2010	R. v. Morelli	3/19/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do	R. v. Morelli, 2010 SCC 8, [2010] 1 S.C.R. 253	Fish J.	majority	Saskatchewan	Constitutional law Criminal law	C	referred to	United States v. Terry, 522 F.3d 645 (2008)	lower-level court	US	[87] Also, and again with respect, the cases my colleague relies on (at para. 173) do not support the notion that a warrant can be issued months after a person might have merely viewed child pornography. For example, in United States v. Terry, 522 F.3d 645 (6th Cir. 2008), the warrant was issued on a probable cause finding that the accused had in fact saved child pornography on his computer five months earlier. Also, the Prince Edward Island Court of Appeal in R. v. Graham, 2008 PESCAD 7, 277 Nfld. & P.E.I.R. 103, neither upheld the warrant nor affirmed the trial judge's finding as to the effect of the passage of time.
2010	Fullowka v. Pinkerton's of Canada Ltd.	2/18/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7844/index.do?q=The+trial+judge+thought+that+this+advice+was+wrong.++I+agree+with+him+about+that+for+the+reasons+set+out+earlier+in+the+duty+of+care+analysis.	Fullowka v. Pinkerton's of Canada Ltd., 2010 SCC 5, [2010] 1 S.C.R. 132	Cromwell J.	unanimous	Northwest Territories	Torts	C	referred to	Dunlop v. Woollahra Municipal Council, [1981] 1 All E.R. 1202	lower-level court	UK	[89] The trial judge thought that this advice was wrong. I agree with him about that for the reasons set out earlier in the duty of care analysis. But in the context of allegations of negligence against those responsible for regulating mine safety, the fact that this advice was received and acted on cannot be dismissed, as the trial judge did, as being of "no consequence" (para. 834). This advice goes precisely to the issue of whether the government took reasonable care in deciding not to close the mine. It will rarely be negligent for officials to refrain from taking discretionary actions that they have been advised by counsel, whose competence and good faith in giving the advice they have no reason to doubt, are beyond their statutory authority: see, e.g., Dunlop v. Woollahra Municipal Council, [1981] 1 All E.R. 1202 (P.C.), at p. 1209; Stafford v. British Columbia, [1996] B.C.J. No. 1010 (QL) (S.C.), at paras. 78-81. In the context of this case, the opposite view leads to alarming results, as the trial judge's holding here demonstrates. The effect of the trial judge's holding is that officials may be found to have acted negligently by refraining from taking action that they believed in good faith and on the basis of reputable, professional legal advice, to be unlawful. In other words, the law of negligence would require the inspectors to take action which they believed abused their powers. This cannot be the law. There is no argument advanced on behalf of the appellants that it was unreasonable for officials to rely on the advice received or that they did not seek or rely on it in good faith.
2010	Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)	2/12/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7843/index.do	Tercon Contractors Ltd. v. British Columbia (Transportation and Highways), 2010 SCC 4, [2010] 1 S.C.R. 69	Binnie J.	dissenting	British Columbia	Contract	C	D	Karsales (Harrow) Ltd. v. Wallis, [1956] 1 W.L.R. 936	lower-level court	UK	[106] This doctrine was largely the creation of Lord Denning in the 1950s (see, e.g., Karsales (Harrow) Ltd. v. Wallis, [1956] 1 W.L.R. 936 (C.A.)). It was said to be a rule of law that operated independently of the intention of the parties in circumstances where the defendant had so egregiously breached the contract as to deny the plaintiff substantially the whole of its benefit. In such a case, according to the doctrine, the innocent party was excused from further performance but the defendant could still be held liable for the consequences of its "fundamental" breach even if the parties had excluded liability by clear and express language. See generally S. M. Waddams, The Law of Contracts (5th ed. 2005), at para. 478; J. D. McCamus, The Law of Contracts (2005), at pp. 765 et seq.
2010	Canada (Prime Minister) v. Khadr	1/29/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7842/index.do	Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 S.C.R. 44	The Court	unanimous	Federal Court of Appeal	Constitutional law Courts	C	referred to	Rasul v. Bush, 542 U.S. 466 (2004)	SC	US	[16] This question was addressed in Khadr 2008, in which this Court held that the Charter applied to the actions of Canadian officials operating at Guantanamo Bay who handed the fruits of their interviews over to U.S. authorities. This Court held, at para. 26, that "the principles of international law and comity that might otherwise preclude application of the Charter to Canadian officials acting abroad do not apply to the assistance they gave to U.S. authorities at Guantanamo Bay", given holdings of the Supreme Court of the United States that the military commission regime then in place constituted a clear violation of fundamental human rights protected by international law: see Khadr 2008, at para. 24; Rasul v. Bush, 542 U.S. 466 (2004), and Hamdan v. Rumsfeld, 548 U.S. 557 (2006). The principles of fundamental justice thus required the Canadian officials who had interrogated Mr. Khadr to disclose to him the contents of the statements he had given them. The Canadian government complied with this Court's order.

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2010	Canada (Prime Minister) v. Khadr	1/29/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7842/index.do	Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 S.C.R. 44	The Court	unanimous	Federal Court of Appeal	Constitutional law Courts	C	referred to	Hamdan v. Rumsfeld, 548 U.S. 557 (2006)	SC	US	[16] This question was addressed in Khadr 2008, in which this Court held that the Charter applied to the actions of Canadian officials operating at Guantanamo Bay who handed the fruits of their interviews over to U.S. authorities. This Court held, at para. 26, that "the principles of international law and comity that might otherwise preclude application of the Charter to Canadian officials acting abroad do not apply to the assistance they gave to U.S. authorities at Guantanamo Bay", given holdings of the Supreme Court of the United States that the military commission regime then in place constituted a clear violation of fundamental human rights protected by international law: see Khadr 2008, at para. 24; Rasul v. Bush, 542 U.S. 466 (2004), and Hamdan v. Rumsfeld, 548 U.S. 557 (2006). The principles of fundamental justice thus required the Canadian officials who had interrogated Mr. Khadr to disclose to him the contents of the statements he had given them. The Canadian government complied with this Court's order. [17] We note that the regime under which Mr. Khadr is currently detained has changed significantly in recent years. The U.S. Congress has legislated and the U.S. courts have acted with the aim of bringing the military processes at Guantanamo Bay in line with international law. (The Detainee Treatment Act of 2005, Pub. L. 109-148, 119 Stat. 2739, prohibited inhumane treatment of detainees and required interrogations to be performed according to the Army field manual. The Military Commissions Act of 2006, Pub. L. 109-366, 120 Stat. 2600, attempted to legalize the Guantanamo regime after the U.S. Supreme Court's ruling in Hamdan v. Rumsfeld. However, on June 12, 2008, in Boumediene v. Bush, 128 S. Ct. 2229 (2008), the U.S. Supreme Court held that Guantanamo Bay detainees have a constitutional right to habeas corpus, and struck down the provisions of the Military Commissions Act of 2006 that suspended that right.) [24] We conclude that Canadian conduct in connection with Mr. Khadr's case did not conform to the principles of fundamental justice. That conduct may be briefly reviewed. The statements taken by CSIS and DFAIT were obtained through participation in a regime which was known at the time to have refused detainees the right to challenge the legality of detention by way of habeas corpus. It was also known that Mr. Khadr was 16 years old at the time and that he had not had access to counsel or to any adult who had his best interests in mind. As held by this Court in Khadr 2008, Canada's participation in the illegal process in place at Guantanamo Bay clearly violated Canada's binding international obligations (Khadr 2008, at paras. 23-25; Hamdan v. Rumsfeld). In conducting their interviews, CSIS officials had control over the questions asked and the subject matter of the interviews (Transcript of cross-examination on Affidavit of Mr. Hooper, Exhibit "GG" to Affidavit of Lt. Cdr. William Kuebler, March 2, 2005 (J.R., vol. III, p. 313, at p. 22)). Canadian officials also knew that the U.S. authorities would have full access to the contents of the interrogations (as Canadian officials sought no restrictions on their use) by virtue of their audio and video recording (CSIS's Role in the Matter of Omar Khadr, at pp. 11-12). The purpose of the interviews was for intelligence gathering and not criminal investigation. While in some contexts there may be an important distinction between those interviews conducted for the purpose of intelligence gathering and those conducted in criminal investigations, here, the distinction loses its significance. Canadian officials questioned Mr. Khadr on matters that may have provided important evidence relating to his criminal proceedings, in circumstances where they knew that Mr. Khadr was being indefinitely detained, was a young person and was alone during the interrogations. Further, the March 2004 interview, where Mr. Khadr refused to answer questions, was conducted knowing that Mr. Khadr had been subjected to three weeks of scheduled sleep deprivation, a measure described by the U.S. Military Commission in Jawad as designed to "make [detainees] more compliant and break down their resistance to interrogation" (para. 4).
2010	Canada (Prime Minister) v. Khadr	1/29/2010	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7842/index.do	Canada (Prime Minister) v. Khadr, 2010 SCC 3, [2010] 1 S.C.R. 44	The Court	unanimous	Federal Court of Appeal	Constitutional law Courts	C	referred to	Boumediene v. Bush, 128 S. Ct. 2229 (2008)	SC	US	[17] We note that the regime under which Mr. Khadr is currently detained has changed significantly in recent years. The U.S. Congress has legislated and the U.S. courts have acted with the aim of bringing the military processes at Guantanamo Bay in line with international law. (The Detainee Treatment Act of 2005, Pub. L. 109-148, 119 Stat. 2739, prohibited inhumane treatment of detainees and required interrogations to be performed according to the Army field manual. The Military Commissions Act of 2006, Pub. L. 109-366, 120 Stat. 2600, attempted to legalize the Guantanamo regime after the U.S. Supreme Court's ruling in Hamdan v. Rumsfeld. However, on June 12, 2008, in Boumediene v. Bush, 128 S. Ct. 2229 (2008), the U.S. Supreme Court held that Guantanamo Bay detainees have a constitutional right to habeas corpus, and struck down the provisions of the Military Commissions Act of 2006 that suspended that right.)
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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	Abella J.	concurring	Ontario	Torts	C	referred to	Jameel v. Wall Street Journal Europe SPRL, [2006] UKHL 44, [2007] 1 A.C. 359, rev'g [2005] EWCA Civ 74, [2005] 4 All E.R. 356	SC	UK (HL)	[144] I accept that the jury's participation in defamation cases is firmly entrenched in the psyche of defamation law and that authorizing judges to decide both steps of the responsible communication analysis leaves juries with a limited role. But I am unpersuaded that it is inconsistent with the statutory scheme to leave the legal issues at stake here with the judge and any disputed facts with the jury. It is worth remembering that such a potentially determinative role for the judge already exists when the defence of absolute or qualified privilege is engaged (Raymond E. Brown, The Law of Defamation in Canada (2nd ed. (loose-leaf)), vol. 2, at pp. 12-289, 13-405 and 16-136). It is also useful to bear in mind the historical basis for the jury's preeminent role in defamation cases. It was an outgrowth of Britain's Libel Act of 1792 when juries were seen to be necessary as "watchdogs of democratic rights against unrepresentative governments" (New South Wales Law Reform Commission, Report 75, Defamation (1995), at para. 3.2, cited in Australian Broadcasting Corp. v. Reading, [2004] NSWCA 411 (AustLII), at para. 143). More than two centuries later, this rationale is difficult to sustain, as is the primacy of the jury's role (Brown, vol. 3, at p. 17-115; Jameel v. Wall Street Journal Europe SPRL, [2005] EWCA Civ 74, [2005] 4 All E.R. 356, at para. 70, per Lord Phillips, M.R.; Gatley on Libel and Slander (11th ed. 2008), at p. 1241; and David A. Anderson, "Is Libel Law Worth Reforming?" (1991-1992), 140 U. Pa. L. Rev. 487, at p. 540).

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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	SC	US	[45] The argument that the Charter requires modification of Canadian defamation law was considered in Hill. Writing for a unanimous Court on this point, Cory J. declined to adopt the American "actual malice" rule from New York Times Co. v. Sullivan, 376 U.S. 254 (1964), which provides immunity for defamation of public officials except where malice is shown. Cory J. did, however, undertake a modest expansion of the recognized qualified privilege for reports on judicial proceedings. [46] While Hill stands for a rejection of the Sullivan approach and an affirmation of the common law of defamation's general conformity with the Charter , it does not close the door to further changes in specific rules and doctrines. As Iacobucci J. observed in R. v. Salituro, [1991] 3 S.C.R. 654, at p. 670, "[j]udges can and should adapt the common law to reflect the changing social, moral and economic fabric of the country." It is implicit in this duty that the courts will, from time to time, take a fresh look at the common law and re-evaluate its consistency with evolving societal expectations through the lens of Charter values. [67] In Sullivan, the United States Supreme Court applied the First Amendment's free speech guarantee to hold that a "public official" cannot recover in defamation absent proof that the defendant was motivated by "actual malice", meaning knowledge of falsity or reckless indifference to truth. In subsequent cases, the "actual malice" rule was extended to apply to all "public figures", not only people formally involved in government or politics: Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). Sullivan and its progeny have made it extremely difficult for anyone in the public eye to sue successfully for defamation. In the contest between free expression and reputation protection, free expression decisively won the day. [68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.) ("Lange v. Atkinson No. 3")), and South Africa (Du Plessis v. De Klerk, 1996 (3) SA 850 (CC); National Media Ltd. v. Bogoshi, 1998 (4) SA 1196 (SCA)). [82] Developments in South Africa have generally paralleled those in the other jurisdictions just discussed, the U.K. most particularly. In Du Plessis, the Constitutional Court of South Africa considered and rejected an argument that the common law of defamation should be liberalized and constitutionalized along the lines of Sullivan. The court held that s. 15 of the Constitution — the free expression guarantee — did "not mandate any particular rule of common law" (p. 885) because the guarantee does not apply directly to disputes between private litigants. However, echoing the Canadian "Charter values" approach, it held that the common law ought to be developed by courts in a manner consistent with constitutional values. [106] Public interest is not confined to publications on government and political matters, as it is in Australia and New Zealand. Nor is it necessary that the plaintiff be a "public figure", as in the American jurisprudence since Sullivan. Both qualifications cast the public interest too narrowly. The public has a genuine stake in knowing about many matters, ranging from science and the arts to the environment, religion and morality. The democratic interest in such wide-ranging public debate must be reflected in the jurisprudence.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Ballina Shire Council v. Ringland (1994), 33 N.S.W.L.R. 680	lower-level court	Australia	[62] The protection offered by a new defence based on conduct is meaningful for both the publisher and those whose reputations are at stake. If the publisher fails to take appropriate steps having regard to all the circumstances, it will be liable. The press and others engaged in public communication on matters of public interest, like bloggers, must act carefully, having regard to the injury to reputation that a false statement can cause. A defence based on responsible conduct reflects the social concern that the media should be held accountable through the law of defamation. As Kirby P. stated in Ballina Shire Council v. Ringland (1994), 33 N.S.W.L.R. 680 (C.A.), at p. 700: "The law of defamation is one of the comparatively few checks upon [the media's] great power." The requirement that the publisher of defamatory material act responsibly provides accountability and comports with the reasonable expectations of those whose conduct brings them within the sphere of public interest. People in public life are entitled to expect that the media and other reporters will act responsibly in protecting them from false accusations and innuendo. They are not, however, entitled to demand perfection and the inevitable silencing of critical comment that a standard of perfection would impose.
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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96	SC	Australia	[68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [77] Despite the absence of a constitutional bill of rights guaranteeing freedom of expression, the High Court of Australia has increased the protection afforded to the media on factual reports. In Lange v. Australian Broadcasting Corp., a case involving a former prime minister of New Zealand, the High Court confirmed the existence of a qualified privilege for publications on "government and political matters", established earlier in Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1. The High Court held that "each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia [a category that, while broad, does not extend to all matters of public interest]. The duty to disseminate such information is simply the correlative of the interest in receiving it" (p. 115). Lange defined "government and political matters" relatively narrowly to cover matters within the sphere of electoral politics, whether at a local, state, or federal level, adding that "discussion of matters concerning the United Nations or other countries may be protected by the extended defence of qualified privilege" (p. 115).
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Lange v. Atkinson, [1998] 3 N.Z.L.R. 424	SC	New Zealand	[68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.) ("Lange v. Atkinson No. 3")), and South Africa (Du Plessis v. De Klerk, 1996 (3) SA 850 (CC); National Media Ltd. v. Bogoshi, 1998 (4) SA 1196 (SCA)). [80] New Zealand's courts have modified the common law defence of qualified privilege in a manner broadly similar to the Australian approach. Coincidentally, the leading New Zealand cases also involved former prime minister David Lange as plaintiff: see Lange v. Atkinson Nos. 1, 2 and 3. In Lange v. Atkinson No. 1, the Court of Appeal announced a qualified privilege for "generally-published statements which directly concern the functioning of representative and responsible government, including statements about the performance or possible future performance of specific individuals in elected public office" (p. 468), basing their decision largely on New Zealand's democratic traditions and the specific dictates of the Bill of Rights Act 1990. Contrary to the Australian position, however, the court imposed no reasonableness requirement on the prima facie availability of the defence. Rather, evidence of irresponsibility can be adduced by the plaintiff to show that the privilege has been misused.

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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Lange v. Atkinson, [2000] 3 N.Z.L.R. 385	SC	New Zealand	[68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [80] New Zealand's courts have modified the common law defence of qualified privilege in a manner broadly similar to the Australian approach. Coincidentally, the leading New Zealand cases also involved former prime minister David Lange as plaintiff: see Lange v. Atkinson Nos. 1, 2 and 3. In Lange v. Atkinson No. 1, the Court of Appeal announced a qualified privilege for "generally-published statements which directly concern the functioning of representative and responsible government, including statements about the performance or possible future performance of specific individuals in elected public office" (p. 468), basing their decision largely on New Zealand's democratic traditions and the specific dictates of the Bill of Rights Act 1990. Contrary to the Australian position, however, the court imposed no reasonableness requirement on the prima facie availability of the defence. Rather, evidence of irresponsibility can be adduced by the plaintiff to show that the privilege has been misused.[81] In Lange v. Atkinson No. 3, on remand from the Privy Council, the Court of Appeal re-affirmed its earlier decision, rejecting Reynolds as ill-suited to New Zealand's needs and realities. Among the court's criticisms of Reynolds was the view that it devalued the traditionally central role of the jury in libel trials by placing the key determination in the hands of the judge, a concern that also arises in the case at bar. More fundamentally, the court opined that "the Reynolds decision appears to alter the structure of the law of qualified privilege in a way which adds to the uncertainty and chilling effect almost inevitably present in this area of law" (para. 38). The Court of Appeal's solution was to reject any requirement of reasonableness or diligence in determining the scope of the privilege itself. In the result, the scope of privileged subject matter in New Zealand is narrower than in the United Kingdom, but within that domain New Zealand law may offer stronger protection.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Du Plessis v. De Klerk, 1996 (3) SA 850	CC	South Africa	[68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.) ("Lange v. Atkinson No. 3")), and South Africa (Du Plessis v. De Klerk, 1996 (3) SA 850 (CC); National Media Ltd. v. Bogoshi, 1998 (4) SA 1196 (SCA)). [82] Developments in South Africa have generally parallelled those in the other jurisdictions just discussed, the U.K. most particularly. In Du Plessis, the Constitutional Court of South Africa considered and rejected an argument that the common law of defamation should be liberalized and constitutionalized along the lines of Sullivan. The court held that s. 15 of the Constitution — the free expression guarantee — did "not mandate any particular rule of common law" (p. 885) because the guarantee does not apply directly to disputes between private litigants. However, echoing the Canadian "Charter values" approach, it held that the common law ought to be developed by courts in a manner consistent with constitutional values
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	National Media Ltd. v. Bogoshi, 1998 (4) SA 1196	CC	South Africa	[68] Commonwealth courts have rejected the precise balance struck in Sullivan between free expression and protection of reputation. However, the law has begun to shift in favour of broader defences for press defendants, most prominently in England, but also in Australia (Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96 (H.C.)), New Zealand (Lange v. Atkinson, [1998] 3 N.Z.L.R. 424 (C.A.) ("Lange v. Atkinson No. 1"); Lange v. Atkinson, [2000] 1 N.Z.L.R. 257 (P.C.) ("Lange v. Atkinson No. 2"); Lange v. Atkinson, [2000] 3 N.Z.L.R. 385 (C.A.) ("Lange v. Atkinson No. 3")), and South Africa (Du Plessis v. De Klerk, 1996 (3) SA 850 (CC); National Media Ltd. v. Bogoshi, 1998 (4) SA 1196 (SCA)). [83] The Supreme Court of Appeal subsequently adopted a responsible journalism defence in Bogoshi. Writing for the court, Hefer J.A. held that "the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time" (p. 1212). Approving of this approach in the Constitutional Court, Sachs J. recently commented that "[i]n Bogoshi the SCA developed in a way that was sensitive to contemporary concerns and realities, a well-weighted means of balancing respect for individual personality rights with concern for freedom of the press": N.M. v. Smith, [2007] ZACC 6, 2007 (5) SA 250, at para. 203. See also Khumalo v. Holomisa, [2002] ZACC 12, 2002 (5) SA 401; Mthembi-Mahanyele v. Mail & Guardian Ltd., [2004] ZASCA 67, 2004 (6) SA 329. [84] The effect of Bogoshi has been to establish in South African law a reasonableness defence resembling Reynolds in most respects, but naturally with
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609	lower-level court	UK	[63] It is also argued that a defence based on the conduct of the defendant may lead to costly and lengthy litigation over questions of journalistic practice about which claimants can have no advance knowledge: see A. T. Kenyon, "Lange and Reynolds Qualified Privilege: Australian and English Defamation Law and Practice" (2004), 28 Melb. U.L. Rev. 406, at p. 425. Of the relevant factors (see discussion of Reynolds below, at paras. 69-71) only the opportunity to respond to the allegation prior to publication is likely to lie within the plaintiff's knowledge, making it hard for a potential plaintiff to judge the strength of her case, it is said. [69] Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, marked a decisive departure from the traditional pro-reputation orientation of defamation law in England. The case involved allegations of improper dealing by an Irish politician. The House of Lords, for the first time, recognized that "freedom to disseminate and receive information on political matters is essential to the proper functioning of the system of parliamentary democracy", (p. 621) and that the news media plays a vital role in furthering that interest. It followed that the law of defamation should provide greater protection to publications made on matters of public interest. A new standard was pronounced — responsible journalism. Effectively, the House of Lords recognized a compelling duty on the press to publish such reports and a corresponding interest on the part of the public in receiving them. [70] In order to determine whether a publication should be covered by responsible journalism, Lord Nicholls provided a list of considerations which have come to be known as the "Reynolds factors" (at p. 626): (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. (2) The nature of the information, and the extent to which the subject matter is a matter of public concern. (3) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories. (4) The steps taken to verify the information. (5) The status of the information. The allegation may have already been the subject of an investigation which commands respect. (6) The urgency of the matter. News is often a perishable commodity. (7) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. (8) Whether the article contained the gist of the plaintiff's side of the story. (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. (10) The circumstances of the publication, including the timing. Lord Nicholls made clear that the ultimate determination of responsibility would be a legal question for the judge, though he allowed that any dispute of "primary fact" would be decided by the jury (p. 626).

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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Jameel v. Wall Street Journal Europe SPRL, [2006] UKHL 44, [2007] 1 A.C. 359, rev'g [2005] EWCA Civ 74, [2005] 4 All E.R. 356	SC	UK (HL)	[71] Reynolds was quickly recognized as a "media-friendly" development. In practical terms, however, Reynolds only partially succeeded in changing the landscape. The ten Reynolds factors proved difficult to apply. Some courts saw them as merely an illustrative list of possible considerations, while others viewed them as a complete code for what constitutes responsible journalism. Journalists and publishers, for their part, found it difficult to anticipate what kind of conduct would satisfy the Reynolds criteria, applied with the benefit of judicial hindsight. (See, e.g., R. L. Weaver et al., "Defamation Law and Free Speech: Reynolds v. Times Newspapers and the English Media" (2004), 37 Vand. J. Transnat'l L. 1255, at pp. 1303-7.) As one commentator has observed: . . . the Reynolds defence virtually never succeeded because the 10 pointers of responsible journalism were treated by the judges as hurdles to be surmounted. The judges applied a dollop of hindsight, finding something which they, as a responsible editor or journalist, would have done differently. The Reynolds defence spawned satellite litigation where, often for understandable reasons, the underlying facts could not be proved and much time and money had to be spent on analysing how the story was constructed. Anonymous sources tended to be viewed with suspicion and juries were given a complex list of factual issues to decide, sometimes with confusing directions as to the presumption of falsity which served to push them in the direction of disbelieving what the journalists said. [Emphasis in original.] (D. Hooper, "The Importance of the Jameel Case", [2007] Ent. L.R. 62, at p. 62. See also A. J. Bonnington, "Reynolds Rides Again" (2006), 11 Comms. L. 147.) [72] The House of Lords addressed this uncertainty in Jameel v. Wall Street Journal Europe SPRL, [2006] UKHL 44, [2007] 1 A.C. 359. The defendant Wall Street Journal Europe had published an article, shortly after September 11, 2001, revealing that the bank accounts of certain prominent Saudi Arabian businessmen, including the plaintiff, were being monitored for possible terrorist connections by Saudi authorities at the behest of the U.S. government, citing anonymous sources. The tone of the article was neutral and unsensational, and the article bore the indicia of responsible journalism. Nonetheless, the trial judge denied the defendants access to the Reynolds privilege, and the Court of Appeal upheld that denial on the sole ground that the paper had not waited long enough to hear back from the plaintiff before running the story. [73] The House of Lords reversed the judgment of the Court of Appeal and held that the responsible journalism defence applied. It criticized the lower courts for applying the Reynolds factors restrictively as "a series of hurdles to be negotiated by a publisher" (para. 33, per Lord Bingham), rather than as an illustrative guide to what might constitute responsible journalism on the facts of a given case. Given that the defence was meant to foster free expression and a free press, its requirements should not be pitched so high as to make its availability all but illusory. The House of Lords also emphasized that the assessment of responsible journalism is not an invitation for courts to micro-manage the editorial practices of media organizations. Rather, a degree of deference should be shown to the editorial judgment of the players,
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Seaga v. Harper, [2008] UKPC 9, [2008] 1 All E.R. 965	SC	UK (PC)	[73] The House of Lords reversed the judgment of the Court of Appeal and held that the responsible journalism defence applied. It criticized the lower courts for applying the Reynolds factors restrictively as "a series of hurdles to be negotiated by a publisher" (para. 33, per Lord Bingham), rather than as an illustrative guide to what might constitute responsible journalism on the facts of a given case. Given that the defence was meant to foster free expression and a free press, its requirements should not be pitched so high as to make its availability all but illusory. The House of Lords also emphasized that the assessment of responsible journalism is not an invitation for courts to micro-manage the editorial practices of media organizations. Rather, a degree of deference should be shown to the editorial judgment of the players, particularly professional editors and journalists. For instance, a court should be slow to conclude that the inclusion of a particular defamatory statement was "unnecessary" and therefore outside the scope of the defence. As Lord Hoffmann put it: The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, ex hypothesi, in the public interest, too risky and would discourage investigative reporting. [para. 51] The House of Lords also made clear that the defence is available to "anyone who publishes material of public interest in any medium", not just journalists or media companies: Jameel, at para. 54, per Lord Hoffmann; Seaga v. Harper, [2008] UKPC 9, [2008] 1 All E.R. 965.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Charman v. Orion Publishing Group Ltd., [2007] EWCA Civ 972, [2008] 1 All E.R. 750	lower-level court	UK	[76] Another unresolved issue is the status of so-called "reportage". "Reportage" refers to defamatory statements clearly attributed to someone other than, and not adopted by, the defendant. On one view, reportage is simply the accurate reporting of facts — the fact of what someone said. Such reportage is essential, the media argue, to comprehensive coverage of public debate. Charges flung back and forth between contending factions in a dispute are themselves, it is argued, an essential part of the story, and will be understood by the public as such. However, the reporting of defamatory statements is barred by the "repetition rule" of defamation law, which holds that someone who repeats a defamatory statement is no less liable than the person who originated it. Recent cases suggest that this rule has been attenuated in the context of actions brought against media outlets, although whether as a distinct defence or as one of the factors to consider in applying the responsible journalism standard remains unclear: Charman v. Orion Publishing Group Ltd., [2007] EWCA Civ 972, [2008] 1 All E.R. 750. I will return to this question below. [119] The "repetition rule" holds that repeating a libel has the same legal consequences as originating it. This rule reflects the law's concern that one should not be able to freely publish a scurrilous libel simply by purporting to attribute the allegation to someone else. The law will not protect a defendant who is "willing to wound, and yet afraid to strike": "Truth" (N.Z.) Ltd. v. Holloway, [1960] 1 W.L.R. 997 (P.C.), at p. 1001, per Lord Denning. In sum, the repetition rule preserves the accountability of media and other reporting on matters of public interest. The "bald retailing of libels" is not in the public interest: Charman, at para. 91, per Sedley L.J. Maintaining the repetition rule is particularly important in the age of the Internet, when defamatory material can spread from one website to another at great speed. [120] However, the repetition rule does not apply to fairly reported statements whose public interest lies in the fact that they were made rather than in their truth or falsity. This exception to the repetition rule is known as reportage. If a dispute is itself a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue, provided: (1) the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability; (2) the report indicates, expressly or implicitly, that its truth has not been verified; (3) the report sets out both sides of the dispute fairly; and (4) the report provides the context in which the statements were made. See Al-Fagih v. H.H. Saudi Research & Marketing (U.K.) Ltd., [2001] EWCA Civ 1634 (BAILII), at para. 52; Charman; Prince Radu of
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1	SC	Australia	[77] Despite the absence of a constitutional bill of rights guaranteeing freedom of expression, the High Court of Australia has increased the protection afforded to the media on factual reports. In Lange v. Australian Broadcasting Corp., a case involving a former prime minister of New Zealand, the High Court confirmed the existence of a qualified privilege for publications on "government and political matters", established earlier in Theophanous v. Herald & Weekly Times Ltd. (1994), 124 A.L.R. 1. The High Court held that "each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia [a category that, while broad, does not extend to all matters of public interest]. The duty to disseminate such information is simply the correlative of the interest in receiving it" (p. 115). Lange defined "government and political matters" relatively narrowly to cover matters within the sphere of electoral politics, whether at a local, state, or federal level, adding that "discussion of matters concerning the United Nations or other countries may be protected by the extended defence of qualified privilege" (p. 115).
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	N.M. v. Smith, [2007] ZACC 6, 2007 (5) SA 250	CC	South Africa	[83] The Supreme Court of Appeal subsequently adopted a responsible journalism defence in Bogoshi. Writing for the court, Hefer J.A. held that "the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time" (p. 1212). Approving of this approach in the Constitutional Court, Sachs J. recently commented that "[i]n Bogoshi the SCA developed in a way that was sensitive to contemporary concerns and realities, a well-weighted means of balancing respect for individual personality rights with concern for freedom of the press": N.M. v. Smith, [2007] ZACC 6, 2007 (5) SA 250, at para. 203. See also Khumalo v. Holomisa, [2002] ZACC 12, 2002 (5) SA 401; Mthembi-Mahanyele v. Mail & Guardian Ltd., [2004] ZASCA 67, 2004 (6) SA 329.

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2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	London Artists, Ltd. v. Littler, [1969] 2 All E.R. 193	lower-level court	UK	[104] In London Artists, Ltd. v. Littler, [1969] 2 All E.R. 193 (C.A.), speaking of the defence of fair comment, Lord Denning, M.R., described public interest broadly in terms of matters that may legitimately concern or interest people: There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest on which everyone is entitled to make fair comment. [p. 198]
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Miller v. Associated Newspapers Ltd., [2005] EWHC 557 (QB) (BAILII)	lower-level court	UK	[114] Some sources of information are more worthy of belief than others. The less trustworthy the source, the greater the need to use other sources to verify the allegations. This applies as much to documentary sources as to people; for example, an "interim progress report" of an internal inquiry has been found to be an insufficiently authoritative source in the circumstances: Miller v. Associated Newspapers Ltd., [2005] EWHC 557 (QB) (BAILII). Consistent with the logic of the repetition rule, the fact that someone has already published a defamatory statement does not give another person licence to repeat it. As already explained, this principle is especially vital when defamatory statements can be reproduced electronically with the speed of a few keystrokes. At the same time, the fact that the defendant's source had an axe to grind does not necessarily deprive the defendant of protection, provided other reasonable steps were taken.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Galloway v. Telegraph Group Ltd., [2004] EWHC 2786 (QB) (BAILII)	lower-level court	UK	[116] It has been said that this is "perhaps the core Reynolds factor" (Gatley, at p. 535) because it speaks to the essential sense of fairness the defence is intended to promote, as well as thoroughness. In most cases, it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond: see, e.g., Galloway v. Telegraph Group Ltd., [2004] EWHC 2786 (QB) (BAILII), at paras. 166-67, per Eady J. Failure to do so also heightens the risk of inaccuracy, since the target of the allegations may well be able to offer relevant information beyond a bare denial.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	"Truth" (N.Z.) Ltd. v. Holloway, [1960] 1 W.L.R. 997	SC	UK (PC)	[119] The "repetition rule" holds that repeating a libel has the same legal consequences as originating it. This rule reflects the law's concern that one should not be able to freely publish a scurrilous libel simply by purporting to attribute the allegation to someone else. The law will not protect a defendant who is "willing to wound, and yet afraid to strike": "Truth" (N.Z.) Ltd. v. Holloway, [1960] 1 W.L.R. 997 (P.C.), at p. 1001, per Lord Denning. In sum, the repetition rule preserves the accountability of media and other reporting on matters of public interest. The "bald retailing of libels" is not in the public interest: Charman, at para. 91, per Sedley L.J. Maintaining the repetition rule is particularly important in the age of the Internet, when defamatory material can spread from one website to another at great speed.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Al-Fagih v. H.H. Saudi Research & Marketing (U.K.) Ltd., [2001] EWCA Civ 1634 (BAILII);	lower-level court	UK	[120] However, the repetition rule does not apply to fairly reported statements whose public interest lies in the fact that they were made rather than in their truth or falsity. This exception to the repetition rule is known as reportage. If a dispute is itself a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue, provided: (1) the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability; (2) the report indicates, expressly or implicitly, that its truth has not been verified; (3) the report sets out both sides of the dispute fairly; and (4) the report provides the context in which the statements were made. See Al-Fagih v. H.H. Saudi Research & Marketing (U.K.) Ltd., [2001] EWCA Civ 1634 (BAILII), at para. 52; Charman; Prince Radu of Hohenzollern v. Houston, [2007] EWHC 2735 (QB) (BAILII); Roberts v. Gable, [2007] EWCA Civ 721, [2008] 2 W.L.R. 129.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Prince Radu of Hohenzollern v. Houston, [2007] EWHC 2735 (QB) (BAILII)	lower-level court	UK	[120] However, the repetition rule does not apply to fairly reported statements whose public interest lies in the fact that they were made rather than in their truth or falsity. This exception to the repetition rule is known as reportage. If a dispute is itself a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue, provided: (1) the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability; (2) the report indicates, expressly or implicitly, that its truth has not been verified; (3) the report sets out both sides of the dispute fairly; and (4) the report provides the context in which the statements were made. See Al-Fagih v. H.H. Saudi Research & Marketing (U.K.) Ltd., [2001] EWCA Civ 1634 (BAILII), at para. 52; Charman; Prince Radu of Hohenzollern v. Houston, [2007] EWHC 2735 (QB) (BAILII); Roberts v. Gable, [2007] EWCA Civ 721, [2008] 2 W.L.R. 129.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Roberts v. Gable, [2007] EWCA Civ 721, [2008] 2 W.L.R. 129	lower-level court	UK	[120] However, the repetition rule does not apply to fairly reported statements whose public interest lies in the fact that they were made rather than in their truth or falsity. This exception to the repetition rule is known as reportage. If a dispute is itself a matter of public interest and the allegations are fairly reported, the publisher should incur no liability even if some of the statements made may be defamatory and untrue, provided: (1) the report attributes the statement to a person, preferably identified, thereby avoiding total unaccountability; (2) the report indicates, expressly or implicitly, that its truth has not been verified; (3) the report sets out both sides of the dispute fairly; and (4) the report provides the context in which the statements were made. See Al-Fagih v. H.H. Saudi Research & Marketing (U.K.) Ltd., [2001] EWCA Civ 1634 (BAILII), at para. 52; Charman; Prince Radu of Hohenzollern v. Houston, [2007] EWHC 2735 (QB) (BAILII); Roberts v. Gable, [2007] EWCA Civ 721, [2008] 2 W.L.R. 129.
2009	Grant v. Torstar Corp.	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7837/index.do	Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 S.C.R. 640	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Bonnick v. Morris, [2002] UKPC 31, [2003] 1 A.C. 300	SC	UK (PC)	[124] If the defamatory statement is capable of conveying more than one meaning, the jury should take into account the defendant's intended meaning, if reasonable, in determining whether the defence of responsible communication has been established. This follows from the focus of the inquiry on the conduct of the defendant. The weight to be placed on the defendant's intended meaning is a matter of degree: "The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances" (Bonnick v. Morris, [2002] UKPC 31, [2003] 1 A.C. 300 (P.C.), at para. 25, per Lord Nicholls). Under the defence of responsible communication, it is no longer necessary that the jury settle on a single meaning as a preliminary matter. Rather, it assesses the responsibility of the communication with a view to the range of meanings the words are reasonably capable of bearing.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2009	Quan v. Cusson	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7839/index.do	Quan v. Cusson, 2009 SCC 62, [2009] 3 S.C.R. 712	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609	SC	UK (HL)	[4] At trial, the defendants pleaded qualified privilege. They disclaimed any separate reliance on the defence known in England as "responsible journalism" or "Reynolds privilege" — which, at the time, had not yet been recognized as a distinct defence by any Canadian court. With respect to two of the articles, the trial judge rejected the claim of privilege and put the case to the jury to decide whether the defence of truth had been made out. Answering a long list of factual questions which parsed the allegedly defamatory statements in considerable detail, the jury found that many, but not all, of the factual imputations in the articles had been proven true. It awarded Cst. Cusson $100,000 in general damages against the Citizen defendants and $25,000 against Staff Sgt. Barager. However, the jury also found no malice on the part of any of the defendants and declined to award any special, aggravated or punitive damages. [25] The Court of Appeal, per Sharpe J.A., undertook an extensive review of the Canadian law of qualified privilege as well as the more recent developments in other common law jurisdictions (its reasons for judgment are discussed more fully in Grant). The court concluded that the existing law should be developed in order to give "appropriate recognition and weight to the Charter values of freedom of expression and freedom of the media without unduly minimizing the value of protecting individual reputation" (para. 140). Drawing particularly on the House of Lords' decisions in Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, and Jameel v. Wall Street Journal Europe Sprl, [2006] UKHL 44, [2007] 1 A.C. 359, it determined that a new defence of responsible journalism on matters of public interest should be recognized in Ontario. [41] In any event, the deficiencies in the evidentiary foundation are largely immaterial because, as held in Grant, the ultimate determination of responsibility is a matter for the jury. Since Sharpe J.A. took the view (following Reynolds and Jameel) that the new defence would be a matter for the judge, he did not consider ordering a new trial so that a jury could entertain the new defence. However, the gaps in the evidentiary record with respect to responsible communication are of less concern if the relevant option is a new trial rather than appellate application of the defence. A proper evidentiary record can be established at a new trial.
2009	Quan v. Cusson	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7839/index.do	Quan v. Cusson, 2009 SCC 62, [2009] 3 S.C.R. 712	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Jameel v. Wall Street Journal Europe Sprl, [2006] UKHL 44, [2007] 1 A.C. 359	SC	UK (HL)	[25] The Court of Appeal, per Sharpe J.A., undertook an extensive review of the Canadian law of qualified privilege as well as the more recent developments in other common law jurisdictions (its reasons for judgment are discussed more fully in Grant). The court concluded that the existing law should be developed in order to give "appropriate recognition and weight to the Charter values of freedom of expression and freedom of the media without unduly minimizing the value of protecting individual reputation" (para. 140). Drawing particularly on the House of Lords' decisions in Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, and Jameel v. Wall Street Journal Europe Sprl, [2006] UKHL 44, [2007] 1 A.C. 359, it determined that a new defence of responsible journalism on matters of public interest should be recognized in Ontario. [41] In any event, the deficiencies in the evidentiary foundation are largely immaterial because, as held in Grant, the ultimate determination of responsibility is a matter for the jury. Since Sharpe J.A. took the view (following Reynolds and Jameel) that the new defence would be a matter for the judge, he did not consider ordering a new trial so that a jury could entertain the new defence. However, the gaps in the evidentiary record with respect to responsible communication are of less concern if the relevant option is a new trial rather than appellate application of the defence. A proper evidentiary record can be established at a new trial. [47] While this argument is not without force, it does not, in my view, carry the day. First, at the time of trial, it was by no means clear that the new defence of responsible communication would emerge as a "different jurisprudential creature" (Loutchansky v. Times Newspapers Ltd., [2001] EWCA Civ 1805, [2002] 1 All E.R. 652, at para. 35), in English or Canadian law, since Jameel had not yet been decided. It was therefore not unreasonable for the defendants to argue qualified privilege at trial, and later, on appeal, to contend for a broader elaboration of a responsible communication defence. A panel of the Court of Appeal was much more likely to undertake a thoroughgoing re-evaluation of the governing jurisprudence than was a single trial judge. It cannot therefore be said that the conduct of the defendants exhibited the absence of due diligence that the "no new issues on
2009	Quan v. Cusson	12/22/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7839/index.do	Quan v. Cusson, 2009 SCC 62, [2009] 3 S.C.R. 712	McLachlin C.J.	majority	Ontario	Torts	C	referred to	Loutchansky v. Times Newspapers Ltd., [2001] EWCA Civ 1805, [2002] 1 All E.R. 652	lower-level court	UK	[47] While this argument is not without force, it does not, in my view, carry the day. First, at the time of trial, it was by no means clear that the new defence of responsible communication would emerge as a "different jurisprudential creature" (Loutchansky v. Times Newspapers Ltd., [2001] EWCA Civ 1805, [2002] 1 All E.R. 652, at para. 35), in English or Canadian law, since Jameel had not yet been decided. It was therefore not unreasonable for the defendants to argue qualified privilege at trial, and later, on appeal, to contend for a broader elaboration of a responsible communication defence. A panel of the Court of Appeal was much more likely to undertake a thoroughgoing re-evaluation of the governing jurisprudence than was a single trial judge. It cannot therefore be said that the conduct of the defendants exhibited the absence of due diligence that the "no new issues on appeal" rule is meant to discourage.
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Fegan v. State Mutual Life Assurance Co. of America, 945 F.Supp. 396 (1996)	lower-level court	US	[16] A century and a half of insurance litigation has failed to produce a bright line definition of the word "accident". Insurers have consistently declined to attempt to define the term in their policies. It has been left to the courts to interpret it, and the courts have found the analysis to pose, as an American court put it, "one of the more philosophically complex simple questions": Fegan v. State Mutual Life Assurance Co. of America, 945 F.Supp. 396 (D. N.H. 1996), at p. 399.
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	De Souza v. Home and Overseas Insurance Co., [1995] L.R.L.R. 453	lower-level court	UK	[17] Generally speaking the cases exclude from the concept of accident a "bodily infirmity caused by disease in the ordinary course of events", as summarized in Mr. Welford's book: The word "accident" involves the idea of something fortuitous and unexpected, as opposed to something proceeding from natural causes; and injury caused by accident is to be regarded as the antithesis to bodily infirmity caused by disease in the ordinary course of events. (A. W. Baker Welford, The Law Relating to Accident Insurance (2nd ed. 1932), at p. 268) The Welford definition was accepted as authoritative by this Court in Smith v. British Pacific Life Insurance Co., [1965] S.C.R. 434, and in two other cases adopting reasons from the courts below, namely, Milashenko v. Co-operative Fire & Casualty Co. (1970), 11 D.L.R. (3d) 128 (S.C.C.), and Columbia Cellulose Co. v. Continental Casualty Co., [1964] I.L.R. ¶ 1-119 (S.C.C.). More recently, it was adopted by the English Court of Appeal in De Souza v. Home and Overseas Insurance Co., [1995] L.R.L.R. 453, per Mustill L.J., at p. 458. [29] Traditionally, the courts have carved out of the potential universe of "unlooked-for mishaps or untoward events which are not expected or designed" the sub-universe of bodily "infirmit[ies] caused by disease in the ordinary course of events". In adopting this approach to the definition of "accident", Welford was treading a well-worn path reaching back at least to 1861 when Cockburn C.J. decided Sinclair v. Maritime Passengers' Assurance Co. (1861), 3 E.L. & E.L. 478, 121 E.R. 521, at p. 524. In that case, a sea captain had sailed his ship The Sultan to the southwest coast of India, and while "superintending the turning of the said ship . . . was struck down by a sunstroke, and died the same day from the effects of the said sunstroke" (p. 523). The court held that sunstroke "is a disease to which persons exposing themselves to the sun in a tropical climate are more or less liable" (pp. 524-25), and the sea captain's death must therefore "be considered as having arisen from a 'natural cause,' and not from 'accident,' within the meaning of this policy" (p. 525). A similar conclusion was reached in Wyman v. Dominion of Canada General Insurance Co., [1936] 2 D.L.R. 268 (Ont. S.C.), where a street cleaner died from heat exposure while working the streets of Toronto on the second hottest summer day of 1935. In England the more recent De Souza (1995) case reached the same conclusion on similar facts (tourist goes to hot climate, spends too much time in the sun, succumbs to sunstroke). [30] In the course of giving his judgment in Sinclair, Cockburn C.J. offered an illustration of how, in his view, the concepts of accident, disease and natural causes related to one another: Thus disease or death engendered by exposure to heat, cold, damp, the vicissitudes of climate, or atmospheric influences, cannot, we think, properly be said to be accidental; unless at all events, the exposure is itself brought about by circumstances which may give it the character of accident. Thus (by way of illustration), if, from the effects of ordinary exposure to the elements, such as is common in the course of navigation, a mariner should catch cold and die, such death would not be accidental; although if, being obliged by shipwreck or other disasters to quit the ship and take to the sea in an open boat, he

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2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934)	SC	US	[18] Welford argued that the element of accident may be manifested in the cause or in the result (p. 269). The distinction between accidental cause (or means) and accidental result has been controversial. Cardozo J. (in dissent) famously invoked Milton's Paradise Lost in warning that "[t]he attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog"*: Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934), at p. 499. While the recent jurisprudence amply shows the existence (perhaps even the flourishing) of a Serbonian bog, we cannot entirely overlook the fact that Mr. Gibbens' accident policy contains the time-honoured formula confining the risk to bodily injuries that are "occasioned solely through external, violent and accidental means" (emphasis added). The question is what meaning is to be given to those words in context. [32] The distinction between "accidents" and "diseases contracted in the ordinary course of events" is often not an easy one to make in practice. The difficulty is illustrated by Brintons, Ltd. v. Turvey, [1905] A.C. 230. In that case a man died after working with wool in the defendant's factory. A bacillus from infected wool had found its way into the man's eye, and it developed into anthrax. The insurer argued that this was death from disease, not by accident. Lord Lindley in the House of Lords, in rejecting this position, held that "[t]he fact that an accident causes injury in the shape of disease does not render the cause not an accident" (p. 238), but the dissenting judgment of Lord Robertson supplied a pertinent caution. He expressed the concern that as a result of allowing such a claim "[i]n every case in which a man dies of any infectious disease . . . all he has got to do is to get the doctor to prove (what could not be disputed) that a bacillus did it, and the accident is there" (p. 235). Referring to illustrations given by his colleague the Earl of Halsbury L.C. in the same case of "tetanus, pneumonia, or erysipelas ensuing on accident", he continued that such illustrations "differ from the present case in the one point essential to the controversy, for in the illustrations there is postulated an accident distinct from the disease, while in the case before your Lordships the so-called 'accident' is simply the inception of the disease" (p. 236). In this, perhaps, Lord Robertson anticipated the dictum of Cardozo J. that "[i]f there was no accident in the means, there was none in the result" (Landress, at p. 501). [41] In Martin, the Chief Justice, at para. 14, quoted Justice Cardozo's observation that "[i]f there was no accident in the means, there was none in the result": Landress, at p. 501. "'Means'", she wrote, "refers to one or more actions or events, seen under the aspect of their causal relation to the events they bring about" (para. 13). Accordingly, in Martin, the end result taken in isolation did not determine the outcome of the claim. The core of the argument was whether the means (the injection) was deliberate (suicide) or accidental (i.e. a miscalculation or misjudgment by the insured doctor). Consideration of the means by which the loss was brought about was not excluded from the analysis. The circumstances surrounding the fatal injection were crucial. It could not be otherwise given the language
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Glenlight Shipping Ltd. v. Excess Insurance Co., 1983 S.L.T. 241	lower-level court	UK	[42] The focus of the Chief Justice's reasoning in Martin is evident from the line of "miscalculation" cases on which she relied. The insured in Glenlight Shipping Ltd. v. Excess Insurance Co., 1983 S.L.T. 241 (Sess. 2nd Div.), died when he drove off a ferry into the sea, erroneously believing that the ferry had reached the pier. In Cornish v. Accident Insurance Co. (1889), 23 Q.B.D. 453 (C.A.), the insured died when he was hit by a train as he crossed a railway track, having failed to notice the oncoming train. The insured in Brown v. Continental Casualty Co., 108 So. 464 (La. 1926), regularly inhaled chloroform to relieve headache and insomnia, and killed himself when he mistakenly took more than the usual dose. The insured in Bertalan Estate v. American Home Assurance Co. (1999), 68 B.C.L.R. (3d) 118 (S.C.), made regular use of nitrous oxide, and died when he failed to remove the mask that delivered the gas to him in a timely fashion. In all these cases, death was held to be accidental. In all of them death was unexpected. All of them resulted from a miscalculation or misjudgment of an event on the part of the deceased insured. None of them involved disease.
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Bacon v. U.S. Mutual Accident Assn., 44 Hun. 599 (1887)	lower-level court	US	[53] The insurer argues that the words "external" and "violent" in the definition of the risk should be given independent meaning. On its view, only a sub-category of accidents are covered. However, I agree with Newbury J.A. that the words "external" and "violent" have long since been subsumed into the concept of accident. In N. W. Commercial Travellers' Association v. London Guarantee and Accident Co. (1895), 10 Man. R. 537 (Q.B.), the insured died of cold while awaiting assistance in a wagon that had broken down. Bain J. reasoned that: Perhaps the meaning that is most obvious when we speak of something having been caused or effected by violent means is that a greater or less degree of physical force has been used to bring about the result. But the word "violent" is also used to express that which is unusual or unnatural or extreme, and I think it is reasonable to suppose that it was used in the policy in a somewhat wide and general sense. [pp. 543-44] On this point the court cited with approval Bacon v. U.S. Mutual Accident Assn., 44 Hun. 599 (N.Y. Sup. Ct. 1887), where the court said, at p. 604: "We say a man dies a violent death, without necessarily implying anything more than that he dies, not in the ordinary course of nature and disease."
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Carroll v. CUNA Mutual Insurance Society, 894 P.2d 746 (1995)	lower-level court	US	[58] As noted in Walkem, the jurisprudence assigns a generous meaning to "accident" (p. 316). However, the word is also "an ordinary word to be interpreted in the ordinary language of the people" (Stats, at p. 1164). In ordinary speech "accident" does not include ailments "proceeding from natural causes" (Welford, at p. 268). In Carroll v. CUNA Mutual Insurance Society, 894 P.2d 746 (Colo. 1995), for example, death resulted from a ruptured aneurysm suffered during the exertions of sexual intercourse. An accident claim was denied because the insured's death was essentially the result of her pre-existing aneurysm and hypertension, not the sex. The issue was one of causation. Sex did not cause the aneurysm. It simply provided the occasion on which the aneurysm happened to occur.
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376 (1954)	lower-level court	US	[60] The "bodily malfunction" cases illustrate the proposition that mishaps not in the ordinary course of events may be classified as accidents. For example, in the American case of Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376 (Ind. App. 1954), the insured choked on partially digested food that he had regurgitated. The court concluded at p. 379 that the death resulted from accidental means, because [i]f the regurgitation had been a perfectly normal process as it normally occurs the decedent would have expelled the contents of his stomach in a perfectly normal manner and no unforeseen, unexpected or unusual contingency would have occurred, and decedent would not have suffered the asphyxiation which was the immediate cause of his death. (See also American Accident Co. of Louisville v. Reigart, 23 S.W. 191 (Ky. 1893), at p. 192.)
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	American Accident Co. of Louisville v. Reigart, 23 S.W. 191 (1893)	lower-level court	US	[60] The "bodily malfunction" cases illustrate the proposition that mishaps not in the ordinary course of events may be classified as accidents. For example, in the American case of Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376 (Ind. App. 1954), the insured choked on partially digested food that he had regurgitated. The court concluded at p. 379 that the death resulted from accidental means, because [i]f the regurgitation had been a perfectly normal process as it normally occurs the decedent would have expelled the contents of his stomach in a perfectly normal manner and no unforeseen, unexpected or unusual contingency would have occurred, and decedent would not have suffered the asphyxiation which was the immediate cause of his death. (See also American Accident Co. of Louisville v. Reigart, 23 S.W. 191 (Ky. 1893), at p. 192.)

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2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Koch v. Empire Life Insurance Co. (1981), 29 A.R. 49	lower-level court	UK	[60] The "bodily malfunction" cases illustrate the proposition that mishaps not in the ordinary course of events may be classified as accidents. For example, in the American case of Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376 (Ind. App. 1954), the insured choked on partially digested food that he had regurgitated. The court concluded at p. 379 that the death resulted from accidental means, because [i]f the regurgitation had been a perfectly normal process as it normally occurs the decedent would have expelled the contents of his stomach in a perfectly normal manner and no unforeseen, unexpected or unusual contingency would have occurred, and decedent would not have suffered the asphyxiation which was the immediate cause of his death. (See also American Accident Co. of Louisville v. Reigart, 23 S.W. 191 (Ky. 1893), at p. 192.) Similar reasoning was used to justify recovery in Koch v. Empire Life Insurance Co. (1981), 29 A.R. 49 (Q.B.), where the insured died as a result of choking on partially digested food while asleep. The agreed statement of facts provided that "[t]here was no pathological reason for the vomiting" (para. 4). Disease was not an issue. The insured was in good health. However, his body did not on that occasion function as would be expected in a perfectly "normal manner". See also Reigart, at p. 192; Jones v. Aetna Life Insurance Co., 439 S.W.2d 721 (Tex. Civ. App. 1969). These cases do not involve Welford's "antithesis" between accident and "disease in the ordinary course of events". An isolated instance of regurgitation, however unpleasant, is not
2009	Co-operators Life Insurance Co. v. Gibbens	12/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7835/index.do	Co-operators Life Insurance Co. v. Gibbens, 2009 SCC 59, [2009] 3 S.C.R. 605	Binnie J.	unanimous	British Columbia	Insurance	C	referred to	Jones v. Aetna Life Insurance Co., 439 S.W.2d 721 (1969)	lower-level court	US	[60] The "bodily malfunction" cases illustrate the proposition that mishaps not in the ordinary course of events may be classified as accidents. For example, in the American case of Peoples Life Ins. Co. v. Menard, 117 N.E.2d 376 (Ind. App. 1954), the insured choked on partially digested food that he had regurgitated. The court concluded at p. 379 that the death resulted from accidental means, because [i]f the regurgitation had been a perfectly normal process as it normally occurs the decedent would have expelled the contents of his stomach in a perfectly normal manner and no unforeseen, unexpected or unusual contingency would have occurred, and decedent would not have suffered the asphyxiation which was the immediate cause of his death. (See also American Accident Co. of Louisville v. Reigart, 23 S.W. 191 (Ky. 1893), at p. 192.) Similar reasoning was used to justify recovery in Koch v. Empire Life Insurance Co. (1981), 29 A.R. 49 (Q.B.), where the insured died as a result of choking on partially digested food while asleep. The agreed statement of facts provided that "[t]here was no pathological reason for the vomiting" (para. 4). Disease was not an issue. The insured was in good health. However, his body did not on that occasion function as would be expected in a perfectly "normal manner". See also Reigart, at p. 192; Jones v. Aetna Life Insurance Co., 439 S.W.2d 721 (Tex. Civ. App. 1969). These cases do not involve Welford's "antithesis" between accident and "disease in the ordinary course of events". An isolated instance of regurgitation, however unpleasant, is not
2009	R. v. Dudley	12/17/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7834/index.do	R. v. Dudley, 2009 SCC 58, [2009] 3 S.C.R. 570	Fish J.	majority	Alberta	Criminal law	R		Crimes Act 1900 (N.S.W.), ss. 475A, 475B.	lower-level statute	Australia	[16] Moreover, hybrid offences are by no means a uniquely Canadian phenomenon. Elsewhere, however, the decision whether to proceed summarily or on indictment is not generally a matter of prosecutorial discretion. In England and Wales, for example, it is the presiding magistrate who decides: Magistrates' Courts Act 1980 (U.K.), 1980, c. 43, s. 19. And in certain Australian states, including New South Wales, the accused may apply to be tried summarily, subject to the consent of the Crown: Crimes Act 1900 (N.S.W.), ss. 475A and 475B.
2009	R. v. Dudley	12/17/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7834/index.do	R. v. Dudley, 2009 SCC 58, [2009] 3 S.C.R. 570	Fish J.	majority	Alberta	Criminal law	R		Magistrates' Courts Act 1980 (U.K.), 1980, c. 43, s. 19.	statute	UK	[16] Moreover, hybrid offences are by no means a uniquely Canadian phenomenon. Elsewhere, however, the decision whether to proceed summarily or on indictment is not generally a matter of prosecutorial discretion. In England and Wales, for example, it is the presiding magistrate who decides: Magistrates' Courts Act 1980 (U.K.), 1980, c. 43, s. 19. And in certain Australian states, including New South Wales, the accused may apply to be tried summarily, subject to the consent of the Crown: Crimes Act 1900 (N.S.W.), ss. 475A and 475B.
2009	Plourde v. Wal-Mart Canada Corp.	11/27/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7830/index.do	Plourde v. Wal-Mart Canada Corp., 2009 SCC 54, [2009] 3 S.C.R. 465	Abella J.	dissenting	Quebec	Labour law	R		National Labor Relations Act, 49 Stat. 449.	statute	uS	[80] The Labour Relations Act was based on the approach adopted in the 1935 American Wagner Act (National Labor Relations Act, 49 Stat. 449). It was also based on the fundamental principles recommended by Canadian labour ministers at a conference in 1944, and which have been adopted throughout Canada. They include: (1) employee freedom of association and union recognition; (2) compulsory bargaining rights for certified trade unions; (3) postponement of the right to strike until after government intervention through conciliation; (4) prohibition of unfair labour practices by both employers and trade unions to protect individual rights and the collective bargaining process; (5) establishment of legal status and enforceability to the collective agreement; (6) provision for resolving disputes arising out of the collective bargaining agreement without resorting to strike; and (7) establishment of regulatory bodies with investigation and control powers in the form of boards of industrial relations. (George W. Adams, Canadian Labour Law (2nd ed. (loose-leaf)), at p. 1-15. See also Pierre Verge, Gilles Trudeau and Guylaine Vallée, Le droit du travail

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2009	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters	11/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7829/index.do	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters, 2009 SCC 53, [2009] 3 S.C.R. 407	Binnie J.	dissenting	Alberta	Constitutional law	C	D	Attorney-General for Ontario v. Winner, [1954] A.C. 541	SC	UK (PC)	[98] Justice Rothstein fairly lays out some of the constitutional thinking in 1867. The contemplated balance between federal and provincial authority was reflected in the general language of the Constitution Act, 1867 , which has been interpreted and re-interpreted as Canadian society has evolved. As mentioned, the drafters of s. 92(10) (a) understood interprovincial communication in terms of wires strung along telegraph poles. In 1867, physical connection was essential. It is therefore not surprising that s. 92(10) (a) would list physical works. Yet, as Rothstein J. acknowledges, "undertakings" is a much broader concept than works, and includes "arrangement[s] under which of course physical things are used": Commission du salaire minimum v. Bell Telephone Co. of Canada, [1966] S.C.R. 767 (per Martland J., at p. 772), citing In re Regulation and Control of Radio Communication in Canada, [1932] A.C. 304 (P.C.), at p. 315, and Attorney-General for Ontario v. Winner, [1954] A.C. 541 (P.C.), at p. 552. Nowhere in these cases is it suggested that the "arrangement" precludes contracting out elements of the service provided. [107] The reasoning of the then Chief Justice in AGT drew on a pair of earlier Supreme Court decisions in Capital Cities Communications Inc. v. Canadian Radio-Television Commission, [1978] 2 S.C.R. 141, and Dionne, both of which challenged the right of the CRTC to regulate cable television companies whose physical works and customers were situate entirely within a single province. The cable distributors in both cases picked up signals that emanated from other provinces and/or the United States. In both cases, this Court concluded that the cable undertaking was interprovincial and thus under federal jurisdiction. In Dionne, Laskin C.J. stated: The fundamental question is not whether the service involved in cable distribution is limited to intraprovincial subscribers or that it is operated by a local concern but rather what the service consists of. This is the very question that was faced by the Privy Council in the Radio case, supra, (in a different context, it is true) and which was also before that body in Attorney General of Ontario v. Winner. [Emphasis added; p. 197.] Winner, of course, dealt with an interprovincial bus carrier. Laskin C.J. perceived no need to make any distinction between the legal test for transportation and communication undertakings as is urged in this case by my colleague Rothstein J. In fact, Laskin C.J. continued: In all these cases, the inquiry must be as to the service that is provided and not simply as to the means through which it is carried on. [Emphasis added; p. 197.] Justice Rothstein's proposed test, in my view, stands Laskin C.J.'s proposition on its head by focussing on the means through which the undertaking is
2009	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters	11/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7829/index.do	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters, 2009 SCC 53, [2009] 3 S.C.R. 407	Rothstein J.	majority	Alberta	Constitutional law	C	referred to	Attorney-General for Ontario v. Winner, [1954] A.C. 541	SC	UK (PC)	[41] Section 92(10) (a) is structured in two parts: first, it provides a list of specific federal works and undertakings ("Lines of Steam or other Ships, Railways, Canals, Telegraphs"), and then it includes a basket clause ("other Works and Undertakings"). All are defined as "connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province". "Works" refer to "physical structure[s]"; "Undertakings" to "arrangement[s] under which of course physical things are used": see Commission du salaire minimum v. Bell Telephone Co. of Canada, [1966] S.C.R. 767 (per Martland J., at p. 772), citing In re Regulation and Control of Radio Communication in Canada, [1932] A.C. 304 (P.C.), at p. 315; Attorney-General for Ontario v. Winner, [1954] A.C. 541 (P.C.), at p. 552. [80] In my view, the "something more" that would be required is the actual transportation of goods or persons across provincial boundaries: see, e.g., Winner (a bus company was an interprovincial undertaking because it transported passengers across provincial borders); Re Ottawa-Carleton Regional Transit Commission (the transport of passengers across the Quebec boundary qualified OC Transpo as a federal undertaking). It is the business performing the interprovincial operations (i.e. the interprovincial transportation) that is subject to federal jurisdiction. A shipper, whether it is a plant that ships its own rail cars or a freight forwarder that ships its own boxes or envelopes, still remains a shipper. The business that performs the interprovincial transportation — the carrier that crosses provincial boundaries — is the undertaking that attracts federal jurisdiction under s. 92(10)(a). The operations of Eastfrate are not in this category.
2009	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters	11/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7829/index.do	Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters, 2009 SCC 53, [2009] 3 S.C.R. 407	Rothstein J.	majority	Alberta	Constitutional law	C	referred to	Canadian Pacific Railway Co. v. Attorney-General for British Columbia, [1950] A.C. 122	SC	UK (PC)	[73] Even where a recognized federal undertaking exists, not every part of its enterprise will necessarily be subject to federal jurisdiction. Distinct local works or undertakings may remain subject to provincial jurisdiction. In the Empress Hotel case (Canadian Pacific Railway Co. v. Attorney-General for British Columbia, [1950] A.C. 122 (P.C.)), the issue was whether the employees of a hotel owned and operated by the CPR were subject to federal regulation. The appellants in that case argued that the hotel's employees were subject to federal regulation because the hotels were part of an integrated national transportation system. They maintained that th[e] unified system [of rail and hotel services] is a national [transportation] undertaking which cannot reasonably be viewed as a conglomeration of local works and undertakings . . . The Empress Hotel [as the material in the record shows] is an integral part of this unified system. [p. 127]
2009	R. v. Basi	11/19/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7828/index.do	R. v. Basi, 2009 SCC 52, [2009] 3 S.C.R. 389	Fish J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. G, [2004] EWCA Crim 1368, [2004] 2 Cr. App. R. 37 (p. 630)	lower-level court	UK	[46] Defence counsel would have to remain constantly on guard never to say or do anything, even inadvertently, that might tend to reveal the informant's identity. This exceedingly onerous constraint would by its very nature "preven[t] frankness and fette[r] the free flow of information between lawyer and client", and otherwise impair the solicitor-client relationship: R. v. G, [2004] EWCA Crim 1368, [2004] 2 Cr. App. R. 37 (p. 630), at p. 635. In certain cases, defence counsel might feel bound to withdraw their representation, caught in a conflict between their duty to represent the best interests of their client and their duty to the court not to disclose or to act on the information heard in camera: R. v. G, at pp. 635-36.
2009	Miazga v. Kvello Estate	11/6/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7827/index.do	Miazga v. Kvello Estate, 2009 SCC 51, [2009] 3 S.C.R. 339	Charron J.	unanimous	Saskatchewan	Torts	C	referred to	Glinski v. McIver, [1962] 1 All E.R. 696	SC	UK (HL)	[70] As stated earlier, it is well established that the reasonable and probable cause requirement for instituting a prosecution has both a subjective and an objective component. As a matter of logic, it therefore follows that the plaintiff, who bears the burden of showing an absence of reasonable and probable cause, would succeed by showing either an absence of subjective belief or an absence of objective reasonable grounds. While there is no clear precedent to that effect in Canadian case law, the weight of precedent in England and other common law jurisdictions supports that proposition. See, e.g., Glinski v. McIver, [1962] 1 All E.R. 696 (H.L.), at pp. 721-22; A v. State of New South Wales, [2007] HCA 10, [2007] 3 L.R.C. 693; Marley v. Mitchell (1988), [2006] N.Z.A.R. 181 (C.A.).
2009	Miazga v. Kvello Estate	11/6/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7827/index.do	Miazga v. Kvello Estate, 2009 SCC 51, [2009] 3 S.C.R. 339	Charron J.	unanimous	Saskatchewan	Torts	C	referred to	A v. State of New South Wales, [2007] HCA 10, [2007] 3 L.R.C. 693	SC	Australia	[70] As stated earlier, it is well established that the reasonable and probable cause requirement for instituting a prosecution has both a subjective and an objective component. As a matter of logic, it therefore follows that the plaintiff, who bears the burden of showing an absence of reasonable and probable cause, would succeed by showing either an absence of subjective belief or an absence of objective reasonable grounds. While there is no clear precedent to that effect in Canadian case law, the weight of precedent in England and other common law jurisdictions supports that proposition. See, e.g., Glinski v. McIver, [1962] 1 All E.R. 696 (H.L.), at pp. 721-22; A v. State of New South Wales, [2007] HCA 10, [2007] 3 L.R.C. 693; Marley v. Mitchell (1988), [2006] N.Z.A.R. 181 (C.A.).
2009	Miazga v. Kvello Estate	11/6/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7827/index.do	Miazga v. Kvello Estate, 2009 SCC 51, [2009] 3 S.C.R. 339	Charron J.	unanimous	Saskatchewan	Torts	C	referred to	Marley v. Mitchell (1988), [2006] N.Z.A.R. 181	lower-level court	New Zealand	[70] As stated earlier, it is well established that the reasonable and probable cause requirement for instituting a prosecution has both a subjective and an objective component. As a matter of logic, it therefore follows that the plaintiff, who bears the burden of showing an absence of reasonable and probable cause, would succeed by showing either an absence of subjective belief or an absence of objective reasonable grounds. While there is no clear precedent to that effect in Canadian case law, the weight of precedent in England and other common law jurisdictions supports that proposition. See, e.g., Glinski v. McIver, [1962] 1 All E.R. 696 (H.L.), at pp. 721-22; A v. State of New South Wales, [2007] HCA 10, [2007] 3 L.R.C. 693; Marley v. Mitchell (1988), [2006] N.Z.A.R. 181 (C.A.).
2009	Canada (Justice) v. Fischbacher	10/16/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7821/index.do	Canada (Justice) v. Fischbacher, 2009 SCC 46, [2009] 3 S.C.R. 170	Fish J.	concurring reasons	Ontario	Criminal law	C	referred to	State v. Thompson, 204 Ariz. 471 (2003)	lower-level court	US	[83] The Minister did have before him the opinion of one Arizona attorney that the "premeditation" requirement on a charge of first degree murder in that state means that the murder was "both planned and deliberate" — the standard applicable in Canada. The Minister, however, was hardly bound by that opinion, which was largely based on the judgment of the Arizona Supreme Court in State v. Thompson, 204 Ariz. 471 (2003) — a decision that must now be read in the light of the same court's subsequent judgment in State v. Kiles, 213 P.3d 174 (2009). In Kiles, at para. 18, the court found no error in the following instruction on the requirement of premeditation under Arizona law: Premeditation means the defendant acts with the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by a length of time to permit reflection. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

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2009	Canada (Justice) v. Fischbacher	10/16/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7821/index.do	Canada (Justice) v. Fischbacher, 2009 SCC 46, [2009] 3 S.C.R. 170	Charron J.	majority	Ontario	Criminal law	C	referred to	Norris v. Government of the United States of America, [2008] UKHL 16, [2008] 2 All E.R. 1103	SC	UK (HL)	[28] In theory, double criminality may be satisfied on one of two possible approaches: a conduct-based or an offence-based test. In Norris v. Government of the United States of America, [2008] UKHL 16, [2008] 2 All E.R. 1103, the House of Lords considered these methodologies for interpreting extradition legislation (at para. 65): [I]t is useful to stand back from the detail and recognise the essential choice that the legislature makes in deciding just what the double criminality principle requires. It is possible to define the crimes for which extradition is to be sought and ordered (extradition crimes) in terms either of conduct or of the elements of the foreign offence. That is the fundamental choice. The court can be required to make the comparison and to look for the necessary correspondence either between the offence abroad (for which the accused's extradition is sought) and an offence here, or between the conduct alleged against the accused abroad and an offence here. For convenience these may be called respectively the offence test and the conduct test. It need hardly be pointed out that if the offence test is adopted the requested state will invariably have to examine the legal ingredients of the foreign offence to ensure that there is no mismatch between it and the supposedly corresponding domestic offence.
2009	Breslaw v. Montreal (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7818/index.do	Breslaw v. Montreal (City), 2009 SCC 44, [2009] 3 S.C.R. 131	Deschamps J.	concurring	Quebec	Civil procedure	C	referred to	Hoffmann — La Roche v. Secretary of State for Trade and Industry, [1974] 2 All E.R. 1128	SC	UK (HL)	[23] I also agree with the Superior Court judge that the appellant's legal syllogism is flawed. If a public body acts outside the limits imposed by its enabling statute, the unavoidable consequence is that its act is null. But if the act is not declared to be null, it is presumed to be valid and its requirements must be satisfied: G. Pépin and Y. Ouellette, Principes de contentieux administratif (2nd ed. 1982), at p. 280; Hoffmann — La Roche v. Secretary of State for Trade and Industry, [1974] 2 All E.R. 1128 (H.L.), at pp. 1153-54. A court may not take the place of the public body and make a decision that body should have made, especially where setting the amount of taxes is concerned.
2009	Marcotte v. Longueuil (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7817/index.do	Marcotte v. Longueuil (City), 2009 SCC 43, [2009] 3 S.C.R. 65	Deschamps J.	dissenting	Quebec	Civil procedure	C	D	Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775	lower-level court	UK	[70] According to Lord Woolf, one thing that can be done to achieve justice is to deal with each case in a way that is proportionate to its importance, to the amount of money involved, to the complexity of the issues and to the parties' financial positions (Final Report, at p. 275). The English courts have stated that the main objective of the new rules of procedure is to control costs, which must, where possible, be proportionate to the amount of money at stake. To this end, the parties must adopt an appropriate strategy. See: Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775, per Lord Woolf C.J., at para. 1; Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354, per Brooke L.J., at para. 106; Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417, per Lord Scott, at para. 121; Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530, per Dyson L.J., at para. 20; Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175, per Dyson L.J., at para. 1.
2009	Marcotte v. Longueuil (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7817/index.do	Marcotte v. Longueuil (City), 2009 SCC 43, [2009] 3 S.C.R. 65	Deschamps J.	dissenting	Quebec	Civil procedure	C	D	Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354	lower-level court	UK	[70] According to Lord Woolf, one thing that can be done to achieve justice is to deal with each case in a way that is proportionate to its importance, to the amount of money involved, to the complexity of the issues and to the parties' financial positions (Final Report, at p. 275). The English courts have stated that the main objective of the new rules of procedure is to control costs, which must, where possible, be proportionate to the amount of money at stake. To this end, the parties must adopt an appropriate strategy. See: Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775, per Lord Woolf C.J., at para. 1; Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354, per Brooke L.J., at para. 106; Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417, per Lord Scott, at para. 121; Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530, per Dyson L.J., at para. 20; Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175, per Dyson L.J., at para. 1.
2009	Marcotte v. Longueuil (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7817/index.do	Marcotte v. Longueuil (City), 2009 SCC 43, [2009] 3 S.C.R. 65	Deschamps J.	dissenting	Quebec	Civil procedure	C	D	Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417	SC	UK (HL)	[70] According to Lord Woolf, one thing that can be done to achieve justice is to deal with each case in a way that is proportionate to its importance, to the amount of money involved, to the complexity of the issues and to the parties' financial positions (Final Report, at p. 275). The English courts have stated that the main objective of the new rules of procedure is to control costs, which must, where possible, be proportionate to the amount of money at stake. To this end, the parties must adopt an appropriate strategy. See: Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775, per Lord Woolf C.J., at para. 1; Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354, per Brooke L.J., at para. 106; Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417, per Lord Scott, at para. 121; Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530, per Dyson L.J., at para. 20; Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175, per Dyson L.J., at para. 1.
2009	Marcotte v. Longueuil (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7817/index.do	Marcotte v. Longueuil (City), 2009 SCC 43, [2009] 3 S.C.R. 65	Deschamps J.	dissenting	Quebec	Civil procedure	C	D	Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530	lower-level court	UK	[70] According to Lord Woolf, one thing that can be done to achieve justice is to deal with each case in a way that is proportionate to its importance, to the amount of money involved, to the complexity of the issues and to the parties' financial positions (Final Report, at p. 275). The English courts have stated that the main objective of the new rules of procedure is to control costs, which must, where possible, be proportionate to the amount of money at stake. To this end, the parties must adopt an appropriate strategy. See: Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775, per Lord Woolf C.J., at para. 1; Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354, per Brooke L.J., at para. 106; Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417, per Lord Scott, at para. 121; Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530, per Dyson L.J., at para. 20; Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175, per Dyson L.J., at para. 1.
2009	Marcotte v. Longueuil (City)	10/8/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7817/index.do	Marcotte v. Longueuil (City), 2009 SCC 43, [2009] 3 S.C.R. 65	Deschamps J.	dissenting	Quebec	Civil procedure	C	D	Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175	lower-level court	UK	[70] According to Lord Woolf, one thing that can be done to achieve justice is to deal with each case in a way that is proportionate to its importance, to the amount of money involved, to the complexity of the issues and to the parties' financial positions (Final Report, at p. 275). The English courts have stated that the main objective of the new rules of procedure is to control costs, which must, where possible, be proportionate to the amount of money at stake. To this end, the parties must adopt an appropriate strategy. See: Lownds v. Home Office, [2002] EWCA Civ 365, [2002] 4 All E.R. 775, per Lord Woolf C.J., at para. 1; Rogers v. Merthyr Tydfil County Borough Council, [2006] EWCA Civ 1134, [2007] 1 All E.R. 354, per Brooke L.J., at para. 106; Callery v. Gray (Nos 1 and 2), [2002] UKHL 28, [2002] 3 All E.R. 417, per Lord Scott, at para. 121; Hashtroodi v. Hancock, [2004] EWCA Civ 652, [2004] 3 All E.R. 530, per Dyson L.J., at para. 20; Leigh v. Michelin Tyre plc, [2003] EWCA Civ 1766, [2004] 2 All E.R. 175, per Dyson L.J., at para. 1.

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2009	Nolan v. Kerry (Canada) Inc.	8/7/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7813/index.do	Nolan v. Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 S.C.R. 678	LeBel J.	dissenting in part	Ontario	Administrative law Civil procedure Pensions	C	D	Barclays Bank Plc v. Holmes, [2000] P.L.R. 339	lower-level court	UK	[166] My colleague also cites Barclays Bank Plc v. Holmes, [2000] P.L.R. 339 (Ch. D.), for the proposition that a pension plan might be structured as a single plan with both DB and DC members as beneficiaries of the fund. The conclusion in Barclays again turned largely on the court's interpretation of the relevant plan documentation. Neuberger J. held that the documentation and the plan structure clearly showed the employer's intention to create a single plan impressed with a trust. For instance, the definition of "Member" in the plan text specifically entitled DC members to benefits under the fund and, as noted by Rothstein J., the same trustee administered all the accounts. Furthermore, the court was influenced by the particular legislative context, which contemplated that a pension plan might have a single fund that supports both DB and DC schemes. [167] The outcome in Barclays can be contrasted with that of another English case, Kemble v. Hicks, [1999] O.P.L.R. 1 (Ch. D.), which involved a DB pension plan to which a DC component was added. As in the current case, the DC members' contributions were held in individual investment accounts under a contract with an insurance company that was not the trustee of the DB fund. The court held that the employer was not entitled to use the DB surplus to fund its contributions toward DC members. Rimer J. acknowledged that the DB and DC plans were "part of the same overall scheme", but held that the establishment of the money-purchase [DC] scheme involved the setting up of what was, within that overall scheme, a scheme quite separate from the final-salary scheme and to which different considerations applied. Those who joined the money-purchase scheme severed their connection with the final-salary scheme, transferred to a new scheme and enjoyed the benefit of a payment to it of a sum representing the actuarial value of their benefits in the final-salary scheme accrued until 31 March 1989. Those who elected not to transfer retained their interest in the assets which remained subject to the final-salary [DB] scheme. [p. 7] [174] This general principle was affirmed in Sutherland, when Siegel J. noted: Where it is found that two separate funds exist, there is no principle that can support "cross-subsidization" in the form of payment of the pension benefits of one group of beneficiaries by using assets in a trust fund intended to fund the pension benefits of a separate group of beneficiaries. [para. 260] Indeed, the results in Sutherland and Barclays were predicated on the courts' conclusion that the employees were members of a single plan and beneficiaries of the same fund. As such, there was no use of trust assets for other than the exclusive benefit of the members. In Kemble, however, the existence of two separate plans meant that the employer's use of surplus from a DB fund to reduce its contributions toward a DC plan was an unjust subsidization of the DC members at the DB members' expense. The same result enures in this case: the use of fund surplus to provide contribution holidays with respect to the DC plan violates the exclusive benefit provisions in the Plan documentation as it benefits all but the DB members.
2009	Nolan v. Kerry (Canada) Inc.	8/7/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7813/index.do	Nolan v. Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 S.C.R. 678	LeBel J.	dissenting in part	Ontario	Administrative law Civil procedure Pensions	C	D	Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd., [1991] 2 All E.R. 597	lower-level court	UK	[188] Despite their status as classic trusts, however, pension trusts engage somewhat different considerations due to the existing legal relationship between the settlor (usually the employer) and the trust beneficiaries (the employees). Browne-Wilkinson V.-C.'s comments in Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd., [1991] 2 All E.R. 597 (Ch. D.), are apt: Pension scheme trusts are of quite a different nature to traditional trusts. The traditional trust is one under which the settlor, by way of bounty, transfers property to trustees to be administered for the beneficiaries as objects of his bounty. Normally, there is no legal relationship between the parties apart from the trust. The beneficiaries have given no consideration for what they receive. The settlor, as donor, can impose such limits on his bounty as he chooses, including imposing a requirement that the consent of himself or some other person shall be required to the exercise of the powers. As the Court of Appeal has pointed out . . . a pension scheme is quite different. Pension benefits are part of the consideration which an employee receives in return for the rendering of his services. In many cases, . . . membership of the pension scheme is a requirement of employment. In contributory schemes, . . . the employee is himself bound to pay his or her contributions. Beneficiaries of the scheme, the members, far from being volunteers have given valuable consideration. The company employer is not conferring a bounty. In my judgment, the scheme is established against the background of such employment and falls to be interpreted against that background. [pp. 605-6]
2009	Nolan v. Kerry (Canada) Inc.	8/7/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7813/index.do	Nolan v. Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 S.C.R. 678	Rothstein J.	majority	Ontario	Administrative law Civil procedure Pensions		considered	Barclays Bank Plc v. Holmes, [2000] P.L.R. 339	lower-level court	UK	97] The case law supporting the permissibility of a single plan involving DC and DB components includes the English Chancery decision in Barclays Bank Plc v. Holmes, [2000] P.L.R. 339. In Barclays, Neuberger J. ruled that there is no reason in law that an employer could not set up a single plan under which some beneficiaries receive DB benefits and some receive DC benefits. At para. 54, he wrote the following, referring to amendments in a 41st deed which granted the employer the right to use a surplus in a DB component to take contribution holidays in respect of a DC component that was part of the same plan: There is no intrinsic reason, as a matter of general law, why an employer or any other person could not set up a Pension Scheme expressly on that basis, in the way that, for instance, the Bank has undoubtedly purported to do, in the present case, in the 41st Deed. Such a view is supported by consideration of the multifarious types of private trusts which are created from time to time, which often involve many differing classes of beneficiary but a single fund. It is true that in Barclays, the same trust Company controlled all accounts. However, as stated above, I do not think there is any difficulty with a single trust having numerous accounts at different institutions. [98] Barclays is not, of course, determinative of this appeal. The legislative context and plan texts are different. However, it does support the proposition that there is nothing repugnant in principle to the existence of a single plan whose members receive different benefits, funded in different ways, depending on which of the various parts of the plan they participate in.
2009	Nolan v. Kerry (Canada) Inc.	8/7/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7813/index.do	Nolan v. Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 S.C.R. 678	Rothstein J.	majority	Ontario	Administrative law Civil procedure Pensions	C	referred to	Lockheed Corp. v. Spink, 517 U.S. 882 (1996	SC	US	[54] An employer might also benefit in a number of ways. The U.S. Supreme Court, in dealing with an employer's introduction of an early retirement plan, recognized that an employer can legitimately receive a number of incidental benefits from a pension plan even though the plan is subject to legislation containing exclusive benefit language. These incidental benefits include "attracting and retaining employees, paying deferred compensation, settling or avoiding strikes, providing increased compensation without increasing wages, increasing employee turnover, and reducing the likelihood of lawsuits by encouraging employees who would otherwise have been laid off to depart voluntarily": Lockheed Corp. v. Spink, 517 U.S. 882 (1996), at pp. 893-94. Such indirect or incidental benefits from the use of pension funds do not mean that the funds are being used for a purpose other than the exclusive benefit of the trust beneficiaries.
2009	Nolan v. Kerry (Canada) Inc.	8/7/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7813/index.do	Nolan v. Kerry (Canada) Inc., 2009 SCC 39, [2009] 2 S.C.R. 678	Rothstein J.	majority	Ontario	Administrative law Civil procedure Pensions	C	referred to	National Grid Co. plc v. Mayes, [2001] UKHL 20, [2001] 2 All E.R. 417	SC	UK (HL)	[113] LeBel J. says that an amendment that purports to make DC employees beneficiaries of the same single trust as DB employees and to allow the employer to take contribution holidays in respect of the DC employees affects the benefits of the DB employees in the sense that assets in the pension fund are being reduced. DB members may well prefer higher actuarial surpluses in the pension fund. Indeed, the Committee argued against the use of the actuarial surplus for the payment of Plan expenses and the taking of DB contribution holidays, as well as for the taking of DC contribution holidays. However, absent legislation stating otherwise, DB members have no right to require surplus funding of the Plan in order to increase their security. In National Grid Co. plc v. Mayes, [2001] UKHL 20, [2001] 2 All E.R. 417, Lord Hoffmann stated: "Caution is a matter for the actuary in certifying the surplus and certifying the arrangements as reasonable" (para. 17). It is the plan documents and trust law that govern. Nothing in the Plan documents or trust law gives the DB members a vested interest in the actuarial surplus of the Trust Fund or prevents the use of the actuarial surplus for Plan expenses or DB or DC contribution holidays.

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2009	Alberta v. Hutterian Brethren of Wilson Colony	7/24/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567	Abella J.	dissenting	Alberta	Constitutional law	C	D	Eur. Court H. R., Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A	international	ECHR	[128] The European Court of Human Rights espoused a similarly liberal conception of freedom of religion in Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A: . . . freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies . . . freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions. . . . freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares,
2009	Alberta v. Hutterian Brethren of Wilson Colony	7/24/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567	Abella J.	dissenting	Alberta	Constitutional law	C	D	Ōahin v. Turkey [GC], No. 44774/98, ECHR 2005-XI	international	ECHR	[129] In Ōahin v. Turkey [GC], No. 44774/98, ECHR 2005-XI, the European Court of Human Rights compellingly wrote: Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position. [para. 108] (See also Jeremy Webber "The Irreducibly Religious Content of Freedom of Religion", in Avigail Eisenberg, ed., Diversity and Equality: The Changing Framework of Freedom in Canada (2006), 178, at p. 184; Charles Taylor, Philosophical Arguments (1995), at pp. 225 et seq.) [132] This does not mean that the right to freedom of religion cannot yield to a state objective whose benefits outweigh the harm to the right. The assertion of a sincere religious belief or duty does not end the inquiry. As the European Court of Human Rights said in Ōahin: [Freedom of religion] does not protect every act motivated or inspired by a religion or belief . . . . In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom to manifest one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected . . . . Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society . . . . [paras. 105, 106 and 108]
2009	Alberta v. Hutterian Brethren of Wilson Colony	7/24/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567	Abella J.	dissenting	Alberta	Constitutional law	C	D	Metropolitan Church of Bessarabia and Others v. Moldova, No. 45701/99, ECHR 2001-XII	international	ECHR	[131] The group, or "community", aspect of religious freedom was discussed by the European Court of Human Rights in Metropolitan Church of Bessarabia and Others v. Moldova, No. 45701/99, ECHR 2001-XII: [T]he right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection [of religious freedom] . . . . In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets [para. 118]
2009	Alberta v. Hutterian Brethren of Wilson Colony	7/24/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567	McLachlin C.J.	majority	Alberta	Constitutional law	C	referred to	Eur. Court H. R., Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A	international	ECHR	[90] Because religion touches so many facets of daily life, and because a host of different religions with different rites and practices co-exist in our society, it is inevitable that some religious practices will come into conflict with laws and regulatory systems of general application. As recognized by the European Court of Human Rights in Kokkinakis v. Greece, judgment of 25 May 1993, Series A No. 260-A, cited by my colleague Abella J., this pluralistic context also includes "atheists, agnostics, sceptics and the unconcerned" (para. 31). Their interests are equally protected by s. 2 (a): R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, at p. 347. In judging the seriousness of the limit in a particular case, the perspective of the religious or conscientious claimant is important. However, this perspective must be considered in the context of a multicultural, multi-religious society where the duty of state authorities to legislate for the general good inevitably produces conflicts with individual beliefs. The bare assertion by a claimant that a particular limit curtails his or her religious practice does not, without more, establish the seriousness of the limit for purposes of the proportionality analysis. Indeed to end the inquiry with such an assertion would cast an impossibly high burden of justification on the state. We must go further and evaluate the degree to which the limit actually impacts on the adherent
2009	Alberta v. Hutterian Brethren of Wilson Colony	7/24/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37, [2009] 2 S.C.R. 567	McLachlin C.J.	majority	Alberta	Constitutional law	C	referred to	Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)	SC	US	[91] The seriousness of a particular limit must be judged on a case-by-case basis. However, guidance can be found in the jurisprudence. Limits that amount to state compulsion on matters of belief are always very serious. As the U.S. Supreme Court has stated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State": Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992), at p. 851.

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2009	R. v. Grant	7/17/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7799/index.do	R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353	Binnie J.	concurring partially	Ontario	Constitutional law Criminal law	C	referred to	United States v. Mendenhall, 446 U.S. 544 (1980)	SC	US	[156] Our approach to detention, as with so much of this area of the law, draws heavily on the U.S. Fourth Amendment jurisprudence. Both societies, Canada and the United States, place a high value on the right of citizens to go about their business without being arbitrarily stopped by the police and told to give an account of activities that they consider to be none of the police's affair. We therefore want a definition of detention that protects our liberty. Accordingly, in R. v. Therens, [1985] 1 S.C.R. 613, Le Dain J. held, and subsequent cases have agreed, that a person is detained where he or she "submits or acquiesces in the deprivation of liberty and reasonably believes that the choice to do otherwise does not exist" (p. 644). This approach corresponded to earlier decisions of the U.S. Supreme Court establishing that "a person has been 'seized' [i.e. detained] within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave": United States v. Mendenhall, 446 U.S. 544 (1980), at p. 554, endorsed in Florida v. Royer, 460 U.S. 491 (1983), and subsequent cases. [157] Stewart J. in Mendenhall stated quite categorically that the "subjective intention" of the state authority (a drugs enforcement officer) "to detain the respondent, had she attempted to leave, is irrelevant except insofar as that may have been conveyed to the respondent" (p. 554, fn. 6 (emphasis added)). The approach of excluding from consideration information not reasonably evident to the person stopped is endorsed by my colleagues at numerous points in their judgment, for example: The question is whether the police conduct would cause a reasonable person to conclude that he or she was not free to go and had to comply with the police direction or demand. [para. 31] . . . Accordingly, we must consider all relevant circumstances to determine if a reasonable person in Mr. Grant's position would have concluded that his or her right to choose how to interact with the police (i.e. whether to leave or comply) had been removed. [para. 46] . . . In our view, the evidence supports Mr. Grant's contention that a reasonable person in his position (18 years old, alone, faced by three physically larger
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2009	R. v. Grant	7/17/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7799/index.do	R. v. Grant, 2009 SCC 32, [2009] 2 S.C.R. 353	Deschamps J.	concurring partially	Ontario	Constitutional law Criminal law	C	referred to	Herring v. United States, 555 U.S. 1 (2009)	SC	US	[212] In the United States, many commentators have attempted to demonstrate that the exclusionary rule is either effective or ineffective as a deterrent, and the question is still open to debate: L. T. Perrin et al., "If It's Broken, Fix It: Moving Beyond the Exclusionary Rule — A New and Extensive Empirical Study of the Exclusionary Rule and a Call for a Civil Administrative Remedy to Partially Replace the Rule" (1998), 83 Iowa L. Rev. 669; W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (4th ed. 2004), vol. 1, at pp. 32-37; Herring v. United States, 555 U.S. 1 (2009); Law Reform Commission of Canada, Working Paper 10, Evidence — The Exclusion of Illegally Obtained Evidence (1974), at pp. 19-20. The question has also been the subject of debate in Canada. According to Paciocco, at p. 340, s. 24(2) cannot have a deterrent effect, because it does not establish a clear and predictable rule requiring the exclusion of evidence. To other commentators, from the perspective of the conduct of state agents, exclusion is not an effective sanction. The police certainly have an interest in the conviction of an accused, but that interest is above all one of society as a whole. Administrative or disciplinary measures may have a greater deterrent effect on the police (Law Reform Commission, at pp. 20-22; R. v. Duguay, [1989] 1 S.C.R. 93, at pp. 123-24, and Burlingham, at para. 104, per L'Heureux-Dubé J., dissenting). In my view, the reservations expressed regarding the effectiveness of the exclusion of evidence as a deterrent are an invitation to be very prudent as regards the importance attached to state conduct.
2009	Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component	7/10/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7796/index.do	Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, 2009 SCC 31, [2009] 2 S.C.R. 295	Deschamps J.	majority	British Columbia	Constitutional law	C	referred to	Lehman v. City of Shaker Heights, 418 U.S. 298 (1974)	SC	US	[6] Halfyard J. of the British Columbia Supreme Court dismissed the action (2006 BCSC 455, 266 D.L.R. (4th) 403). He determined that both BC Transit and TransLink were subject to the Charter since they were "government" within the meaning of s. 32 of the Charter . However, he concluded, on the basis of the factors set out in Montréal (City) v. 2952-1366 Québec Inc., 2005 SCC 62, [2005] 3 S.C.R. 141 ("City of Montréal"), and in Lehman v. City of Shaker Heights, 418 U.S. 298 (1974), that the respondents' right to freedom of expression had not been infringed. In his view, since there was no history of permitting political or advocacy advertising on the sides of buses, the location was not a "public place".
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Binnie J.	dissenting	Manitoba	Civil law Constitutional law	C	D	Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649	lower-level court	UK	[198] There is a strong consensus among common law countries regarding the right to refuse medical treatment, even if this leads to death. (See A. Meisel, "The Legal Consensus About Forgoing Life-Sustaining Treatment: Its Status and Its Prospects" (1992), 2 Kennedy Inst. of Ethics J. 309; B. M. Dickens, "Medically Assisted Death: Nancy B. v. Hôtel-Dieu de Québec" (1993), 38 McGill L.J. 1053, at p. 1060; Airedale NHS Trust v. Bland, [1993] 1 All E.R. 821 (H.L.), at p. 891; Re C (adult: refusal of medical treatment), [1994] 1 All E.R. 819 (Fam. Div.); Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649 (C.A.); Re B (adult: refusal of medical treatment), [2002] EWHC 429 (Fam.), [2002] 2 All E.R. 449; Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990); and Auckland Area Health Board v. Attorney-General, [1993] 1 N.Z.L.R. 235 (H.C.).)
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2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Binnie J.	dissenting	Manitoba	Civil law Constitutional law	C	D	Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)	SC	US	[198] There is a strong consensus among common law countries regarding the right to refuse medical treatment, even if this leads to death. (See A. Meisel, "The Legal Consensus About Forgoing Life-Sustaining Treatment: Its Status and Its Prospects" (1992), 2 Kennedy Inst. of Ethics J. 309; B. M. Dickens, "Medically Assisted Death: Nancy B. v. Hôtel-Dieu de Québec" (1993), 38 McGill L.J. 1053, at p. 1060; Airedale NHS Trust v. Bland, [1993] 1 All E.R. 821 (H.L.), at p. 891; Re C (adult: refusal of medical treatment), [1994] 1 All E.R. 819 (Fam. Div.); Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649 (C.A.); Re B (adult: refusal of medical treatment), [2002] EWHC 429 (Fam.), [2002] 2 All E.R. 449; Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990); and Auckland Area Health Board v. Attorney-General, [1993] 1 N.Z.L.R. 235 (H.C.).)
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Binnie J.	dissenting	Manitoba	Civil law Constitutional law	C	D	Auckland Area Health Board v. Attorney-General, [1993] 1 N.Z.L.R. 235	SC	New Zealand	[198] There is a strong consensus among common law countries regarding the right to refuse medical treatment, even if this leads to death. (See A. Meisel, "The Legal Consensus About Forgoing Life-Sustaining Treatment: Its Status and Its Prospects" (1992), 2 Kennedy Inst. of Ethics J. 309; B. M. Dickens, "Medically Assisted Death: Nancy B. v. Hôtel-Dieu de Québec" (1993), 38 McGill L.J. 1053, at p. 1060; Airedale NHS Trust v. Bland, [1993] 1 All E.R. 821 (H.L.), at p. 891; Re C (adult: refusal of medical treatment), [1994] 1 All E.R. 819 (Fam. Div.); Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649 (C.A.); Re B (adult: refusal of medical treatment), [2002] EWHC 429 (Fam.), [2002] 2 All E.R. 449; Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990); and Auckland Area Health Board v. Attorney-General, [1993] 1 N.Z.L.R. 235 (H.C.).)
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	applied	Gillick v. West Norfolk and Wisbech Area Health Authority, [1985] 3 All E.R. 402	lower-level court	UK	[48] The "mature minor" principle was first articulated by the House of Lords in Gillick v. West Norfolk and Wisbech Area Health Authority, [1985] 3 All E.R. 402. The issue was whether a doctor could prescribe contraception for a girl under the age of 16 without attracting liability in tort for proceeding without the consent of her parents. [67] Australian courts too have recognized the "mature minor" rule. In Secretary, Department of Health and Community Services v. J.W.B. (Marion's Case) (1992), 175 C.L.R. 218, the High Court of Australia stated: The common law in Australia has been uncertain as to whether minors under sixteen can consent to medical treatment in any circumstances. However, the recent House of Lords decision in Gillick v. West Norfolk A.H.A. is of persuasive authority. The proposition endorsed by the majority in that case was that parental power to consent to medical treatment on behalf of a child diminishes gradually as the child's capacities and maturity grow and that this rate of development depends on the individual child. . . . A minor is, according to this principle, capable of giving informed consent when he or she "achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed". This approach, though lacking the certainty of a fixed age rule, accords with experience and with psychology. It should be followed in this country as part of the common law [pp. 237-38]
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	applied	Re W (a minor) (medical treatment), [1992] 4 All E.R. 627	lower-level court	UK	[54] Several years later, in Re W (a minor) (medical treatment), [1992] 4 All E.R. 627, the English Court of Appeal dealt with the more complicated question of whether a court could override an adolescent's refusal of treatment in the face of great injury or even death. Re W, and the prior decision in Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177 (C.A.), definitively established that even "mature minors" were subject to the court's inherent parens patriae jurisdiction. This inherent jurisdiction was found by the court to be broader than the powers of a natural parent, and justified overriding the treatment wishes of even a "Gillick-competent" minor.[2]
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	applied	Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177	lower-level court	UK	[54] Several years later, in Re W (a minor) (medical treatment), [1992] 4 All E.R. 627, the English Court of Appeal dealt with the more complicated question of whether a court could override an adolescent's refusal of treatment in the face of great injury or even death. Re W, and the prior decision in Re R (a minor) (wardship: medical treatment), [1991] 4 All E.R. 177 (C.A.), definitively established that even "mature minors" were subject to the court's inherent parens patriae jurisdiction. This inherent jurisdiction was found by the court to be broader than the powers of a natural parent, and justified overriding the treatment wishes of even a "Gillick-competent" minor.[2]
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649	lower-level court	UK	[40] At common law, adults are presumptively entitled to direct the course of their own medical treatment and generally must give their "informed consent" before treatment occurs, although this presumption of capacity can be rebutted by evidence to the contrary. (See Lucinda Ferguson, "The End of an Age: Beyond Age Restrictions for Minors' Medical Treatment Decisions", paper prepared for the Law Commission of Canada (October 29, 2004), at p. 5.) When competency is not in question, this right "to decide one's own fate" (Re T (adult: refusal of medical treatment), [1992] 4 All E.R. 649 (C.A.), at p. 661) includes the unqualified right to refuse life-saving medical treatment.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Planned Parenthood of Central Missouri v. Danforth, Attorney General of Missouri, 428 U.S. 52 (1976)	SC	US	[65] The Supreme Court of the United States has never commented directly on the legal rights of mature adolescents to direct their own medical care, although it has recognized that some minors possess the maturity to make certain specific constitutionally protected decisions, including the decision to have an abortion (see, e.g., Planned Parenthood of Central Missouri v. Danforth, Attorney General of Missouri, 428 U.S. 52 (1976)). In Bellotti, Attorney General of Massachusetts v. Baird, 443 U.S. 622 (1979), however, the court indicated that adolescents' constitutional rights could not "be equated with those of adults" due to "the particular vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing" (p. 634). Neglecting to draw a clear distinction between incompetent younger children and older adolescents, the Supreme Court in Parham, Commissioner, Department of Human Resources of Georgia v. J. R., 442 U.S. 584 (1979), held that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment" (p. 603).
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Bellotti, Attorney General of Massachusetts v. Baird, 443 U.S. 622 (1979)	SC	US	[65] The Supreme Court of the United States has never commented directly on the legal rights of mature adolescents to direct their own medical care, although it has recognized that some minors possess the maturity to make certain specific constitutionally protected decisions, including the decision to have an abortion (see, e.g., Planned Parenthood of Central Missouri v. Danforth, Attorney General of Missouri, 428 U.S. 52 (1976)). In Bellotti, Attorney General of Massachusetts v. Baird, 443 U.S. 622 (1979), however, the court indicated that adolescents' constitutional rights could not "be equated with those of adults" due to "the particular vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing" (p. 634). Neglecting to draw a clear distinction between incompetent younger children and older adolescents, the Supreme Court in Parham, Commissioner, Department of Human Resources of Georgia v. J. R., 442 U.S. 584 (1979), held that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment" (p. 603).

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Parham, Commissioner, Department of Human Resources of Georgia v. J. R., 442 U.S. 584 (1979)	SC	US	[65] The Supreme Court of the United States has never commented directly on the legal rights of mature adolescents to direct their own medical care, although it has recognized that some minors possess the maturity to make certain specific constitutionally protected decisions, including the decision to have an abortion (see, e.g., Planned Parenthood of Central Missouri v. Danforth, Attorney General of Missouri, 428 U.S. 52 (1976)). In Bellotti, Attorney General of Massachusetts v. Baird, 443 U.S. 622 (1979), however, the court indicated that adolescents' constitutional rights could not "be equated with those of adults" due to "the particular vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing" (p. 634). Neglecting to draw a clear distinction between incompetent younger children and older adolescents, the Supreme Court in Parham, Commissioner, Department of Human Resources of Georgia v. J. R., 442 U.S. 584 (1979), held that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment" (p. 603).
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Cardwell v. Bechtol, 724 S.W.2d 739 (1987)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (1992)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	In re E.G., 549 N.E.2d 322 (1989)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (1990)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (1994), aff'd 74 F.3d 1173 (1996)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	In the Matter of Rena, 705 N.E.2d 1155 (1999)	lower-level court	US	[66] Individual states have approached the issue of adolescent decision making in various ways, some enacting statutory exceptions to the default presumption of incapacity, and some embracing the common law "mature minor" doctrine to varying degrees. As in the U.K. and Canada, no state court has gone so far as to suggest that the "mature minor" doctrine effectively "reclassifies" mature adolescents as adults for medical treatment purposes. The variance in the jurisprudence from the different states is captured in some of the following cases and academic writing: Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Medical Center, 422 S.E.2d 827 (W. Va. 1992); In re E.G., 549 N.E.2d 322 (Ill. 1989); In the Matter of Long Island Jewish Medical Center, 557 N.Y.S.2d 239 (Sup. Ct. 1990); Novak v. Cobb County-Kennestone Hospital Authority, 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd 74 F.3d 1173 (11th Cir. 1996); In the Matter of Rena, 705 N.E.2d 1155 (Mass. App. Ct. 1999); Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000). See also Rhonda Gay Hartman, "Coming of Age: Devising Legislation for Adolescent Medical Decision-Making" (2002), 28 Am. J. L. & Med. 409; Jonathan F. Will, "My God My Choice: The Mature Minor Doctrine and Adolescent Refusal of Life-Saving or Sustaining Medical Treatment Based Upon Religious Beliefs" (2005-2006), 22 J. Contemp. Health L. & Pol'y 233; Elizabeth S. Scott, "The Legal Construction of Adolescence" (2000-2001), 29 Hofstra L. Rev. 547; Jennifer L. Rosato, "Let's Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making" (2001-2002), 51 DePaul L. Rev. 769.
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2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Secretary, Department of Health and Community Services v. J.W.B. (Marion's Case) (1992), 175 C.L.R. 218	SC	Australia	[67] Australian courts too have recognized the "mature minor" rule. In Secretary, Department of Health and Community Services v. J.W.B. (Marion's Case) (1992), 175 C.L.R. 218, the High Court of Australia stated: The common law in Australia has been uncertain as to whether minors under sixteen can consent to medical treatment in any circumstances. However, the recent House of Lords decision in Gillick v. West Norfolk A.H.A. is of persuasive authority. The proposition endorsed by the majority in that case was that parental power to consent to medical treatment on behalf of a child diminishes gradually as the child's capacities and maturity grow and that this rate of development depends on the individual child. . . . A minor is, according to this principle, capable of giving informed consent when he or she "achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed". This approach, though lacking the certainty of a fixed age rule, accords with experience and with psychology. It should be followed in this country as part of the common law. [pp. 237-38]
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Director General, New South Wales Department of Community Services v. Y., [1999] NSWSC 644 (AustLII)	lower-level court	Australia	[68] And, as elsewhere, Australian courts have determined that their authority to make orders in respect of children's welfare, including medical treatment, is not limited by the decisions of a "Gillick-competent" minor (see Director General, New South Wales Department of Community Services v. Y., [1999] NSWSC 644 (AustLII), at paras. 99-103). The treatment decisions of even mature children can therefore be overridden by a court exercising its parens patriae jurisdiction or the Family Court's almost identical statutory jurisdiction. In Minister for Health v. A.S., [2004] WASC 286, 33 Fam. L.R. 223, for example, the Supreme Court of Western Australia stated that the court will almost always override a child's decision to refuse life-saving or life-prolonging treatment, in accordance with the child's best interests. While the views of the child are relevant to the "best interests" analysis, and while a court will exercise great caution in overturning them, these wishes alone will not be determinative, regardless of maturity (para. 23; Marion's Case, at p. 280).
2009	A.C. v. Manitoba (Director of Child and Family Services)	6/26/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do	A.C. v. Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 S.C.R. 181	Abella J.	majority	Manitoba	Civil law Constitutional law	C	referred to	Minister for Health v. A.S., [2004] WASC 286, 33 Fam. L.R. 223	lower-level court	Australia	[68] And, as elsewhere, Australian courts have determined that their authority to make orders in respect of children's welfare, including medical treatment, is not limited by the decisions of a "Gillick-competent" minor (see Director General, New South Wales Department of Community Services v. Y., [1999] NSWSC 644 (AustLII), at paras. 99-103). The treatment decisions of even mature children can therefore be overridden by a court exercising its parens patriae jurisdiction or the Family Court's almost identical statutory jurisdiction. In Minister for Health v. A.S., [2004] WASC 286, 33 Fam. L.R. 223, for example, the Supreme Court of Western Australia stated that the court will almost always override a child's decision to refuse life-saving or life-prolonging treatment, in accordance with the child's best interests. While the views of the child are relevant to the "best interests" analysis, and while a court will exercise great caution in overturning them, these wishes alone will not be determinative, regardless of maturity (para. 23; Marion's Case, at p. 280)
2009	Caisse populaire Desjardins de l'Est de Drummond v. Canada	6/19/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7793/index.do	Caisse populaire Desjardins de l'Est de Drummond v. Canada, 2009 SCC 29, [2009] 2 S.C.R. 94	Deschamps J.	dissenting	Federal Court of Appeal	Taxation	C	D	Reagan v. Murphy, 105 So.2d 210 (1958)	lower-level court	US	[90] At common law, the term "real right" and its close cousins "right in rem" and "jus in re", although less common, are nevertheless established. Professor Royston Miles Goode writes in Goode on Legal Problems of Credit and Security (4th ed. 2008), at para. 1-17, that "a security interest is a right in rem". Professors Ronald C. C. Cuming, Catherine Walsh and Roderick J. Wood also refer to the concept of "real right" or "right in rem" in Personal Property Security Law (2005): A creditor who is given a security interest in the debtor's property obtains a proprietary right to the collateral. The defining characteristic of a proprietary right (which is also referred to as a real right or a right in rem) is that it is a right in a thing that is generally enforceable against the world. [p. 511] See also R. A. Macdonald, "Reconceiving the Symbols of Property: Universalities, Interests and Other Heresies" (1994), 39 McGill L.J. 761; J. Austin, Lectures on Jurisprudence, or, The Philosophy of Positive Law (5th ed. 1885), at pp. 381-91; T. E. Holland, The Elements of Jurisprudence (12th ed. 1916), at pp. 146-47; W. N. Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1917), 26 Yale L.J. 710, at pp. 714-15; J. W. Salmond, Jurisprudence (10th ed. 1947), at pp. 252-56; G. W. Paton, A Text-book of Jurisprudence (2nd ed. 1951), at pp. 232-36; Reagan v. Murphy, 105 So.2d 210 (La. 1958); Harwood Oil & Mining Co. v. Black, 124 So.2d 764 (La. 1960).
2009	Caisse populaire Desjardins de l'Est de Drummond v. Canada	6/19/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7793/index.do		Deschamps J.	dissenting	Federal Court of Appeal	Taxation	C	D	Harwood Oil & Mining Co. v. Black, 124 So.2d 764 (1960)	lower-level court	US	[90] At common law, the term "real right" and its close cousins "right in rem" and "jus in re", although less common, are nevertheless established. Professor Royston Miles Goode writes in Goode on Legal Problems of Credit and Security (4th ed. 2008), at para. 1-17, that "a security interest is a right in rem". Professors Ronald C. C. Cuming, Catherine Walsh and Roderick J. Wood also refer to the concept of "real right" or "right in rem" in Personal Property Security Law (2005): A creditor who is given a security interest in the debtor's property obtains a proprietary right to the collateral. The defining characteristic of a proprietary right (which is also referred to as a real right or a right in rem) is that it is a right in a thing that is generally enforceable against the world. [p. 511] See also R. A. Macdonald, "Reconceiving the Symbols of Property: Universalities, Interests and Other Heresies" (1994), 39 McGill L.J. 761; J. Austin, Lectures on Jurisprudence, or, The Philosophy of Positive Law (5th ed. 1885), at pp. 381-91; T. E. Holland, The Elements of Jurisprudence (12th ed. 1916), at pp. 146-47; W. N. Hohfeld, "Fundamental Legal Conceptions as Applied in Judicial Reasoning" (1917), 26 Yale L.J. 710, at pp. 714-15; J. W. Salmond, Jurisprudence (10th ed. 1947), at pp. 252-56; G. W. Paton, A Text-book of Jurisprudence (2nd ed. 1951), at pp. 232-36; Reagan v. Murphy, 105 So.2d 210 (La. 1958); Harwood Oil & Mining Co. v. Black, 124 So.2d 764 (La. 1960).
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2009	Caisse populaire Desjardins de l'Est de Drummond v. Canada	6/19/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7793/index.do		Deschamps J.	dissenting	Federal Court of Appeal	Taxation	C	D	Cass. com. 3 juin 1997, D. 1998.Jur.61, note François	SC	France	[145] Where the French rules are concerned, however, it should be noted that allowing compensation to be effected is based on a concept that does not on its own form part of the positive law of Quebec. In France, where there is a sufficient nexus between two debts, compensation may be effected despite the assignment of a claim or a collective recovery procedure: D. R. Martin, "Contrats et obligations", Juris-classeur civil, arts. 1289 to 1293, fasc. 108 to 111, No. 75. Since a compensation agreement creates a sufficient nexus, the possibility of setting it up is not in dispute (unless the agreement was entered into during a period where solvency was in doubt): Cass. civ., July 13, 1942, J.C.P. 1943.II.2157 (Annot. Houin); Cass. com., June 3, 1997, D. 1998.Jur.61 (Annot. François). (See, however, Cass. com., Dec. 9, 1997, Bull. civ. IV, No. 327, and the critique of that decision by A. Honorat, "Redressement et liquidation judiciaires", D. 1998.Somm.325.) Some authors draw a distinction in the case of garnishment by a third party on the basis that the property would no longer be available after the seizure: Didier Martin, "Des techniques d'affectation en garantie des soldes de comptes bancaires", D. 1987.Chron.229, and Thierry Bonneau, in Droit bancaire (7th ed. 2007), at No. 395. Duboc disagrees, however, as do Jean-Louis Rives-Lange and Monique Contamine-Raynaud (Droit bancaire (6th ed. 1995)). According to Rives-Lange and Contamine-Raynaud, [TRANSLATION] "[t]here is no reason to decide cases involving collective seizures differently from those involving individual seizures" (p. 183, footnote 6). In Quebec, the French debate over the unavailability of seized property would have to be resolved in favour of the possibility of setting up a compensation agreement entered into before the seizure. As I mentioned above, since art. 637 of the Code of Civil Procedure provides that seizure results in assignment of the claim, the principles discussed above concerning the assignment of claims apply to garnishment

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2009	R. v. Griffin	6/18/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7792/index.do	R. v. Griffin, 2009 SCC 28, [2009] 2 S.C.R. 42	LeBel and Fish JJ.	dissenting	Quebec	Criminal law	C	D	R. v. Moon, [1969] 3 All E.R. 803	lower-level court	UK	[83] In order to ensure that a misdirection to the jury has been successfully rectified, a trial judge will generally have to repeat the direction he or she has given, acknowledge that it was incorrect, tell the jury to put it out of their minds and then tell them in plain and simple terms what the law is: R. v. Moon, [1969] 3 All E.R. 803 (C.A.), cited in R. v. Seguin (1979), 45 C.C.C. (2d) 498 (Ont. C.A.), at p. 503. See also R. v. Boyd (1999), 118 O.A.C. 85, at para. 29; R. v. Carpenter (1993), 14 O.R. (3d) 641 (C.A.), at p. 647; R. v. Cavanagh (1976), 15 O.R. (2d) 173 (C.A.), at p. 182; and Shapiro v. Wilkinson, [1943] O.R. 806 (C.A.), at pp. 811-12.
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Abella J.	concurring	Alberta	Constitutional law			California v. Greenwood, 486 U.S. 35 (1988)	SC	US	[76] ABELLA J. — What we inelegantly call "garbage" may contain the most intensely personal and private information about ourselves. Brennan J., in his dissent in California v. Greenwood, 486 U.S. 35 (1988), illuminated the issue as follows: A single bag of trash testifies eloquently to the eating, reading, and recreational habits of the person who produced it. A search of trash, like a search of the bedroom, can relate intimate details about sexual practices, health, and personal hygiene. Like rifling through desk drawers or intercepting phone calls, rummaging through trash can divulge the target's financial and professional status, political affiliations and inclinations, private thoughts, personal relationships, and romantic interests. [p. 50]
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Abella J.	concurring	Alberta	Constitutional law			Litchfield v. State, 824 N.E.2d 356 (2005)	lower-level court	US	[90] While personal information may be obtained by searching through household waste that is left at or in close proximity to the property line for collection, on the other hand the individual disposing of the waste has indicated an intention to part with the objects contained in it. From a balancing of the Tessling factors, this leads to a conclusion that we are dealing with a diminished expectation of privacy, not unlike the reduced expectation at border crossings (see, for example, R. v. Simmons, [1988] 2 S.C.R. 495, and R. v. Monney, [1999] 1 S.C.R. 652). This does not mean that the state can arbitrarily search through the information. Barring exigent circumstances, there should at least be a threshold of reasonable suspicion about the possibility of a criminal offence before household waste left for collection is searched. (See Litchfield v. State, 824 N.E.2d 356 (Ind. 2005).)
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	Katz v. United States, 389 U.S. 347 (1967)	SC	US	[14] "Expectation of privacy is a normative rather than a descriptive standard" (Tessling, at para. 42). A government that increases its snooping on the lives of citizens, and thereby makes them suspicious and reduces their expectation of privacy, will not thereby succeed in unilaterally reducing their constitutional entitlement to privacy protection. Equally, however, while a disembarking passenger at the Toronto airport might feel entitled to privacy when emptying his bowels after an intercontinental flight, the obligation to make use of a "drug loo facility" under the supervision of the authorities was upheld in the context of border formalities in R. v. Monney, [1999] 1 S.C.R. 652. Privacy analysis is laden with value judgments which are made from the independent perspective of the reasonable and informed person who is concerned about the long-term consequences of government action for the protection of privacy. This is inherent in the "assessment" called for by Dickson J. (as he then was) in Hunter v. Southam Inc., [1984] 2 S.C.R. 145, at pp. 159-60: This limitation on the right guaranteed by s. 8 , whether it is expressed negatively as freedom from "unreasonable" search and seizure, or positively as an entitlement to a "reasonable" expectation of privacy, indicates that an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement. Dickson J.'s analysis paid tribute to Katz v. United States, 389 U.S. 347 (1967), and quoted its foundational privacy principle that "the Fourth Amendment protects people, not places" (Stewart J., at p. 351). This was elaborated upon by Harlan J. in Katz in a concurring opinion which gave rise to the twin
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	Lacroix v. The Queen, [1954] Ex. C.R. 69	lower-level court	UK	[44] At the same time, I do not accept the argument of the Crown that there is no element of trespass involved because the police "never set foot on the appellant's land" (R.F., at para. 66). The maxim cujus est solum ejus est usque ad coelum et usque ad inferos ("whoever owns the soil, owns all the way up to the heavens and down to the depths of the earth") may be "so permeated with qualifications that it is best regarded as a 'colourful' and 'fanciful phrase' of limited validity": B. Ziff, Principles of Property Law (2nd ed. 1996), at pp. 82-83. Nevertheless, in Lacroix v. The Queen, [1954] Ex. C.R. 69, the court held that the owner of land has a right in the airspace over his property limited by what he can possess or occupy for the use and enjoyment of his land. In Dahlberg v. Naydiuk (1969), 10 D.L.R. (3d) 319 (Man. C.A.), it was held that firing a gun over a farmer's land was a trespass to the land. In Lewvest Ltd. v. Scotia Towers Ltd. (1981), 126 D.L.R. (3d) 239 (Nfld. S.C.T.D.), a trespass was found to have occurred when the boom of a sky crane swung over the plaintiff's land. See to the same effect Anchor Brewhouse Developments Ltd. v. Berkley House (Docklands Developments) Ltd., [1987] 2 E.G.L.R. 173 (Ch. D.). Without reviewing these cases in any detail, it seems obvious that the police could not with impunity position a cherry picker in the laneway behind the appellant's house and, without "setting foot" on the property, grab various objects off the appellant's lawn and porch for inspection. As Conrad J.A. rightly emphasized, the courts have long put the home near the core of privacy concerns as the place where our most intimate and private activities are most likely to take place (R. v. Evans, [1996] 1 S.C.R. 8, at para. 42; Tessling, at para. 22; R. v. Silveira, [1995] 2 S.C.R. 297, at para. 140; R. v. Feeney, [1997] 2 S.C.R. 13, at para. 43; and Plant, at p. 302), as well as the perimeter space around the home (R. v. Kokesch, [1990] 3 S.C.R. 3; R. v. Grant, [1993] 3 S.C.R. 223, at pp. 237 and 241; R. v. Wiley, [1993] 3 S.C.R. 263, at p. 273).
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	Anchor Brewhouse Developments Ltd. v. Berkley House (Docklands Developments) Ltd., [1987] 2 E.G.L.R. 173	lower-level court	UK	[44] At the same time, I do not accept the argument of the Crown that there is no element of trespass involved because the police "never set foot on the appellant's land" (R.F., at para. 66). The maxim cujus est solum ejus est usque ad coelum et usque ad inferos ("whoever owns the soil, owns all the way up to the heavens and down to the depths of the earth") may be "so permeated with qualifications that it is best regarded as a 'colourful' and 'fanciful phrase' of limited validity": B. Ziff, Principles of Property Law (2nd ed. 1996), at pp. 82-83. Nevertheless, in Lacroix v. The Queen, [1954] Ex. C.R. 69, the court held that the owner of land has a right in the airspace over his property limited by what he can possess or occupy for the use and enjoyment of his land. In Dahlberg v. Naydiuk (1969), 10 D.L.R. (3d) 319 (Man. C.A.), it was held that firing a gun over a farmer's land was a trespass to the land. In Lewvest Ltd. v. Scotia Towers Ltd. (1981), 126 D.L.R. (3d) 239 (Nfld. S.C.T.D.), a trespass was found to have occurred when the boom of a sky crane swung over the plaintiff's land. See to the same effect Anchor Brewhouse Developments Ltd. v. Berkley House (Docklands Developments) Ltd., [1987] 2 E.G.L.R. 173 (Ch. D.). Without reviewing these cases in any detail, it seems obvious that the police could not with impunity position a cherry picker in the laneway behind the appellant's house and, without "setting foot" on the property, grab various objects off the appellant's lawn and porch for inspection. As Conrad J.A. rightly emphasized, the courts have long put the home near the core of privacy concerns as the place where our most intimate and private activities are most likely to take place (R. v. Evans, [1996] 1 S.C.R. 8, at para. 42; Tessling, at para. 22; R. v. Silveira, [1995] 2 S.C.R. 297, at para. 140; R. v. Feeney, [1997] 2 S.C.R. 13, at para. 43; and Plant, at p. 302), as well as the perimeter space around the home (R. v. Kokesch, [1990] 3 S.C.R. 3; R. v. Grant, [1993] 3 S.C.R. 223, at pp. 237 and 241; R. v. Wiley, [1993] 3 S.C.R. 263, at p. 273)
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	California v. Greenwood, 486 U.S. 35 (1988)	SC	US	[61] In California v. Greenwood, 486 U.S. 35 (1988), the United States Supreme Court held that by placing the garbage in opaque bags at the curbside for pickup by a trash collector, residents of a house retained no reasonable expectation of privacy in the inculpatory items which they discarded. Some State courts have reached a contrary conclusion: People v. Krivda, 486 P.2d 1262 (Cal. 1971), at p. 1268; State v. Morris, 680 A.2d 90 (Vt. 1996).
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	People v. Krivda, 486 P.2d 1262 (1971)	lower-level court	US	[61] In California v. Greenwood, 486 U.S. 35 (1988), the United States Supreme Court held that by placing the garbage in opaque bags at the curbside for pickup by a trash collector, residents of a house retained no reasonable expectation of privacy in the inculpatory items which they discarded. Some State courts have reached a contrary conclusion: People v. Krivda, 486 P.2d 1262 (Cal. 1971), at p. 1268; State v. Morris, 680 A.2d 90 (Vt. 1996).
2009	R. v. Patrick	4/9/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7611/index.do	R. v. Patrick, 2009 SCC 17, [2009] 1 S.C.R. 579	Binnie J.	majority	Alberta	Constitutional law	C	referred to	State v. Morris, 680 A.2d 90 (1996)	lower-level court	US	[61] In California v. Greenwood, 486 U.S. 35 (1988), the United States Supreme Court held that by placing the garbage in opaque bags at the curbside for pickup by a trash collector, residents of a house retained no reasonable expectation of privacy in the inculpatory items which they discarded. Some State courts have reached a contrary conclusion: People v. Krivda, 486 P.2d 1262 (Cal. 1971), at p. 1268; State v. Morris, 680 A.2d 90 (Vt. 1996).

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2009	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia	4/2/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7598/index.do	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia, 2009 SCC 15, [2009] 1 S.C.R. 504	Deschamps J.	unanimous	British Columbia	Action Commercial law Financial institutions	C	applied	Agip (Africa) Ltd. v. Jackson, [1992] 4 All E.R. 451, aff'g [1992] 4 All E.R. 385	lower-level court	UK	[78] It has been accepted that the English case of Agip (Africa) Ltd. v. Jackson, [1992] 4 All E.R. 451 (C.A.) (aff'g [1992] 4 All E.R. 385 (Ch.)), has been accepted as setting out rules with respect to tracing of money: Citadel General Assurance Co. v. Lloyds Bank Canada, [1997] 3 S.C.R. 805. [79] According to the Court of Appeal in Agip, tracing at law is permitted where a person has received money rightfully claimed by the claimant. Liability is based on mere receipt, and the extent of liability will depend on the amount received (Agip (C.A.), at pp. 463-64; Agip (Ch.), at p. 399; Banque Belge pour l'Étranger v. Hambrouck, [1921] 1 K.B. 321 (C.A.)). It is sometimes said that funds cannot be traced to bank accounts at common law. This view overstates the rule and fails to take into account the fact that, as an evidentiary process, tracing is possible if identification is possible (see D. R. Klinck, "'Two Distincts, Division None': Tracing Money into (and out of) Mixed Accounts" (1988), 2 B.F.L.R. 147, at p. 148, and L. D. Smith, The Law of Tracing (1997), at pp. 183 ff.). Indeed, no statement that tracing is impossible can be found in the case that is most often cited in support of the theory that funds cannot be traced to bank accounts at common law. If Lord Ellenborough C.J.'s comment in Taylor v. Plumer (1815), 3 M. & S. 562, 34 E.R. 721, is read in its entirety, it is clear that tracing is impossible only when the means of ascertainment fail: It makes no difference in reason or law into what other form, different from the original, the change may have been made, whether it be into that of promissory notes for the security of the money which was produced by the sale of the goods of the principal, as in Scott v. Surman, Willes, 400, or into other merchandize, as in Whitecomb v. Jacob, Salk. 160, for the product of or substitute for the original thing still follows the nature of the thing itself, as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail, which is the case when the subject is turned into money, and mixed and confounded in a general mass of the same description. The difficulty which arises in such a case is a difficulty of fact and not of law, and the dictum that money has no ear-mark must be understood in the same way; i.e. as predicated only of an undivided and undistinguishable mass of current money. [Emphasis added; p. 726.] [80] That it is possible at common law to trace money to bank accounts is illustrated by the cases of Hambrouck and Agip. In Hambrouck, a man named Hambrouck had fraudulently procured cheques drawn on the Banque Belge pour l'Étranger. He endorsed the cheques and deposited them in his account at Farrow's Bank. The cheques were cleared through the banking system and credited to Hambrouck's account. "In substance no other funds were paid into the account than the proceeds of these forged cheques" (Atkin L.J., at p. 331 (emphasis added)). Hambrouck then paid money out of that bank account to a Ms. Spanoghe, with whom he was living. A deposit was made in Ms. Spanoghe's account at the London Joint City and Midland Bank and, according to Atkin L.J., "[n]o other sums were at any time placed to that deposit account" (p. 332). On the basis of those facts, Bankes and Atkin L.JJ. were both of the opinion that the funds could be traced at common law to Ms. Spanoghe's account (pp. 328 and 335-36). Two points drawn from that case are important for our purposes: neither the fact that a cheque is cleared through the banking system before being deposited in the payee's account nor the fact that the payee has mixed the funds with other funds is sufficient to bar recovery at common law.
2009	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia	4/2/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7598/index.do	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia, 2009 SCC 15, [2009] 1 S.C.R. 504	Deschamps J.	unanimous	British Columbia	Action Commercial law Financial institutions	C	referred to	Barclays Bank Ltd. v. W. J. Simms Son & Cooke (Southern) Ltd., [1979] 3 All E.R. 522	lower-level court	UK	[21] That a bank has a right to recover from a recipient a payment made under a mistake of fact was made clear in a restatement of the law by Goff J. (as he then was) in Barclays Bank Ltd. v. W. J. Simms Son & Cooke (Southern) Ltd., [1979] 3 All E.R. 522 (Q.B.), at p. 541. Canadian courts have long recognized that right on the basis of the analytical framework adopted in Royal Bank v. The King, [1931] 2 D.L.R. 685 (Man. K.B.). Since Simms, however, and I agree with this approach, many Canadian courts have relied on the English case as setting the conditions for recovery in restitution by a bank, subject to Canadian law with respect to change of position, an issue that will be discussed below: Royal Bank of Canada v. LVG Auctions Ltd. (1983), 43 O.R. (2d) 582 (H.C.J.), aff'd (1984), 12 D.L.R. (4th) 768 (Ont. C.A.); Toronto-Dominion Bank v. Pella/Hunt Corp. (1992), 10 O.R. (3d) 634 (Gen. Div.); A.E. LePage Real Estate Services Ltd. v. Rattray Publications (1994), 120 D.L.R. (4th) 499 (Ont. C.A.), at p. 507: "Barclays Bank v. Simms is the accepted authority explaining the obligations of a bank to its customer and its redress against the payee of a cheque who appears to be taking advantage of an innocent mistake on the part of a bank employee"; Central Guaranty Trust Co. v. Dixdale Mortgage Investment Corp. (1994), 24 O.R. (3d) 506 (C.A.), at p. 512, fn. 1; Ogilvie, at p. 285; P. D. Maddaugh and J. D. McCamus, The Law of Restitution (loose-leaf), at p. 10-32
2009	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia	4/2/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7598/index.do	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia, 2009 SCC 15, [2009] 1 S.C.R. 504	Deschamps J.	unanimous	British Columbia	Action Commercial law Financial institutions	C	referred to	Lipkin Gorman v. Karpnale Ltd., [1991] 2 A.C. 548	SC	UK	[31] Price v. Neal has been interpreted in various ways over the centuries. One of the interpretations serves as a basis for a broad statement that the principle of finality of payment requires the drawee to bear the loss where the drawer's signature is forged, irrespective of detrimental reliance (see S. A. Scott, "Comment on Benjamin Geva's Paper: 'Reflections on the Need to Revise the Bills of Exchange Act — Some Doctrinal Aspects'" (1981-82), 6 Can. Bus. L.J. 331 ("Comment on Reflections"), at p. 342). A second interpretation of Price v. Neal is that the drawee cannot rely on the forgery after acceptance (or payment) of a bill bearing a signature he should know to be forged or is deemed to have negligently omitted to verify. Yet a third interpretation put forward for Price v. Neal limits its scope to instances where two innocent parties have equal equities but the holder of the bill has legal title to the money (see Lipkin Gorman v. Karpnale Ltd., [1991] 2 A.C. 548 (H.L.); B. Geva, "Reflections on the Need to Revise the Bills of Exchange Act — Some Doctrinal Aspects: Panel Discussion" (1981-82), 6 Can. Bus. L.J. 269 ("Reflections"), at pp. 308-9; J. S. Ziegel, B. Geva and R. C. C. Cuming, Commercial and Consumer Transactions: Cases, Text and Materials (3rd ed. 1995), vol. II, at p. 396, citing J. B. Ames, "The Doctrine of Price v. Neal" (1891), 4 Harv. L. Rev. 297, at pp. 297-99). In view of the various interpretations of Price v. Neal, I do not accept that it provides a basis for an unqualified rule that a drawee will never have any recourse against either the collecting bank or the payee where payment has been made on the forged signature of the drawer. [62] The question in the third enquiry is whether the payee has changed its position. In Simms, the condition that money cannot be recovered in the event of a change of position was seen to be linked to the defendant's being deprived of an opportunity to give a notice of dishonour. This prompted comments that the defence of change of position is more specific than the label would suggest: Geva, "Reflections", at pp. 308 ff. However, leading English commentators on the subject now observe that the law has evolved and may now include defences of change of position that are not related to the BEA 's notice requirements: Lord Goff and G. Jones, The Law of Restitution (6th ed. 2002), at p. 852; see Lipkin Gorman v. Karpnale Ltd. Similarly, leading Canadian commentators consider that since Rural Municipality of Storthoaks v. Mobil Oil Canada, Ltd., [1976] 2 S.C.R. 147, the defence of change of position has been "an established feature of the Canadian law of mistaken payments": Maddaugh and McCamus, at p. 10-35, §10:500.10; see also G. H. L. Fridman, Restitution (2nd ed. 1992), at p. 458. I see no reason why the general defence of change of position should not
2009	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia	4/2/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7598/index.do	B.M.P. Global Distribution Inc. v. Bank of Nova Scotia, 2009 SCC 15, [2009] 1 S.C.R. 504	Deschamps J.	unanimous	British Columbia	Action Commercial law Financial institutions	C	referred to	Foskett v. McKeown, [2001] 1 A.C. 102	SC	UK (HL)	[85] In my view, Taylor, Agip and Hambrouck show that it is possible at common law to trace funds into bank accounts if it is possible to identify the funds. (See also Goode, at pp. 378, 390-91 and 395.) According to Agip and Hambrouck, mixing by the recipient is not a bar to recovery. I do not see those cases as exceptions to a common law rule against tracing in mixed funds. Rather, I accept the view advanced by Lord Millett in Foskett v. McKeown, [2001] 1 A.C. 102 (H.L.), at p. 132, that the rules for tracing money are the same as those for tracing into physical mixtures. This view is also supported by Professor L. D. Smith in his treatise The Law of Tracing, at pp. 74 and 194 ff. For our purposes, there is no need to review all the rules applicable to physical mixtures (Lawrie v. Rathbun (1876), 38 U.C.Q.B. 255; Carter v. Long & Bisby (1896), 26 S.C.R. 430, at pp. 434-35; J. Ulph, "Retaining Proprietary Rights at Common Law Through Mixtures and Changes", [2001] L.M.C.L.Q. 449). Suffice it to say that, as between innocent contributors, contributions are followed first to amounts they have withdrawn. In the case at bar, since the withdrawals of all those who received funds far exceeded their contributions, BBC can trace its own contribution to the balances remaining in the accounts
2009	Teck Cominco Metals Ltd. v. Lloyd's Underwriters	2/20/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6649/index.do	Teck Cominco Metals Ltd. v. Lloyd's Underwriters, 2009 SCC 11, [2009] 1 S.C.R. 321	McLachlin C.J.	unanimous	British Columbia	International law	R		Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675,	statute	US	[3] The largest claim arises from the discharge of waste material known as "slag" into the Columbia River adjacent to Teck's smelter in Trail. Allegedly, the discharge accumulated in the Upper Columbia River and Lake Roosevelt in Washington State. In an action filed in the U.S. District Court in 2004 (the "U.S. Environmental Action"), numerous private citizens and the State of Washington seek to hold Teck liable under a U.S. statute (the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. __ 9601-9675) for environmental property damage allegedly caused by the contamination.
2009	Shafron v. KRG Insurance Brokers (Western) Inc.	1/23/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7327/index.do	Shafron v. KRG Insurance Brokers (Western) Inc., 2009 SCC 6, [2009] 1 S.C.R. 157	Rothstein J.	unanimous	British Columbia	Contract Labour law	C	not followed	T. Lucas & Co. v. Mitchell, [1974] Ch. 129	lower-level court	UK	[35] Other cases have accepted that severance might be applied if the severed parts are independent of one another or can be severed without the severance affecting the meaning of the part remaining. See, for example, T. S. Taylor Machinery Co. v. Biggar (1968), 2 D.L.R. (3d) 281 (Man. C.A.), at p. 290, Putsman v. Taylor, [1927] 1 K.B. 637 (Div. Ct.), at pp. 639-40, and T. Lucas & Co. v. Mitchell, [1974] Ch. 129 (C.A.), at p. 135.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2009	Shafron v. KRG Insurance Brokers (Western) Inc.	1/23/2009	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7327/index.do	Shafron v. KRG Insurance Brokers (Western) Inc., 2009 SCC 6, [2009] 1 S.C.R. 157	Rothstein J.	unanimous	British Columbia	Contract Labour law	C	referred to	Frederick E. Rose (London) Ld. v. William H. Pim Jnr. & Co., [1953] 2 Q.B. 450	lower-level court	UK	[52] However, this is not a case in which rectification is properly applicable. In Frederick E. Rose (London) Ld. v. William H. Pim Jnr. & Co., [1953] 2 Q.B. 450 (C.A.), Denning L.J. stated at p. 461: Rectification is concerned with contracts and documents, not with intentions. In order to get rectification it is necessary to show that the parties were in complete agreement on the terms of their contract, but by an error wrote them down wrongly; and in this regard, in order to ascertain the terms of their contract, you do not look into the inner minds of the parties — into their intentions — any more than you do in the formation of any other contract. Here, there was nothing to indicate what the parties intended by the use of the term "Metropolitan" when they entered into the covenant and nothing to indicate that they agreed on an area and then mistakenly wrote down "Metropolitan".
2008	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada	11/21/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6236/index.do?q=%22The+argument+was+made+that+any+time+a+loss+is+shown+to+be+occasioned+by+the+design%22	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada, [2008] 3 S.C.R. 453, 2008 SCC 66	Binnie J.	majority	Ontario	Insurance	C	not followed	Queensland Government Railways v. Manufacturers' Mutual Insurance, Ltd., [1969] 1 Lloyd's Rep. 214	SC	Australia	A. The Queensland Principle [38] The argument was made that any time a loss is shown to be occasioned by the design, such failure is prima facie proof that the design was faulty or improper because the product, as designed, turned out to be unfit for the intended purpose. The exception is for a "faulty design" not "faulty designer", as noted by the High Court of Australia in Queensland Government Railways v. Manufacturers' Mutual Insurance, Ltd., [1969] 1 Lloyd's Rep. 214. In that case three concrete piers of a railway bridge under construction were swept away by a flood. The insurance policy excluded "loss or damage arising from faulty design". An arbitrator found the cause of the collapse to be the inability of the piers to withstand the transverse forces of the river current to which they became subject. He also found that it was reasonable for the designing engineer to rely on the fact that a previous bridge in that location had stood for 50 years, and that the design was in accordance with the then state of the art. On these facts, the High Court unanimously (5-0) reversed the arbitrator's award and upheld the exception. Barwick C.J., for himself and three other justices, stated: To design something that will not work simply because at the time of its designing insufficient is known about the problems involved and their solution to achieve a successful outcome is a common enough instance of faulty design. [p. 217] Barwick C.J. did not rest his decision on the foreseeability of the risk of a flood "higher than any previously recorded" (p. 215), although Windeyer J., in a concurring judgment, considered such a flood to be a foreseeable risk (p. 219). Instead, Barwick C.J.'s target was the "state of the engineering art" issue. He wrote: The learned arbitrator came to the conclusion that work done at the University of Queensland in investigating the cause of the collapse of the piers "operated as an enlargement of engineering knowledge" and that, when the bridge was designed, . . . engineering knowledge and practice lacked a proper appreciation of the extent of the powerful forces which bridge piers may be required to withstand. [p. 216]
2008	St. Lawrence Cement Inc. v. Barrette	11/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2609/index.do	St. Lawrence Cement Inc. v. Barrette, [2008] 3 S.C.R. 392, 2008 SCC 64	LeBel and Deschamps JJ.	unanimous	Quebec	Property law	C	referred to	Allen v. Gulf Oil Refining Ltd., [1981] 1 All E.R. 353	SC	UK (HL)	[97] First, SLC argues that as a result of the SLC Special Act passed by the Quebec legislature in 1952 to govern its activities, it has immunity from actions in damages relating to its industrial activities. In its view, this immunity results from the rule that a person or a corporation may not be held liable in nuisance if the activity in question is authorized by statute and it is proved that the nuisance is the inevitable result or consequence of exercising that authority. According to SLC, although this rule derives from English law (Allen v. Gulf Oil Refining Ltd., [1981] 1 All E.R. 353 (H.L.); Manchester Corporation v. Farnworth, [1930] A.C. 171 (H.L.); Hammersmith and City Railway Co. v. Brand (1869), L.R. 4 H.L. 171), it is recognized in Canadian common law (Ryan v. Victoria (City), [1999] 1 S.C.R. 201; Tock v. St. John's Metropolitan Area Board, [1989] 2 S.C.R. 1181) and is also applicable in Quebec law (Canadian Pacific Railway Co. v. Roy, [1902] A.C. 220 (P.C.); Quimette; Laforest v. Ciments du St-Laurent, [1974] C.S. 289).
2008	R. v. Mahalingan	11/14/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4214/index.do	R. v. Mahalingan, [2008] 3 S.C.R. 316, 2008 SCC 63	Charron J.	concurring partially	Ontario	Criminal law	C	referred to	R. v. Humphrys, [1976] R.T.R. 339 (H.L.)	lower-level court	UK	[114] On the one hand, applying the mutuality requirement is more straightforward in the criminal context because the concerned parties and their privies are usually easier to identify than in the civil context. On the other hand, the mutuality requirement, which by definition would estop the accused as well as the Crown, does not accord with the presumption of innocence and the onus on the Crown to prove its case beyond a reasonable doubt. In the course of explaining why issue estoppel has no place in English criminal law, Viscount Dilhorne in R. v. Humphrys, [1976] R.T.R. 339 (H.L.), at p. 348, referred to R. v. Hogan, [1974] 1 Q.B. 398, as a useful illustration of some of the undesirable consequences of applying issue estoppel in the criminal context. [115] Hogan had been convicted of causing grievous bodily harm with intent to do so. Following his conviction, the victim died and Hogan was charged with murder. At his trial for murder, the Crown contended that Hogan was estopped from putting in issue any of the matters which could be taken as concluded against him at his first trial. The trial judge agreed. Viscount Dilhorne summarized the trial judge's ruling and its effect as follows (at pp. 348-49): While there was no direct authority on the question, he held that issue estoppel applied between the Crown and the defendant in criminal proceedings and that it was mutual with the result that the defendant was estopped from challenging issues decided against him just as much as the prosecution were estopped from challenging a finding on an issue in the defendant's favour in the earlier trial. He therefore had held that Hogan could not challenge the findings at his first trial (1) that the victim had suffered grievous bodily harm; (2) that it had been inflicted deliberately; (3) that it had been inflicted without lawful excuse; and (4) that it had been inflicted with the intention of causing grievous bodily harm. He also held that, as self-defence had been put forward at the first trial unsuccessfully, Hogan could not again put that forward on his trial for murder. The result was that the jury at the murder trial had only to consider whether the death was caused by the injury inflicted in respect of which he had been found guilty at his first trial and the defence put forward of provocation. So the application of issue estoppel meant that the jury at the murder trial, although sworn to give a true verdict according to the evidence, were required to accept the conclusions of another jury on evidence which that jury had heard. [116] Viscount Dilhorne saw "no escape from the conclusion that, if issue estoppel applies in criminal cases, it must apply equally to both parties, to the Crown and the defendant, as it does to the parties to civil litigation". However, it was his position that "issue estoppel has not and never has had a place in English criminal law and it is very undesirable that it should have" (p. 349). He was therefore of the opinion that the ruling of the trial judge in Hogan was wrong.

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2008	R. v. Mahalingan	11/14/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4214/index.do	R. v. Mahalingan, [2008] 3 S.C.R. 316, 2008 SCC 63	McLachlin C.J.	majority	Ontario	Criminal law	C	referred to	Carl Zeiss Stiftung v. Rayner & Keeler Ltd., [1967] 1 A.C. 853	SC	UK (HL)	[49] The requirements of issue estoppel, whether in civil or criminal law, are: (i) that the same question has been decided; (ii) that the judicial decision which is said to create the estoppel was final; and (iii) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies: Angle v. Minister of National Revenue, [1975] 2 S.C.R. 248, at p. 254, per Dickson J. (as he then was), adopting a statement by Lord Guest in Carl Zeiss Stiftung v. Rayner & Keeler Ltd., [1967] 1 A.C. 853 (H.L.), at p. 935.
2008	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada	11/12/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6236/index.do	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada, [2008] 3 S.C.R. 453, 2008 SCC 66	Rothstein J.	dissenting	Ontario	Insurance	C	D	Queensland Government Railways v. Manufacturers' Mutual Insurance, Ltd., [1969] 1 Lloyd's Rep. 214	SC	Australia	[70] In my opinion the term "faulty or improper design" does not imply the introduction of a "state of the art" standard against which an impugned design is to be compared, as held by Binnie J. As explained in Queensland Government Railways v. Manufacturers' Mutual Insurance, Ltd., [1969] 1 Lloyd's Rep. 214 (Aust. H.C.), the distinction that is relevant is between a design that is defective and design that is free from defect (p. 217). The question is whether or not the damage to the insured property was due to an inability of the design to fulfil its purpose in the foreseeable conditions of the property's use. [85] The High Court of Australia made this point in Queensland in dealing with an exclusion for "loss or damage arising from faulty design". In Queensland, a flood swept away the piers of a bridge over a river. Barwick C.J., for the majority, rejected the view that the "faulty design" exclusion would apply simply because the design engineers had failed to meet certain standards. He found that "faulty design" is a more comprehensive term than "negligent designing." At p. 217, he stated: We think it was an error to confine faulty design to "the personal failure or non-compliance with standards which would be expected of designing engineers" on the part of the designing engineers responsible for the piers. To design something that will not work simply because at the time of its designing insufficient is known about the problems involved and their solution to achieve a successful outcome is a common enough instance of faulty design. The distinction which is relevant is that between "faulty", i.e., defective, design and design free from defect. We have not found sufficient ground for reading the exclusion in this policy as not covering loss from faulty design when, as here, the piers fell because their design was defective although, according to the finding, not negligently so. The exclusion is not against loss from "negligent designing"; it is against loss from "faulty design", and the latter is more comprehensive than the former. [86] In my respectful view, the Queensland approach is the appropriate starting point. It teaches that the term "faulty or improper design" attaches to the thing that was designed, not to the work of the design engineers. Whatever standard their work meets or does not meet, the thing designed either works for its intended purpose or it does not. [87] In this case, a "faulty design" is a design that contains faults, is imperfect or is unsound for its purpose and an "improper design" is a design that is unsuitable or ill-adapted to its purpose. In other words, a design that is faulty and improper is one that does not work for the purpose for which it was intended to be used. [88] Queensland has been cited in a number of Canadian cases. In Simcoe & Erie General Insurance Co. v. Willowbrook Homes (1964) Ltd., [1980] I.L.R. ¶ 1-1236 (Alta. C.A.), a concrete wall of a building under construction fell during a severe windstorm. The insurer was able to establish that an exclusion clause for "faulty or improper design" applied because, regardless of whether or not the clause required an element of blameworthiness on
2008	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada	11/12/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6236/index.do	Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada, [2008] 3 S.C.R. 453, 2008 SCC 66	Binnie J.	majority	Ontario	Insurance	C	referred to	Kier Construction Ltd. v. Royal Insurance (U.K.) Ltd. (1992), 30 Con. L.R. 45	lower-level court	UK	[46] Queensland has also been cited in the English courts; see Kier Construction Ltd. v. Royal Insurance (UK) Ltd. (1992), 30 Con. L.R. 45 (Q.B.), and Hitchens (Hatfield) Ltd. v. Prudential Assurance Co., [1991] 2 Lloyd's Rep. 580 (C.A.), but the discussion in those cases does not shed much light on the particular questions at issue here.

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2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	applied	Synthon B.V. v. SmithKline Beecham plc, [2006] 1 All E.R. 685, [2005] UKHL 59	SC	UK (HL)	[12] At the outset, it is appropriate to refer to the words of Judson J. for this Court in Commissioner of Patents v. Farbwerke Hoechst Aktiengesellschaft Vormals Meister Lucius & Bruning, [1964] S.C.R. 49, at p. 57: There is no inherent common law right to a patent. An inventor gets his patent according to the terms of the Patent Act , no more and no less. The most recent reference to the law of patents being wholly statutory are the words of Lord Walker in Synthon B.V. v. SmithKline Beecham plc, [2006] 1 All E.R. 685, [2005] UKHL 59, at paras. 57-58: The law of patents is wholly statutory, and has a surprisingly long history. . . . In the interpretation and application of patent statutes judge-made doctrine has over the years done much to clarify the abstract generalities of the statutes and to secure uniformity in their application. Nevertheless it is salutary to be reminded, from time to time, that the general concepts which are the common currency of patent lawyers are founded on a statutory text, and cannot have any other firm foundation. I therefore turn to the regulatory scheme applicable in this case. [24] In the 2005 decision of the House of Lords in Synthon, Lord Hoffmann has brought some further clarity to the law of anticipation as understood since General Tire. His reference at para. 20 to the "unquestionable authority" of Lord Westbury in Hills v. Evans (1862), 31 L.J. Ch. (N.S.) 457, at p. 463, makes it plain that his analysis does not depend on any change on English law flowing from the enactment of the Patents Act 1977 (U.K.), 1977, c. 37, or the U.K.'s adoption of the Convention on the Grant of European Patents, 1065 U.N.T.S. 199 (entered into force October 7, 1977). He distinguishes between two requirements for anticipation that were not theretofore expressly considered separately, prior disclosure and enablement. [32] In the context of disclosure as explained in Synthon, "the absence of the discovery of the special advantages" to which Lord Wilberforce was referring in Witsiepe's means that the genus patent does not disclose the special advantages of the invention covered by the selection patent. Where there is no such disclosure, there is no discovery of the special advantages of the selection patent as compared to the genus patent, and the disclosure requirement to prove anticipation fails. At this stage, the person skilled in the art is reading the prior patent to understand whether it discloses the special advantages of the second invention. No trial and error is permitted. If in reading the genus patent the special advantages of the invention of the selection patent are not disclosed, the genus patent does not anticipate the selection patent. [36] A more extensive review of the law of enablement as defined in Synthon is contained in a decision of Kitchin J. in Wobben v. Vestas-Celtic Wind Technology Ltd., [2007]
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	applied	Windsurfing International Inc. v. Tabur Marine (Great Britain) Ltd., [1985] R.P.C. 59	lower-level court	uk	[67] It will be useful in an obviousness inquiry to follow the four-step approach first outlined by Oliver L.J. in Windsurfing International Inc. v. Tabur Marine (Great Britain) Ltd., [1985] R.P.C. 59 (C.A.). This approach should bring better structure to the obviousness inquiry and more objectivity and clarity to the analysis. The Windsurfing approach was recently updated by Jacob L.J. in Pozzoli SPA v. BDMO SA, [2007] F.S.R. 37 (p. 872), [2007] EWCA Civ 588, at para. 23: In the result I would restate the Windsurfing questions thus: (1) (a) Identify the notional "person skilled in the art"; (b) Identify the relevant common general knowledge of that person; (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it; (3) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed; (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention? [Emphasis added.] It will be at the fourth step of the Windsurfing/Pozzoli approach to obviousness that the issue of "obvious to try" will arise. [72] Applying the four steps of Windsurfing/Pozzoli, I accept the applications judge's findings of fact where they are unaffected by his rejection of the "obvious to try" test. Where application of the obvious to try test requires further consideration of the evidence, it will be necessary for this Court to make some findings of fact. In

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2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	General Tire & Rubber Co. v. Firestone Tyre & Rubber Co., [1972] R.P.C. 457	lower-level court	uk	[21] The applications judge noted that the English Court of Appeal stated in General Tire & Rubber Co. v. Firestone Tyre & Rubber Co., [1972] R.P.C. 457, at p. 486: If, on the other hand, the prior publication contains a direction which is capable of being carried out in a manner which would infringe the patentee's claim, but would be at least as likely to be carried out in a way which would not do so, the patentee's claim will not have been anticipated, although it may fail on the ground of obviousness. To anticipate the patentee's claim the prior publication must contain clear and unmistakable directions to do what the patentee claims to have invented . . . . [Emphasis added by the applications judge.] He then noted that in Free World, at para. 26, this Court approved the following statement from General Tire: A signpost, however clear, upon the road to the patentee's invention will not suffice. The prior inventor must be clearly shown to have planted his flag at
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	E. I. Du Pont de Nemours & Co. (Witsiepe's) Application, [1982] F.S.R. 303	lower-level court	uk	[31] Section 27(1) of the Act requires as a condition for obtaining a patent that the invention was not "known or used" and was not "described" in any patent or any publication more than two years before the patent application was filed. In the context of genus and selection patents, in E. I. Du Pont de Nemours & Co. (Witsiepe's) Application, [1982] F.S.R. 303 (H.L.), Lord Wilberforce stated, at p. 311: It is the absence of the discovery of the special advantages, as well as the fact of non-making, that makes it possible for such persons to make an invention related to a member of the class. The compound made for the selection patent was only soundly predicted at the time of the genus patent. It was not made and its special advantages were not known. It is for those reasons that a patent should not be denied to the inventor who made and discovered the special advantages of the
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Halliburton Energy Services Inc. v. Smith International (North Sea) Ltd., [2006] EWCA Civ 1715 (BAILII)	lower-level court	uk	[34] Two recent United Kingdom decisions are of assistance. In Halliburton Energy Services Inc. v. Smith International (North Sea) Ltd., [2006] EWCA Civ 1715 (BAILII), Jacob L.J., a highly experienced patent judge, states at para. 18: Patents are meant to teach people how to do things. If what is "taught" involves just too much [work] to be reasonable allowing for all the circumstances including the nature of the art, then the patent cannot be regarded as an "enabling disclosure." . . . The setting of a gigantic project, even if merely routine, will not do.
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Wobben v. Vestas-Celtic Wind Technology Ltd., [2007] EWHC 2636 (Pat.) (BAILII)	lower-level court	uk	[36] A more extensive review of the law of enablement as defined in Synthon is contained in a decision of Kitchin J. in Wobben v. Vestas-Celtic Wind Technology Ltd., [2007] EWHC 2636 (Pat.) (BAILII), at paras. 196-97. Although Wobben was a case in which the alleged infringer raised as one of its defences insufficiency under the United Kingdom legislation, I think guidance is provided as to what will or will not constitute enablement for purposes of anticipation.
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Application of Tomlinson, 363 F.2d 928 (1966)	lower-level court	US	[56] Generally, in the United States, it appears that at the Court of Appeals level, the "obvious to try" test had not been accepted. In Application of Tomlinson, 363 F.2d 928 (C.C.P.A. 1966), Rich J. wrote, at p. 931: Slight reflection suggests, we think, that there is usually an element of "obviousness to try" in any research endeavor, that is not undertaken with complete blindness but rather with some semblance of a chance of success, and that patentability determinations based on that as the test would not only be contrary to statute but result in a marked deterioration of the entire patent system as an incentive to invest in those efforts and attempts which go by the name of "research". See also In re O'Farrell, 853 F.2d 894 (Fed. Cir. 1988), at p. 903

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2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	In re O'Farrell, 853 F.2d 894 (1988)	lower-level court	US	[56] Generally, in the United States, it appears that at the Court of Appeals level, the "obvious to try" test had not been accepted. In Application of Tomlinson, 363 F.2d 928 (C.C.P.A. 1966), Rich J. wrote, at p. 931: Slight reflection suggests, we think, that there is usually an element of "obviousness to try" in any research endeavor, that is not undertaken with complete blindness but rather with some semblance of a chance of success, and that patentability determinations based on that as the test would not only be contrary to statute but result in a marked deterioration of the entire patent system as an incentive to invest in those efforts and attempts which go by the name of "research". See also In re O'Farrell, 853 F.2d 894 (Fed. Cir. 1988), at p. 903.
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007)	Sc	US	[57] However, in KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007), Kennedy J., for a unanimous court, rejected the restrictive approach that the Court of Appeals had taken in that case. He stated, at p. 1739: Throughout this Court's engagement with the question of obviousness, our cases have set forth an expansive and flexible approach inconsistent with the way the Court of Appeals applied its TSM [Teaching-Suggestion-Motivation] test here. To be sure, Graham recognized the need for "uniformity and definiteness." Yet the principles laid down in Graham reaffirmed the "functional approach" of Hotchkiss. To this end, Graham set forth a broad inquiry and invited courts, where appropriate, to look at any secondary considerations that would prove instructive
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Johns-Manville Corporation's Patent, [1967] R.P.C. 479	lower-level court	UK	[59] In the United Kingdom the "obvious to try" test has been accepted since at least 1967: see Johns-Manville Corporation's Patent, [1967] R.P.C. 479 (C.A.). The current state of the law in the United Kingdom was summarized in H. Lundbeck A/S v. Generics (UK) Ltd., [2008] R.P.C. 19 (p. 437), [2008] EWCA Civ 311. Lord Hoffmann stated the following, at paras. 24-25, in response to the argument that the trial judge in that case, Kitchin J., had refused to consider the "obvious to try" test: [The trial judge] cited from Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc. [2007] R.P.C. 20, which represents this [Court of Appeal's] last word on the extent to which the notion of some step being obvious to try is helpful in deciding whether an invention is obvious. The judge then summed up (at para. 72) the current state of the law: "The question of obviousness must be considered on the facts of each case. The court must consider the weight to be attached to any particular factor in the light of all the relevant circumstances. These may include such matters as the motive to find a solution to the problem the patent addresses, the number and extent of the possible avenues of research, the effort involved in pursuing them and the expectation of success." No criticism has been made of this statement of principle . . . . See also Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc., [2007] R.P.C. 20 (p. 487), [2007] EWCA Civ 5, at para. 45 (rev'd [2008] R.P.C. 28 (p.
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	H. Lundbeck A/S v. Generics (UK) Ltd., [2008] R.P.C. 19 (p. 437), [2008] EWCA Civ 311	lower-level court	UK	[59] In the United Kingdom the "obvious to try" test has been accepted since at least 1967: see Johns-Manville Corporation's Patent, [1967] R.P.C. 479 (C.A.). The current state of the law in the United Kingdom was summarized in H. Lundbeck A/S v. Generics (UK) Ltd., [2008] R.P.C. 19 (p. 437), [2008] EWCA Civ 311. Lord Hoffmann stated the following, at paras. 24-25, in response to the argument that the trial judge in that case, Kitchin J., had refused to consider the "obvious to try" test: [The trial judge] cited from Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc. [2007] R.P.C. 20, which represents this [Court of Appeal's] last word on the extent to which the notion of some step being obvious to try is helpful in deciding whether an invention is obvious. The judge then summed up (at para. 72) the current state of the law: "The question of obviousness must be considered on the facts of each case. The court must consider the weight to be attached to any particular factor in the light of all the relevant circumstances. These may include such matters as the motive to find a solution to the problem the patent addresses, the number and extent of the possible avenues of research, the effort involved in pursuing them and the expectation of success." No criticism has been made of this statement of principle . . . . See also Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc., [2007] R.P.C. 20 (p. 487), [2007] EWCA Civ 5, at para. 45 (rev'd [2008] R.P.C. 28 (p. 716), [2008] UKHL 49). The passage at para. 45 in the decision of the Court of Appeal remains relevant and uncontested. [64] While I do not think the list is exhaustive, the factors set forth by Kitchin J. and adopted by Lord Hoffmann in Lundbeck, referred to at para. 59 of these reasons, are useful guides in deciding whether a particular step was "obvious to try". However, the "obvious to try" test must be approached cautiously. It is only one factor to assist in the obviousness inquiry. It is not a panacea for alleged infringers. The patent system is intended to provide an economic encouragement for research
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc., [2007] R.P.C. 20 (p. 487), [2007] EWCA Civ 5, rev'd [2008] R.P.C. 28 (p. 716), [2008] UKHL 49	lower-level court	UK	[59] In the United Kingdom the "obvious to try" test has been accepted since at least 1967: see Johns-Manville Corporation's Patent, [1967] R.P.C. 479 (C.A.). The current state of the law in the United Kingdom was summarized in H. Lundbeck A/S v. Generics (UK) Ltd., [2008] R.P.C. 19 (p. 437), [2008] EWCA Civ 311. Lord Hoffmann stated the following, at paras. 24-25, in response to the argument that the trial judge in that case, Kitchin J., had refused to consider the "obvious to try" test: [The trial judge] cited from Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc. [2007] R.P.C. 20, which represents this [Court of Appeal's] last word on the extent to which the notion of some step being obvious to try is helpful in deciding whether an invention is obvious. The judge then summed up (at para. 72) the current state of the law: "The question of obviousness must be considered on the facts of each case. The court must consider the weight to be attached to any particular factor in the light of all the relevant circumstances. These may include such matters as the motive to find a solution to the problem the patent addresses, the number and extent of the possible avenues of research, the effort involved in pursuing them and the expectation of success." No criticism has been made of this statement of principle . . . . See also Angiotech Pharmaceuticals Inc. v. Conor Medsystems Inc., [2007] R.P.C. 20 (p. 487), [2007] EWCA Civ 5, at para. 45 (rev'd [2008] R.P.C. 28 (p.

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2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Saint-Gobain PAM SA v. Fusion Provida Ltd., [2005] EWCA Civ 177 (BAILII)	lower-level court	UK	[65] In Saint-Gobain PAM SA v. Fusion Provida Ltd., [2005] EWCA Civ 177 (BAILII), Jacob L.J. stated, at para. 35: Mere possible inclusion of something within a research programme on the basis you will find out more and something might turn up is not enough. If it were otherwise there would be few inventions that were patentable. The only research which would be worthwhile (because of the prospect of protection) would be into areas totally devoid of prospect. The "obvious to try" test really only works where it is more-or-less self-evident that what is being tested ought to work. In General Tire, Sachs L.J. said, at p. 497: "Obvious" is, after all, a much-used word and it does not seem to us that there is any need to go beyond the primary dictionary meaning of "very plain". In Intellectual Property Law, at p. 136, Professor Vaver also equates "obvious" to "very plain". I am of the opinion that the "obvious to try" test will work only where it is very plain or, to use the words of Jacob L.J., more or less self-evident that what is being tested ought to work.
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	May & Baker Ltd. v. Boots Pure Drug Co. (1950), 67 R.P.C. 23	lower-level court	UK	[110] The invention defined by claim 14 of the '875 patent is not the same as the invention claimed by claim 1 of the '777 patent because the former is broader than the latter. Although not a selection patent case, there is a striking passage in the judgment of Lord Simonds in May & Baker Ltd. v. Boots Pure Drug Co. (1950), 67 R.P.C. 23 (H.L.), at p. 32. It describes a scenario very much the same as in the case at bar: Is there then a difference in the inventions claimed in the original and amended specifications? On the one hand a vast range of possible compounds, a fragment no doubt in the whole sphere of organic chemistry yet so numerous that the number becomes meaningless, within which no one can say what hidden things might be brought to light, what benefits discovered for the relief of humanity. On the other hand two specific drugs. Are these inventions the same or different inventions? My Lords, I hesitate to appeal to common sense, lest others should take a different view of the case. Yet in the consensus of opinion of all the learned judges who have dealt with this matter I find justification for the view which I most emphatically hold that it is plain common sense to say that the inventions are not the same but different: and I think that, if they are different, the substantial difference could not be denied. I think Lord Simonds' comments cover this case precisely:
2008	Apotex Inc. v. Sanofi-Synthelabo Canada Inc.	11/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2575/index.do	Apotex Inc. v. Sanofi-Synthelabo Canada Inc., [2008] 3 S.C.R. 265, 2008 SCC 61	Rothstein J.	unanimous	Federal Court of Appeal	Intellectual property	R		Patents Act 1977 (U.K.), 1977, c. 37.	statute	UK	[24] In the 2005 decision of the House of Lords in Synthon, Lord Hoffmann has brought some further clarity to the law of anticipation as understood since General Tire. His reference at para. 20 to the "unquestionable authority" of Lord Westbury in Hills v. Evans (1862), 31 L.J. Ch. (N.S.) 457, at p. 463, makes it plain that his analysis does not depend on any change on English law flowing from the enactment of the Patents Act 1977 (U.K.), 1977, c. 37, or the U.K.'s adoption of the Convention on the Grant of European Patents, 1065 U.N.T.S. 199 (entered into force October 7, 1977). He distinguishes between two requirements for anticipation that were not theretofore expressly considered separately, prior disclosure and enablement.
2008	R. v. Illes	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2513/index.do	R. v. Illes, [2008] 3 S.C.R. 134, 2008 SCC 57	Charron J.	dissenting	British Columbia	Criminal law	C	D	R. v. Duncan (1981), 73 Cr. App. R. 359	lower-level court	UK	[41] The impugned instruction, albeit without the presumptive language, is modelled on the jury charge recommended by the English Court of Appeal in R. v. Duncan (1981), 73 Cr. App. R. 359. The Court of Appeal in the case at bar, based on its own decision in R. v. David (2006), 213 C.C.C. (3d) 64, 2006 BCCA 412, concluded that it is dangerous to instruct the jury in a manner that suggests that inculpatory and exculpatory statements ought to be weighed differently, particularly when the instruction is couched in presumptive terms. The court was divided however on the effect of the impugned instruction in the context of Mr. Illes's trial. The majority concluded that the verdict would necessarily have been the same despite the error. Rowles J.A., dissenting, was of the view that the instruction could not be regarded as a harmless error and, consequently, would have granted a new trial on that ground. [57] The first ground of appeal raises the question whether, when faced with statements by an accused containing both inculpatory and exculpatory elements, a trial judge may, or should, instruct the jury that "the incriminating parts are likely to be true otherwise why say them?", whereas excuses for one's behaviour do not necessarily carry the same weight. As explained more fully in R. v. Rojas, [2008] 3 S.C.R. 111, 2008 SCC 56, released concurrently, the mixed statement instruction originates from the English Court of Appeal's decision in Duncan. For reasons stated in Rojas, I agree with the court below that it is dangerous for a trial judge to instruct the jury in a manner that suggests that inculpatory and exculpatory statements ought to be weighed differently. I therefore conclude that the Duncan instruction should not be adopted by Canadian trial courts. [58] That said, as I explained in Rojas, the issue of whether a Duncan-type instruction constitutes misdirection in any given case will depend entirely on the particular words used and their context. The main difficulty in this case is that the trial judge added words suggestive of a legal presumption to the effect that incriminating parts of an accused's statement are likely to be true. As stated in Rojas, where a Duncan-type instruction is couched in terms of a legal presumption, the prejudicial effect may be difficult to overcome. Nevertheless, having regard to the contents of the letters in question, their admitted fabrication by Mr. Illes, the respective use made of the evidence at trial by the Crown and the defence, and the instructions to the jury as a whole, I agree with the majority in the Court of Appeal that this unfortunate instruction, although given in error, could not realistically have impacted on the verdict.

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2008	R. v. Rojas	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4180/index.do	R. v. Rojas, [2008] 3 S.C.R. 111, 2008 SCC 56	Charron J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Duncan (1981), 73 Cr. App. R. 359	lower-level court	UK	[4] The second ground of appeal raises the question whether, when faced with statements by an accused containing both inculpatory and exculpatory elements, a trial judge may, or should, instruct the jury that the incriminating parts are likely to be true "otherwise why say them?", whereas excuses for one's behaviour do not necessarily carry the same weight. This "mixed statement" instruction originates from the decision of the English Court of Appeal in R. v. Duncan (1981), 73 Cr. App. R. 359, and, for this reason, it is often referred to as "the Duncan instruction". As I will explain, I conclude that it is dangerous to instruct the jury in a manner which suggests that inculpatory statements should be given more weight than exculpatory statements and, consequently, that it is best to avoid instructing the jury in this manner. [5] The effect of a mixed statement instruction of the kind found in Duncan, however, may vary considerably from case to case, depending on the precise content of the instruction and its context. Whether the instruction constitutes reversible error is a matter to be determined on a case-by-case basis, having regard to the charge as a whole and the evidence at trial. In this case, I agree with the Court of Appeal that the instruction, when considered in context, did not constitute a misdirection. [29] The underlined text originates from the English Court of Appeal's decision in Duncan. Duncan was charged with murder in respect of the death of the woman with whom he was living. He did not testify at his trial. However, in several out-of-court statements made to a neighbour and to the police, he admitted the killing but was unable to explain the motive for his actions. He suggested that he must have lost his temper when the victim teased him. The issue before the court was whether the latter assertion about a possible motive could be considered for the truth of its contents and give rise to a possible defence of provocation. The basic rules of evidence at play were explained by the Court of Appeal as follows (at p. 363): (1) What a person says out of court is, generally speaking, not admissible to prove the truth of what he says. (2) It may be admissible if — (a) it is an exception to the hearsay rule, in which case it is evidence of the truth of what is stated; (b) it falls outside the hearsay rule, that is to say if it is adduced for a purpose other than proving the truth of the statement — an example of this is to be found in Subramaniam v. Public Prosecutor, [1956] 1 W.L.R. 965, where a statement was relevant to the question of whether there had been duress or not. The only relevant exception to the hearsay rule in the present circumstances is that relating to admissions against interest or confessions. [30] In short, the inculpatory parts of the statements were admissible under the confessions exception to the hearsay rule, whereas the exculpatory parts of the statements were self-serving and inadmissible. The Crown agreed, however, that where the statement is adduced as an admission against interest, the whole of the statement must be adduced. The Court of Appeal agreed with this concession, noting that "[a]ny other course would obviously be unfair" (p. 363). The question then became whether the exculpatory parts of the mixed statements could constitute evidence of the truth of their contents, or whether they were admissible for the limited purpose of providing context to the admissions against interest. The Crown advocated the latter rule.
2008	R. v. Rojas	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4180/index.do	R. v. Rojas, [2008] 3 S.C.R. 111, 2008 SCC 56	Charron J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Sharp, [1988] 1 W.L.R. 7	lower-level court	UK	[31] The English Court of Appeal did not accede to the Crown's argument, stating that it could prove a very difficult task to explain the difference between those parts of a mixed statement which were truly a confession and those parts which were exculpatory. The court therefore ruled that the entirety of the statement was admissible for the truth of its contents but recommended that the jury be charged in the following manner (at p. 365): Where a "mixed" statement is under consideration by the jury in a case where the defendant has not given evidence, it seems to us that the simplest, and, therefore, the method most likely to produce a just result, is for the jury to be told that the whole statement, both the incriminating parts and the excuses or explanations, must be considered by them in deciding where the truth lies. It is, to say the least, not helpful to try to explain to the jury that the exculpatory parts of the statement are something less than evidence of the facts they state. Equally, where appropriate, as it usually will be, the judge may, and should, point out that the incriminating parts are likely to be true (otherwise why say them?), whereas the excuses do not have the same weight. [Emphasis added.] This instruction was later endorsed by the House of Lords in R. v. Sharp, [1988] 1 W.L.R. 7, and more recently in R. v. Aziz, [1995] 2 Cr. App. R. 478. [38] In recognizing both the basis for admitting inculpatory statements and the exceptional admissibility of an accused's untested statements, the Duncan instruction, as such, accurately reflects the state of the law. In England, the instruction is also perceived as achieving the "right balance", as the House of Lords explained in Aziz (at p. 485): Moreover, I would reject the suggestion that the law as stated in Sharp is unduly balanced in favour of the defendants who do not testify. On the contrary, as was emphasised in Duncan and Sharp, a judge is entitled to comment adversely on the quality of the exculpatory parts of a mixed statement
2008	R. v. Rojas	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4180/index.do	R. v. Rojas, [2008] 3 S.C.R. 111, 2008 SCC 56	Charron J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Aziz, [1995] 2 Cr. App. R. 478	lower-level court	UK	[31] The English Court of Appeal did not accede to the Crown's argument, stating that it could prove a very difficult task to explain the difference between those parts of a mixed statement which were truly a confession and those parts which were exculpatory. The court therefore ruled that the entirety of the statement was admissible for the truth of its contents but recommended that the jury be charged in the following manner (at p. 365): Where a "mixed" statement is under consideration by the jury in a case where the defendant has not given evidence, it seems to us that the simplest, and, therefore, the method most likely to produce a just result, is for the jury to be told that the whole statement, both the incriminating parts and the excuses or explanations, must be considered by them in deciding where the truth lies. It is, to say the least, not helpful to try to explain to the jury that the exculpatory parts of the statement are something less than evidence of the facts they state. Equally, where appropriate, as it usually will be, the judge may, and should, point out that the incriminating parts are likely to be true (otherwise why say them?), whereas the excuses do not have the same weight. [Emphasis added.] This instruction was later endorsed by the House of Lords in R. v. Sharp, [1988] 1 W.L.R. 7, and more recently in R. v. Aziz, [1995] 2 Cr. App. R. 478. [38] In recognizing both the basis for admitting inculpatory statements and the exceptional admissibility of an accused's untested statements, the Duncan instruction, as such, accurately reflects the state of the law. In England, the instruction is also perceived as achieving the "right balance", as the House of Lords explained in Aziz (at p. 485): Moreover, I would reject the suggestion that the law as stated in Sharp is unduly balanced in favour of the defendants who do not testify. On the contrary, as was emphasised in Duncan and Sharp, a judge is entitled to comment adversely on the quality of the exculpatory parts of a mixed statement which has not been tested by cross-examination. The right balance has been found. [Emphasis added.] Judges in Canada, as in England, are also entitled to comment on the evidence so long as they make it clear that factual issues are for the jury to decide:

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2008	Saulnier v. Royal Bank of Canada	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6231/index.do	Saulnier v. Royal Bank of Canada, [2008] 3 S.C.R. 166, 2008 SCC 58	Binnie J.	unanimous	Nova Scotia	Bankruptcy and insolvency	C	referred to	Re Celtic Extraction Ltd., [2000] 2 W.L.R. 991	lower-level court	UK	[41] This approach is well illustrated by the trial decision of Kennedy C.J.S.C. in this case, who put the argument succinctly: That evidence confirms my understanding, that on the east coast of Canada fishing licenses, particularly for lobster, are commonly exchanged between fishermen for a great deal of money. Fishing vessels of questionable value are traded for small fortunes because of the licences that are anticipated to come with them. . . . To ignore commercial reality would be to deny creditors access to something of significant value in the hands of the bankrupt. That would be both artificial and potentially inequitable. [paras. 51-52 and 58] Similar views have been expressed in other licensing contexts: see Saskatoon Auction Mart Ltd. v. Finesse Holsteins (1992), 4 P.P.S.A.C. (2d) 67 (Sask. Q.B.); G. Slocombe & Associates Inc. v. Gold River Lodges Ltd. (2001), 2 P.P.S.A.C. (3d) 324, 2001 BCSC 840, at para. 8; and the English cases of Re Celtic
2008	Saulnier v. Royal Bank of Canada	10/24/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6231/index.do	Saulnier v. Royal Bank of Canada, [2008] 3 S.C.R. 166, 2008 SCC 58	Binnie J.	unanimous	Nova Scotia	Bankruptcy and insolvency	C	referred to	Swift v. Dairywise Farms Ltd., [2000] 1 W.L.R. 1177	lower-level court	UK	[41] This approach is well illustrated by the trial decision of Kennedy C.J.S.C. in this case, who put the argument succinctly: That evidence confirms my understanding, that on the east coast of Canada fishing licenses, particularly for lobster, are commonly exchanged between fishermen for a great deal of money. Fishing vessels of questionable value are traded for small fortunes because of the licences that are anticipated to come with them. . . . To ignore commercial reality would be to deny creditors access to something of significant value in the hands of the bankrupt. That would be both artificial and potentially inequitable. [paras. 51-52 and 58] Similar views have been expressed in other licensing contexts: see Saskatoon Auction Mart Ltd. v. Finesse Holsteins (1992), 4 P.P.S.A.C. (2d) 67 (Sask. Q.B.); G. Slocombe & Associates Inc. v. Gold River Lodges Ltd. (2001), 2 P.P.S.A.C. (3d) 324, 2001 BCSC 840, at para. 8; and the English cases of Re Celtic
2008	F.H. v. McDougall	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do	F.H. v. McDougall, [2008] 3 S.C.R. 41, 2008 SCC 53	Rothstein J.	unanimous	British Columbia	Appeal Evidence	C	referred to	Bater v. Bater, [1950] 2 All E.R. 458	lower-level court	UK	[27] Courts in British Columbia have tended to follow the approach of Lord Denning in Bater v. Bater, [1950] 2 All E.R. 458 (C.A.). Lord Denning was of the view that within the civil standard of proof on a balance of probabilities "there may be degrees of probability within that standard" (p. 459), depending upon the subject matter. He stated: It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion. [p. 459] [28] In the present case the trial judge referred to H.F. v. Canada (Attorney General), at para. 154, in which Neilson J. stated: The court is justified in imposing a higher degree of probability which is "commensurate with the occasion": . . . . [29] In the constitutional context, Dickson C.J. adopted the Bater approach in R. v. Oakes, [1986] 1 S.C.R. 103. In his view a "very high degree of probability" required that the evidence be cogent and persuasive and make clear the consequences of the decision one way or the other. He wrote at p. 138: Having regard to the fact that s. 1 is being invoked for the purpose of justifying a violation of the constitutional rights and freedoms the Charter was designed to protect, a very high degree of probability will be, in the words of Lord Denning, "commensurate with the occasion". Where evidence is required in order to prove the constituent elements of a s. 1 inquiry, and this will generally be the case, it should be cogent and persuasive and make clear to the Court the consequences of imposing or not imposing the limit. [30] However, a "shifting standard" of probability has not been universally accepted. In Continental Insurance Co. v. Dalton Cartage Co., [1982] 1 S.C.R. 164, Laskin C.J. rejected a "shifting standard". Rather, to take account of the seriousness of the allegation, he was of the view that a trial judge should scrutinize the evidence with "greater care". At pp. 169-71 he stated:

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2008	F.H. v. McDougall	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do	F.H. v. McDougall, [2008] 3 S.C.R. 41, 2008 SCC 53	Rothstein J.	unanimous	British Columbia	Appeal Evidence	C	referred to	R (McCann) v. Crown Court at Manchester, [2003] 1 A.C. 787, [2002] UKHL 39	SC	UK (HL)	[32] In the United Kingdom some decisions have indicated that depending upon the seriousness of the matters involved, even in civil cases, the criminal standard of proof should apply. In R (McCann) v. Crown Court at Manchester, [2003] 1 A.C. 787, [2002] UKHL 39, Lord Steyn said at para. 37: . . . I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary: In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563, 586 D-H, per Lord Nicholls of Birkenhead. For essentially practical reasons, the Recorder of Manchester decided to apply the criminal standard. The Court of Appeal said that would usually be the right course to adopt. Lord Bingham of Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of these views. But in my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 apply the criminal standard. [36] The unanimous conclusion of the House of Lords was that there is only one civil standard of proof. At para. 13, Lord Hoffmann states: I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. However, Lord Hoffmann did not disapprove of application of the criminal standard depending upon the issue involved. Following his very clear statement that there is only one civil standard of proof, he somewhat enigmatically wrote, still in para. 13: I do not intend to disapprove any of the cases in what I have called the first category, but I agree with the observation of Lord Steyn in McCann's case, at p. 812, that clarity would be greatly enhanced if the courts said simply that although the proceedings were civil, the nature of the particular issue involved
2008	F.H. v. McDougall	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do	F.H. v. McDougall, [2008] 3 S.C.R. 41, 2008 SCC 53	Rothstein J.	unanimous	British Columbia	Appeal Evidence	C	referred to	In re H. (Minors) (Sexual Abuse: Standard of Proof), [1996] A.C. 563	SC	UK (HL)	[33] Yet another consideration, that of "inherent probability or improbability of an event" was discussed by Lord Nicholls in In re H. (Minors) (Sexual Abuse: Standard of Proof), [1996] A.C. 563 (H.L.), at p. 586: . . . the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established
2008	F.H. v. McDougall	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do	F.H. v. McDougall, [2008] 3 S.C.R. 41, 2008 SCC 53	Rothstein J.	unanimous	British Columbia	Appeal Evidence	C	referred to	In re B (Children), [2008] 3 W.L.R. 1, [2008] UKHL 35	SC	UK (HL)	[34] Most recently in In re B (Children), [2008] 3 W.L.R. 1, [2008] UKHL 35, a June 11, 2008 decision, the U.K. House of Lords again canvassed the issue of standard of proof. Subsequent to the hearing of the appeal, Mr. Southey, counsel for the Attorney General of Canada, with no objection from other counsel, brought this case to the attention of the Court. [35] Lord Hoffmann addressed the "confusion" in the United Kingdom courts over this issue. He stated at para. 5: Some confusion has however been caused by dicta which suggest that the standard of proof may vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned. The cases in which such statements have been made fall into three categories. First, there are cases in which the court has for one purpose classified the proceedings as civil (for example, for the purposes of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) but nevertheless thought that, because of the serious consequences of the proceedings, the criminal standard of proof or something like it should be applied. Secondly, there are cases in which it has been observed that when some event is inherently improbable, strong evidence may be needed to persuade a tribunal that it more probably happened than not. Thirdly, there are cases in which judges are simply confused about whether they are talking about the standard of proof or about the role of inherent probabilities in deciding whether the burden of proving a fact to a given standard has been discharged. [38] In re B is a child case under the United Kingdom Children Act 1989. While her comments on standard of proof are confined to the 1989 Act, Baroness Hale explained that neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. At paras. 70-72, she stated: My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section I of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted; or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted; or he may find himself still at liberty to maltreat this or other children in the future.
2008	R. v. R.E.M.	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5775/index.do	R. v. R.E.M., [2008] 3 S.C.R. 3, 2008 SCC 51	McLachlin C.J.	unanimous	British Columbia	Criminal law	C	referred to	Swinburne v. David Syme & Co., [1909] V.L.R. 550, aff'd on other grounds, [1910] V.L.R. 539	lower-level court	Australia	[8] The common law historically recognized no legal duty upon a tribunal to disclose its reasons for a decision or to identify what evidence has been believed and what disbelieved: see e.g. R. v. Inhabitants of Audly (1699), 2 Salk. 526, 91 E.R. 448; Swinburne v. David Syme & Co., [1909] V.L.R. 550 (S.C.), aff'd on other grounds, [1910] V.L.R. 539 (H.C. Aust.); Macdonald v. The Queen, [1977] 2 S.C.R. 665. In the words of a former Chief Justice of this Court, Laskin C.J.: A recurring question [in] non-jury trials and at the appellate level is whether reasons should be given. There is no legal requirement of this kind, and it is quite unnecessary in a great many cases that come to trial before a Judge alone, and equally unnecessary in a great many cases where the appellate Court's judgment affirms the trial Judge. (B. Laskin, "A Judge and His Constituencies" (1976), 7 Man. L.J. 1, at pp. 3-4)
2008	R. v. R.E.M.	10/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5775/index.do	R. v. R.E.M., [2008] 3 S.C.R. 3, 2008 SCC 51	McLachlin C.J.	unanimous	British Columbia	Criminal law	C	referred to	United States v. Forness, 125 F.2d 928 (1942)	lower-level court	US	[12] In addition, reasons help ensure fair and accurate decision making; the task of articulating the reasons directs the judge's attention to the salient issues and lessens the possibility of overlooking or under-emphasizing important points of fact or law. As one judge has said: "Often a strong impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper" (United States v. Forness, 125 F.2d 928 (2d Cir. 1942), at p. 942). Finally, reasons are a fundamental means of developing the law uniformly, by providing guidance to future courts in accordance with the principle of stare decisis. Thus, the observation in H. Broom's Constitutional Law Viewed in Relation to Common Law, and Exemplified by Cases (2nd ed. 1885), at pp. 147-48: "A public statement of the reasons for a judgment is due to the suitors and to the community at large — is essential to the establishment of fixed intelligible rules, and for the development of law as a science." In all these ways, reasons instantiate the rule of law and support the legitimacy of the judicial system.

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2008	RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.	10/9/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4172/index.do	RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc., [2008] 3 S.C.R. 79, 2008 SCC 54	Abella J.	dissenting in part	British Columbia	Labour law	C	D	Faccenda Chicken Ltd. v. Fowler, [1986] 1 All E.R. 617	lower-level court	UK	[39] The employment contract is one of personal service. That means that subject to the discussion that follows about non-competition clauses and fiduciary duties, employees are generally free to leave their employment and, on leaving, to compete with their former employer. This is understandably a painful reality for an employer to accept, but it is, nonetheless, a lawful one. (Canadian Aero Service Ltd. v. O'Malley, [1974] S.C.R. 592, at p. 606, distinguishing fiduciary employees; CRC-Evans Canada Ltd. v. Pettifer (1997), 26 C.C.E.L. (2d) 294 (Alta. Q.B.), at para. 54; Alnor Services Ltd. v. Sawyer (1990), 31 C.C.E.L. 34 (B.C.S.C.); Faccenda Chicken Ltd. v. Fowler, [1986] 1 All E.R. 617 (C.A.); Geoffrey England, Employment Law in Canada (4th ed. (loose-leaf)), vol. 2, at § 11-141).
2008	New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.	7/18/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4150/index.do	New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc., [2008] 2 S.C.R. 604, 2008 SCC 45	Abella J.	majority	New Brunswick	Constitutional law Pensions	C	referred to	Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 408	lower-level court	UK	[40] In the income tax context, the courts have had to determine whether a pension plan is bona fide or merely set up as a "sham" for the purpose of achieving a tax advantage. For example, in Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 408, Gibson J. found that the company's pension plan was a masquerade, and that the parties and the trustee of the plan "never intended that it be a document that the parties would act upon" (p. 418). He relied on Snook v. London & West Riding Investments, Ltd., [1967] 1 All E.R. 518 (C.A.), where Lord Diplock said: As regards the contention of the plaintiff that the transactions between himself, Auto-Finance, Ltd. and the defendants were a "sham", it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. [p. 528]
2008	New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.	7/18/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4150/index.do	New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc., [2008] 2 S.C.R. 604, 2008 SCC 45	Abella J.	majority	New Brunswick	Constitutional law Pensions	C	referred to	Snook v. London & West Riding Investments, Ltd., [1967] 1 All E.R. 518	lower-level court	UK	[40] In the income tax context, the courts have had to determine whether a pension plan is bona fide or merely set up as a "sham" for the purpose of achieving a tax advantage. For example, in Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 408, Gibson J. found that the company's pension plan was a masquerade, and that the parties and the trustee of the plan "never intended that it be a document that the parties would act upon" (p. 418). He relied on Snook v. London & West Riding Investments, Ltd., [1967] 1 All E.R. 518 (C.A.), where Lord Diplock said: As regards the contention of the plaintiff that the transactions between himself, Auto-Finance, Ltd. and the defendants were a "sham", it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. [p. 528]
2008	Holland v. Saskatchewan	7/11/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6250/index.do	Holland v. Saskatchewan, [2008] 2 S.C.R. 551, 2008 SCC 42	McLachlin C.J.	unanimous	Saskatchewan	State Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	lower-level court	UK	[8] I agree with the Court of Appeal that the claim, thus characterized, discloses no cause of action recognized by law and must be struck. The Court of Appeal correctly concluded that the viability of the action in negligence falls to be determined by application of Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), adopted and refined by this Court in Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79. The Court of Appeal concluded that to date the law has not recognized an action against a government authority for negligent breach of statutory duty by acting outside or contrary to the law. This being the case, the question was whether a new instance of negligence should be permitted. This question is resolved by asking whether a new kind of duty of care arises under the two-step Anns inquiry. The Court of Appeal did not find it necessary to consider the first branch of Anns, holding that even if the requirement of proximity were established, residual policy considerations at the second step militate against recognizing such a cause of action. [10] The next question was whether a hitherto unrecognized relationship of potential liability in negligence should be recognized under the Anns test. Assuming, without deciding, that the legislative and regulatory matrix established proximity between the Class and the government at the first step, policy considerations would negate recognition of liability, as the Court of Appeal detailed. These include the chilling effect and specter of indeterminate liability. As Richards J.A. stated at para. 43 of the Court of Appeal's decision: . . . the respondent's theory of liability would fundamentally shift the way in which the public and private spheres historically have carried the consequences or burden of governmental action which is shown to be ultra vires. I see no policy reason which would warrant such a dramatic revision in the shape of the law and, as indicated above, see much which cuts tellingly against shaping the law in the manner sought by the respondent.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609	lower-level court	UK	[87] This history is reflected in the words of Lord Nicholls in Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, at p. 615: Traditionally one of the ingredients of this defence is that the comment must be fair, fairness being judged by the objective standard of whether any fair-minded person could honestly express the opinion in question. Judges have emphasised the latitude to be applied in interpreting this standard. So much so, that the time has come to recognise that in this context the epithet 'fair' is now meaningless and misleading. Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective. But the basis of our public life is that the crank, the enthusiast, may say what he honestly thinks as much as the reasonable person who sits on a jury. The true test is whether the opinion, however exaggerated, obstinate or prejudiced, was honestly held by the person expressing it: see Diplock J. in Silkin v. Beaverbrook Newspapers Ltd. [1958] 2 All E.R. 516 at 518, [1958] 1 W.L.R. 743 at 747. [Emphasis added.] [88] Some Canadian courts have cited this passage from Reynolds with approval. For example, in Ross v. New Brunswick Teachers' Assn. (2001), 201 D.L.R. (4th) 75, 2001 NBCA 62, the New Brunswick Court of Appeal quoted it and then went on to conclude: Therefore, for a comment to be protected by a plea of fair comment, the comment must be relevant to the facts to which it is addressed, but it need not be reasonable nor one with which the trier of fact agrees. It need only be proven to be "fair" or "relevant" in the sense that the comment relates to the proven underlying facts on which the commentator relies and represents an honest expression of the real view of the person making the comment. [Emphasis added; para. 78.] [94] Thus, the only justifiable remnant of the former requirement that a fair-minded person be capable of holding the opinion is that the comment must be based on known facts. This is implied in the above-quoted observations of Lord Nicholls from Reynolds. In Canada, fair comment includes a based on true facts element that is independent of concerns about whether an honest person could hold the opinion. Thus, I see no reason to retain an objective honest belief element. Eliminating that element is an incremental change. This Court has the power, and indeed the responsibility, to make such changes when the common law falls out of step with its underlying principles and with modern values, and when a test has proven to be unworkable or

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2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Slim v. Daily Telegraph Ltd., [1968] 1 All E.R. 497	lower-level court	UK	[83a] In Slim v. Daily Telegraph Ltd., [1968] 1 All E.R. 497 (C.A.), Lord Denning stated: The important thing is to determine whether or not the writer was actuated by malice. If he was an honest man expressing his genuine opinion on a subject of public interest, . . . he has a good defence of fair comment. His honesty is the cardinal test. [p. 503] [84] Although it is not entirely clear from Slim who has the burden of proving or disproving subjective honest belief, it is settled law in the U.K. that this burden falls to the plaintiff once the elements of fair comment are proved: [A] comment which falls within the objective limits of the defence of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Cheng v. Tse Wai Chun, [2000] 3 H.K.C.F.A.R. 339	SC	Hong Kong	[84] Although it is not entirely clear from Slim who has the burden of proving or disproving subjective honest belief, it is settled law in the U.K. that this burden falls to the plaintiff once the elements of fair comment are proved: [A] comment which falls within the objective limits of the defence of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred. (Cheng v. Tse Wai Chun (2000), 3 H.K.C.F.A.R. 339, at pp. 360-61 (emphasis in original), per Lord Nicholls, cited in Gatley, at p. 310) [103] I would not adopt the British malice test (reproduced here for convenience), which is based on honesty of belief rather than the motive for publication. [A] comment which falls within the objective limits of the defence of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Charleston v. News Group Newspapers Ltd., [1995] 2 W.L.R. 450	SC	UK (HL)	[97] For a comment to be prima facie defamatory, there must be a possibility that its audience will believe it; otherwise, it cannot harm the plaintiff's reputation. The audience is presumed to consist of "ordinary, reasonable, fair-minded" people (Charleston v. News Group Newspapers Ltd., [1995] 2 W.L.R. 450 (H.L.), at p. 454). The test is not whether any person, no matter how unreasonable or unfair, could think less of the plaintiff because of the comment. Therefore, the more disconnected the comment is from its underlying facts, the less likely it is to be defamatory. It follows that comments that are not capable of objective honest belief, given the relevant facts, will rarely be defamatory. For example, in a modern developed society, an imputation that someone practises witchcraft would not be defamatory, because it would not be believed and therefore would not harm the plaintiff's reputation (Loukas v. Young, [1968] 3 N.S.W.R. 549 (S.C.)). Thus, the test for prima facie defamation, if correctly applied, will exclude from protection many situations involving comments that are not capable of objective honest belief.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Loukas v. Young, [1968] 3 N.S.W.R. 549	lower-level court	Australia	[97] For a comment to be prima facie defamatory, there must be a possibility that its audience will believe it; otherwise, it cannot harm the plaintiff's reputation. The audience is presumed to consist of "ordinary, reasonable, fair-minded" people (Charleston v. News Group Newspapers Ltd., [1995] 2 W.L.R. 450 (H.L.), at p. 454). The test is not whether any person, no matter how unreasonable or unfair, could think less of the plaintiff because of the comment. Therefore, the more disconnected the comment is from its underlying facts, the less likely it is to be defamatory. It follows that comments that are not capable of objective honest belief, given the relevant facts, will rarely be defamatory. For example, in a modern developed society, an imputation that someone practises witchcraft would not be defamatory, because it would not be believed and therefore would not harm the plaintiff's reputation (Loukas v. Young, [1968] 3 N.S.W.R. 549 (S.C.)). Thus, the test for prima facie defamation, if correctly applied, will exclude from protection many situations involving comments that are not capable of objective honest belief.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	LeBel J.	concurring partially	British Columbia	Torts	C	referred to	Renouf v. Federal Capital Press of Australia Pty. Ltd. (1977), 17 A.C.T.R. 35	lower-level court	Australia	[105] Similarly, an Australian court has noted that "personal animosity may perfectly well consort with sincerity to produce a comment which is harmful and unfair" (Renouf v. Federal Capital Press of Australia Pty. Ltd. (1977), 17 A.C.T.R. 35 (S.C.), at p. 54). Australia maintains essentially the same test of malice as exists in Canada: whether malice was the dominant motive for publication (see M. Gillooly, The Law of Defamation in Australia and New Zealand (1998), at pp. 132-33).

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2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609	SC	UK (HL)	[20] In Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, the House of Lords decided that the common law doctrine of qualified privilege has enough "elasticity" (p. 625) to accommodate freedom of the media in a manner consistent with the freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "[T]here are occasions when the public interest requires that publication to the world at large should be privileged" (p. 617), depending on such matters as the seriousness of the allegation, the nature of the information published, the extent to which the subject matter is a matter of public concern, the source of the information and the steps taken to verify its truth (p. 626). Where it applies, the "public interest defence of responsible journalism" protects the journalist even where he or she got material facts wrong. Later English authority has noted that the effect of the Reynolds test is to shift the qualified privilege from the "occasion" to the specific publication: Loutchansky v. Times Newspapers Ltd. (Nos. 2-5), [2002] 2 W.L.R. 640, [2001] EWCA Civ 1805. See also Bonnick v. Morris, [2003] 1 A.C. 300, [2002] UKPC 31; Jameel v. Wall Street Journal Europe SPRL, [2006] 4 All E.R. 1279, [2006] UKHL 44; Cusson v. Quan (2007), 231 O.A.C. 277, 2007 ONCA 771 (leave to appeal granted April 3, 2008, [2008] 1 S.C.R. xii; hearing pending). [23] Recent New Zealand authority approaches qualified privilege from a different perspective. In Lange v. Atkinson, [2000] 3 N.Z.L.R. 385, the New Zealand Court of Appeal disagreed with both the House of Lords in Reynolds and the Australian High Court in Lange, that a "responsible journalism" or "reasonableness" requirement should be imposed as a condition precedent to an occasion being classified as one of "qualified privilege": We are not persuaded that in the New Zealand situation matters such as the steps taken to verify the information, the seeking of comment from the person defamed, and the status or source of the information, should fall within the ambit of the inquiry into whether the occasion is privileged. [para. 38] A more appropriate control mechanism, in the New Zealand view, is to seek flexibility in the definition of malice, the proof of which lies on the plaintiff. Thus the privilege would be defeated if the plaintiff could show either that the publisher "knew he was not telling the truth or was reckless in that regard" (para. 51), citing Botiuk v. Toronto Free Press Publications Ltd., [1995] 3 S.C.R. 3, at para. 79. In effect, the New Zealand doctrine rests on a public interest doctrine of proof of irresponsible journalism. [24] While the legal position in both Australia and New Zealand was influenced by statutory provisions that have no direct counterpart in Canada, the Canadian law of qualified privilege will necessarily evolve in ways that are consistent with Charter values. At issue will be both the scope of the qualified privilege (Reynolds is broader) and whether the burden of proof of responsible journalism should lie on the defendant (Reynolds) or irresponsible journalism on the plaintiff (Lange v. Atkinson). [51] Of course, even the latitude allowed by the "objective" honest belief test may be exceeded. "Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective"; Reynolds, at p. 615.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Loutchansky v. Times Newspapers Ltd. (Nos. 2-5), [2002] 2 W.L.R. 640, [2001] EWCA Civ 1805	lower-level court	UK	[20] In Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, the House of Lords decided that the common law doctrine of qualified privilege has enough "elasticity" (p. 625) to accommodate freedom of the media in a manner consistent with the freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "[T]here are occasions when the public interest requires that publication to the world at large should be privileged" (p. 617), depending on such matters as the seriousness of the allegation, the nature of the information published, the extent to which the subject matter is a matter of public concern, the source of the information and the steps taken to verify its truth (p. 626). Where it applies, the "public interest defence of responsible journalism" protects the journalist even where he or she got material facts wrong. Later English authority has noted that the effect of the Reynolds test is to shift the qualified privilege from the "occasion" to the specific publication: Loutchansky v. Times Newspapers Ltd. (Nos. 2-5), [2002] 2 W.L.R. 640, [2001] EWCA Civ 1805. See also Bonnick v. Morris, [2003] 1 A.C. 300, [2002] UKPC 31; Jameel v. Wall Street Journal Europe SPRL, [2006] 4 All E.R. 1279, [2006] UKHL 44; Cusson v. Quan (2007), 231 O.A.C. 277, 2007 ONCA 771 (leave to appeal granted April 3, 2008, [2008] 1 S.C.R. xii; hearing pending)
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Bonnick v. Morris, [2003] 1 A.C. 300, [2002] UKPC 31	SC	UK (PC)	[20] In Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, the House of Lords decided that the common law doctrine of qualified privilege has enough "elasticity" (p. 625) to accommodate freedom of the media in a manner consistent with the freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "[T]here are occasions when the public interest requires that publication to the world at large should be privileged" (p. 617), depending on such matters as the seriousness of the allegation, the nature of the information published, the extent to which the subject matter is a matter of public concern, the source of the information and the steps taken to verify its truth (p. 626). Where it applies, the "public interest defence of responsible journalism" protects the journalist even where he or she got material facts wrong. Later English authority has noted that the effect of the Reynolds test is to shift the qualified privilege from the "occasion" to the specific publication: Loutchansky v. Times Newspapers Ltd. (Nos. 2-5), [2002] 2 W.L.R. 640, [2001] EWCA Civ 1805. See also Bonnick v. Morris, [2003] 1 A.C. 300, [2002] UKPC 31; Jameel v. Wall Street Journal Europe SPRL, [2006] 4 All E.R. 1279, [2006] UKHL 44; Cusson v. Quan (2007), 231 O.A.C. 277, 2007 ONCA 771 (leave to appeal granted April 3, 2008, [2008] 1 S.C.R. xii; hearing pending)
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Jameel v. Wall Street Journal Europe SPRL, [2006] 4 All E.R. 1279, [2006] UKHL 44	SC	UK (HL)	[20] In Reynolds v. Times Newspapers Ltd., [1999] 4 All E.R. 609, the House of Lords decided that the common law doctrine of qualified privilege has enough "elasticity" (p. 625) to accommodate freedom of the media in a manner consistent with the freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "[T]here are occasions when the public interest requires that publication to the world at large should be privileged" (p. 617), depending on such matters as the seriousness of the allegation, the nature of the information published, the extent to which the subject matter is a matter of public concern, the source of the information and the steps taken to verify its truth (p. 626). Where it applies, the "public interest defence of responsible journalism" protects the journalist even where he or she got material facts wrong. Later English authority has noted that the effect of the Reynolds test is to shift the qualified privilege from the "occasion" to the specific publication: Loutchansky v. Times Newspapers Ltd. (Nos. 2-5), [2002] 2 W.L.R. 640, [2001] EWCA Civ 1805. See also Bonnick v. Morris, [2003] 1 A.C. 300, [2002] UKPC 31; Jameel v. Wall Street Journal Europe SPRL, [2006] 4 All E.R. 1279, [2006] UKHL 44; Cusson v. Quan (2007), 231 O.A.C. 277, 2007 ONCA 771 (leave to appeal granted April 3, 2008, [2008] 1 S.C.R. xii; hearing pending)
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96	SC	Australia	[21] Reliance was also placed by the appellants on the decisions of the High Court of Australia which has accepted a more narrow "government or political matters" defence. In Lange v. Australian Broadcasting Corp. (1997), 145 A.L.R. 96, at p. 117, it was held that "the reputations of those defamed by widespread publications will be adequately protected by requiring the publisher to prove reasonableness of conduct . . . [or] if the person defamed proves that the publication was actuated by common law malice".
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Lange v. Atkinson, [2000] 3 N.Z.L.R. 385	lower-level court	New Zealand	[23] Recent New Zealand authority approaches qualified privilege from a different perspective. In Lange v. Atkinson, [2000] 3 N.Z.L.R. 385, the New Zealand Court of Appeal disagreed with both the House of Lords in Reynolds and the Australian High Court in Lange, that a "responsible journalism" or "reasonableness" requirement should be imposed as a condition precedent to an occasion being classified as one of "qualified privilege": [24] While the legal position in both Australia and New Zealand was influenced by statutory provisions that have no direct counterpart in Canada, the Canadian law of qualified privilege will necessarily evolve in ways that are consistent with Charter values. At issue will be both the scope of the qualified privilege (Reynolds is broader) and whether the burden of proof of responsible journalism should lie on the defendant (Reynolds) or irresponsible journalism on the plaintiff (Lange v. Atkinson).
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Slim v. Daily Telegraph Ltd., [1968] 1 All E.R. 497	lower-level court	UK	[36] Concern about the obvious anomalies in such a requirement has prompted the intervener CCLA to urge that "the honest belief requirement be eliminated" altogether (Factum, at para. 7), despite the description in Cherneskey, at p. 1082, of honesty of belief as the "cardinal test" of the defence of fair comment (Ritchie J. quoting Lord Denning in Slim v. Daily Telegraph Ltd., [1968] 1 All E.R. 497 (C.A.), at p. 503). I do not think abolition of the requirement of honest belief, however formulated, would be "incremental". In R. v. Salituro, [1991] 3 S.C.R. 654, the Court said, at p. 670: The judiciary should confine itself to those incremental changes which are necessary to keep the common law in step with the dynamic and evolving fabric of our society. Nor does the desire to evolve the common law to reflect Charter values require such a fundamental shift, in my opinion.
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Howarth v. Barlow, 99 N.Y.S. 457 (1906)	lower-level court	US	[38] The relevancy of the comment to the facts has long been part (but only part) of the fair comment test as is shown in paragraph (b) in Dickson J.'s list: see also McQuire v. Western Morning News Co., [1903] 2 K.B. 100 (C.A.), at p. 113. As Gaynor J. put it in Howarth v. Barlow, 99 N.Y.S. 457 (App. Div. 1906), at p. 459: That such opinions or inferences are farfetched, highstrung, or severely moral, or contrary to other opinions or inferences that seem more reasonable, does not matter so long as there be a basis for them in the acts or words of the person who is the subject of such criticism

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2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Channel Seven Adelaide Pty. Ltd. v. Manock (2007), 241 A.L.R. 468, [2007] HCA 60	SC	Australia	[49] The test represents a balance between free expression on matters of public interest and the appropriate protection of reputation against damage that exceeds what is required to fulfill free expression requirements. The objective test is now widely used in common law jurisdictions as the "honest belief" component of fair comment, including the United Kingdom: Telnikoff v. Matusevitch, [1991] 3 W.L.R. 952 (H.L.), quoting with approval Dickson J.'s dissent, at p. 959. In Australia, the High Court recently affirmed a similar approach; see the observation of Gleeson C.J.: The protection from actionability which the common law gives to fair and honest comment on matters of public interest is an important aspect of freedom of speech. In this context, "fair" does not mean objectively reasonable. The defence protects obstinate, or foolish, or offensive statements of opinion, or inference, or judgment, provided certain conditions are satisfied. The word "fair" refers to limits to what any honest person, however opinionated or prejudiced, would express upon the basis of the relevant facts. (Channel Seven Adelaide Pty. Ltd. v. Manock (2007), 241 A.L.R. 468, [2007] HCA 60, at para. 3 (emphasis added)) In New Zealand, the objective test at common law has now been replaced by a more subjective test in the Defamation Act 1992 (N.Z.), 1992, No. 105, s. 10. See generally B. Marten, "A Fairly Genuine Comment on Honest Opinion in New Zealand" (2005), 36 V.U.W.L.R. 127; Mitchell v. Sprott, [2002] 1
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Mitchell v. Sprott, [2002] 1 N.Z.L.R. 766	lower-level court	New Zealand	[49] The test represents a balance between free expression on matters of public interest and the appropriate protection of reputation against damage that exceeds what is required to fulfill free expression requirements. The objective test is now widely used in common law jurisdictions as the "honest belief" component of fair comment, including the United Kingdom: Telnikoff v. Matusevitch, [1991] 3 W.L.R. 952 (H.L.), quoting with approval Dickson J.'s dissent, at p. 959. In Australia, the High Court recently affirmed a similar approach; see the observation of Gleeson C.J.: The protection from actionability which the common law gives to fair and honest comment on matters of public interest is an important aspect of freedom of speech. In this context, "fair" does not mean objectively reasonable. The defence protects obstinate, or foolish, or offensive statements of opinion, or inference, or judgment, provided certain conditions are satisfied. The word "fair" refers to limits to what any honest person, however opinionated or prejudiced, would express upon the basis of the relevant facts. (Channel Seven Adelaide Pty. Ltd. v. Manock (2007), 241 A.L.R. 468, [2007] HCA 60, at para. 3 (emphasis added)) In New Zealand, the objective test at common law has now been replaced by a more subjective test in the Defamation Act 1992 (N.Z.), 1992, No. 105, s. 10. See generally B. Marten, "A Fairly Genuine Comment on Honest Opinion in New Zealand" (2005), 36 V.U.W.L.R. 127; Mitchell v. Sprott, [2002] 1
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	SC	US	[52] As usual, the debate is about onus: It is difficult to know whether malice is an element to be considered independently of the issue of fairness, and thus a matter which the plaintiff must prove to defeat the defence of fair comment, or to be treated as part of the issue of fairness, which the defendant must prove in order to establish that element of the defence. . . . [I]f the issue is treated as one which goes to the question of fairness, the defendant has the burden of showing it was fair. This latter position appears to have gained some acceptance in Ontario. (Brown, at p. 15-101) At this point in the analysis, the comment will have been found to be defamatory and the defendant is scrambling for a defence. Interveners supporting the media suggested that "honest belief", however formulated, should be pushed into the analysis of malice, where the plaintiff bears the onus of proof. Such an approach would disproportionately favour the media, in my view. Proof of malice on the part of the media is generally very difficult. The media are well-resourced, secretive about their inner workings and highly protective of their confidential sources. At the same time, as many in the U.S. media have come to learn since New York Times Co. v. Sullivan, 376 U.S. 254 (1964), putting the judicial spotlight on journalistic operations in a malice enquiry (that is now the fulcrum of a libel case against a public figure) may not be in anyone's interest. I would therefore affirm the present allocation of proof whereby the defendant must prove the elements of the fair comment defence (including the objective honest belief requirement) before the onus
2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	C	referred to	Jones v. Skelton, [1963] 1 W.L.R. 1362	SC	UK (HL)	[55] At common law, the judge is to make a legal determination "whether there is a case or an issue to go to the jury" by deciding if the words are "capable of being a statement of a fact or facts". It is then "for the jury to decide as to what is fact and what is comment" (Court of Appeal reasons, at para. 42, citing Jones v. Skelton, [1963] 1 W.L.R. 1362 (P.C.), at pp. 1379-80). As pointed out by the intervener British Columbia Civil Liberties Association, "the judge's role in that test is a response to concerns about freedom of expression" (Factum, at para. 34).

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2008	WIC Radio Ltd. v. Simpson	6/27/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5670/index.do	WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40	Binnie J.	majority	British Columbia	Torts	R		Defamation Act 1992 (N.Z.), 1992, No. 105, s. 10.	statute	New Zealand	[49] The test represents a balance between free expression on matters of public interest and the appropriate protection of reputation against damage that exceeds what is required to fulfill free expression requirements. The objective test is now widely used in common law jurisdictions as the "honest belief" component of fair comment, including the United Kingdom: Telnikoff v. Matusevitch, [1991] 3 W.L.R. 952 (H.L.), quoting with approval Dickson J.'s dissent, at p. 959. In Australia, the High Court recently affirmed a similar approach; see the observation of Gleeson C.J.: The protection from actionability which the common law gives to fair and honest comment on matters of public interest is an important aspect of freedom of speech. In this context, "fair" does not mean objectively reasonable. The defence protects obstinate, or foolish, or offensive statements of opinion, or inference, or judgment, provided certain conditions are satisfied. The word "fair" refers to limits to what any honest person, however opinionated or prejudiced, would express upon the basis of the relevant facts. (Channel Seven Adelaide Pty. Ltd. v. Manock (2007), 241 A.L.R. 468, [2007] HCA 60, at para. 3 (emphasis added)) In New Zealand, the objective test at common law has now been replaced by a more subjective test in the Defamation Act 1992 (N.Z.), 1992, No. 105, s. 10. See generally B. Marten, "A Fairly Genuine Comment on Honest Opinion in New Zealand" (2005), 36 V.U.W.L.R. 127; Mitchell v. Sprott, [2002] 1 [illegible]
2008	BCE Inc. v. 1976 Debentureholders	6/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6238/index.do	BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, 2008 SCC 69	The Court	unanimous	Quebec	Commercial law	C	referred to	Scottish Co-operative Wholesale Society Ltd. v. Meyer, [1959] A.C. 324	SC	UK (HL)	[54] Section 241 jurisprudence reveals two possible approaches to the interpretation of the oppression provisions of the CBCA : M. Koehnen, Oppression and Related Remedies (2004), at pp. 79-80 and 84. One approach emphasizes a strict reading of the three types of conduct enumerated in s. 241 (oppression, unfair prejudice and unfair disregard): see Scottish Co-operative Wholesale Society Ltd. v. Meyer, [1959] A.C. 324 (H.L.); Diligenti v. RWMD Operations Kelowna Ltd. (1976), 1 B.C.L.R. 36 (S.C.); Stech v. Davies, [1987] 5 W.W.R. 563 (Alta. Q.B.). Cases following this approach focus on the precise content of the categories "oppression", "unfair prejudice" and "unfair disregard". While these cases may provide valuable insight into what constitutes oppression in particular circumstances, a categorical approach to oppression is problematic because the terms used cannot be put into watertight compartments or conclusively defined. As Koehnen puts it (at p. 84), "[t]he three statutory components of oppression are really adjectives that try to describe inappropriate conduct. . . . The difficulty with adjectives is they provide no assistance in formulating principles that should underlie court intervention." [58] First, oppression is an equitable remedy. It seeks to ensure fairness — what is "just and equitable". It gives a court broad, equitable jurisdiction to enforce not just what is legal but what is fair: Wright v. Donald S. Montgomery Holdings Ltd. (1998), 39 B.L.R. (2d) 266 (Ont. Ct. (Gen. Div.)), at p. 273; Re Keho Holdings Ltd. and Noble (1987), 38 D.L.R. (4th) 368 (Alta. C.A.), at p. 374; see, more generally, Koehnen, at pp. 78-79. It follows that courts considering claims for oppression should look at business realities, not merely narrow legalities: Scottish Co-operative Wholesale Society, at p. 343
2008	BCE Inc. v. 1976 Debentureholders	6/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6238/index.do	BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, 2008 SCC 69	The Court	unanimous	Quebec	Commercial law	C	referred to	Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (1986)	lower-level court	US	[85]On these appeals, it was suggested on behalf of the corporations that the "Revlon line" of cases from Delaware support the principle that where the interests of shareholders conflict with the interests of creditors, the interests of shareholders should prevail. [86]The "Revlon line" refers to a series of Delaware corporate takeover cases, the two most important of which are Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986), and Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985). In both cases, the issue was how directors should react to a hostile takeover bid. Revlon suggests that in such circumstances, shareholder interests should prevail over those of other stakeholders, such as creditors. Unocal tied this approach to situations where the corporation will not continue as a going concern, holding that although a board facing a hostile takeover "may have regard for various constituencies in discharging its responsibilities, . . . such concern for non-stockholder interests is inappropriate when . . . the object no longer is to protect or maintain the corporate enterprise but to sell it to the highest bidder" (p. 182). [86]The "Revlon line" refers to a series of Delaware corporate takeover cases, the two most important of which are Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986), and Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985). In both cases, the issue was how directors should react to a hostile takeover bid. Revlon suggests that in such circumstances, shareholder interests should prevail over those of other stakeholders, such as creditors. Unocal tied this approach to situations where the corporation will not continue as a going concern, holding that although a board facing a hostile takeover "may have regard for various constituencies in discharging its responsibilities, . . . such concern for non-stockholder interests is inappropriate when . . . the object no longer is to protect or maintain the corporate enterprise but to sell it to the highest bidder" (p. 182). [87]What is clear is that the Revlon line of cases has not displaced the fundamental rule that the duty of the directors cannot be confined to particular priority rules, but is rather a function of business judgment of what is in the best interests of the corporation, in the particular situation it faces. In a review of trends in Delaware corporate jurisprudence, former Delaware Supreme Court Chief Justice E. Norman Veasey put it this way: [I]t is important to keep in mind the precise content of this "best interests" concept — that is, to whom this duty is owed and when. Naturally, one often thinks that directors owe this duty to both the corporation and the stockholders. That formulation is harmless in most instances because of the confluence of interests, in that what is good for the corporate entity is usually derivatively good for the stockholders. There are times, of course, when the focus is directly on the interests of stockholders [i.e., as in Revlon]. But, in general, the directors owe fiduciary duties to the corporation, not to the stockholders. [Emphasis in original.] (E. Norman Veasey with Christine T. Di Guglielmo, "What Happened in Delaware Corporate Law and Governance from 1992-2004? A Retrospective on Some Key Developments" (2005), 153 U. Pa. L. Rev. 1399, at p. 1431)
2008	BCE Inc. v. 1976 Debentureholders	6/20/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6238/index.do	BCE Inc. v. 1976 Debentureholders, [2008] 3 S.C.R. 560, 2008 SCC 69	The Court	unanimous	Quebec	Commercial law	C	referred to	Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (1985)	lower-level court	US	[86]The "Revlon line" refers to a series of Delaware corporate takeover cases, the two most important of which are Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986), and Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985). In both cases, the issue was how directors should react to a hostile takeover bid. Revlon suggests that in such circumstances, shareholder interests should prevail over those of other stakeholders, such as creditors. Unocal tied this approach to situations where the corporation will not continue as a going concern, holding that although a board facing a hostile takeover "may have regard for various constituencies in discharging its responsibilities, . . . such concern for non-stockholder interests is inappropriate when . . . the object no longer is to protect or maintain the corporate enterprise but to sell it to the highest bidder" (p. 182).
2008	Canada (Justice) v. Khadr	5/23/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4638/index.do	Canada (Justice) v. Khadr, [2008] 2 S.C.R. 125, 2008 SCC 28	The Court	unanimous	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Rasul v. Bush, 542 U.S. 466 (2004)	SC	US	[22] In Rasul v. Bush, 542 U.S. 466 (2004), the United States Supreme Court held that detainees at Guantanamo Bay who, like Mr. Khadr, were not U.S. citizens, could challenge the legality of their detention by way of the statutory right of habeas corpus provided for in 28 U.S.C. § 2241. This holding necessarily implies that the order under which the detainees had previously been denied the right to challenge their detention was illegal. In his concurring reasons, Kennedy J. noted that "the detainees at Guantanamo Bay are being held indefinitely, and without benefit of any legal proceeding to determine their status" (pp. 487-88). Mr. Khadr was detained at Guantanamo Bay during the time covered by the Rasul decision, and Canadian officials interviewed him and passed on information to U.S. authorities during that time.
2008	Canada (Justice) v. Khadr	5/23/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4638/index.do	Canada (Justice) v. Khadr, [2008] 2 S.C.R. 125, 2008 SCC 28	The Court	unanimous	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006)	SC	US	[23] At the time he was interviewed by CSIS officials, Mr. Khadr also faced the possibility of trial by military commission pursuant to Military Commission Order No. 1. In Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), the United States Supreme Court considered the legality of this Order. The court held that by significantly departing from established military justice procedure without a showing of military exigency, the procedural rules for military commissions violated both the Uniform Code of Military Justice (10 U.S.C. § 836) and Common Article 3 of the Geneva Conventions. Different members of the majority of the United States Supreme Court focused on different deviations from the Geneva Conventions and the Uniform Code of Military Justice. But the majority was unanimous in holding that, in the circumstances, the deviations were sufficiently significant to deprive the military commissions of the status of "a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples", as required by Common Article 3 of the Geneva Conventions.
2008	Canada (Justice) v. Khadr	5/23/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4638/index.do	Canada (Justice) v. Khadr, [2008] 2 S.C.R. 125, 2008 SCC 28	The Court	unanimous	Federal Court of Appeal	Constitutional law Evidence	C	referred to	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	SC	US	[29] With Mr. Khadr's present and future liberty at stake, s. 7 of the Charter required that CSIS conduct itself in conformity with the principles of fundamental justice. The principles of fundamental justice are informed by Canada's international human rights obligations: Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1, at para. 60; United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7, at paras. 82-92; Hape, at paras. 55-56.

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2008	Canada (Justice) v. Khadr	5/23/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4638/index.do	Canada (Justice) v. Khadr, [2008] 2 S.C.R. 125, 2008 SCC 28	The Court	unanimous	Federal Court of Appeal	Constitutional law Evidence	R		10 U.S.C. § 836.	statute	US	[6] The Guantanamo Bay detention camp was established by Presidential Military Order in 2001 (66 FR 57833) for the detention and prosecution of non-U.S. citizens believed to be members of Al Qaeda or otherwise involved in international terrorism. The Order conferred exclusive jurisdiction upon military commissions for the trial of "any and all offences triable by military commission", and stipulated pursuant to 10 U.S.C. § 836 that applying normal rules of criminal procedure to such trials "is not practicable". The Order further provided that an individual subject to the order "shall not be privileged to seek any remedy or maintain any proceeding . . . or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal". Subsequent orders purported to remove protections of the Geneva Conventions of 1949 (75 U.N.T.S. 31, 85, 135 and 287) and established procedural rules for the military commissions that departed from normal rules of criminal procedure as to the type of evidence that may be admitted, the right to counsel and disclosure of the case to meet, and judicial independence. [22] In Rasul v. Bush, 542 U.S. 466 (2004), the United States Supreme Court held that detainees at Guantanamo Bay who, like Mr. Khadr, were not U.S. citizens, could challenge the legality of their detention by way of the statutory right of habeas corpus provided for in 28 U.S.C. § 2241. This holding necessarily implies that the order under which the detainees had previously been denied the right to challenge their detention was illegal. In his concurring reasons, Kennedy J. noted that "the detainees at Guantanamo Bay are being held indefinitely, and without benefit of any legal proceeding to determine their status" (pp. 487-88). Mr. Khadr was detained at Guantanamo Bay during the time covered by the Rasul decision, and Canadian officials interviewed him and passed on information to U.S. authorities during that time. [23] At the time he was interviewed by CSIS officials, Mr. Khadr also faced the possibility of trial by military commission pursuant to Military Commission Order No. 1. In Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), the United States Supreme Court considered the legality of this Order. The court held that by significantly departing from established military justice procedure without a showing of military exigency, the procedural rules for military commissions violated both the Uniform Code of Military Justice (10 U.S.C. § 836) and Common Article 3 of the Geneva Conventions. Different members of the majority of the United States Supreme Court focused on different deviations from the Geneva Conventions and the Uniform Code of Military Justice. But the majority was unanimous in holding that, in the circumstances, the deviations were sufficiently significant to deprive the military commissions of the status of "a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized
2008	Canada v. McLarty	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4636/index.do	Canada v. McLarty, [2008] 2 S.C.R. 79, 2008 SCC 26	Bastarache and Abella JJ.	dissenting on the appeal	Federal Court of Appeal	Taxation	C	D	Winter v. Inland Revenue Commissioners, [1963] A.C. 235	SC	UK (HL)	[81] Expenses (absolute liabilities) are distinguished from contingent liabilities (which are not tax deductible) with reference to the "Winter test". In Winter v. Inland Revenue Commissioners, [1963] A.C. 235 (H.L.), Lords Reid and Guest discussed how to differentiate absolute from contingent liabilities. In Winter, Lord Guest explained: Contingent liabilities must . . . be something different from future liabilities which are binding on the company, but are not payable until a future date. I should define a contingency as an event which may or may not occur and a contingent liability as a liability which depends for its existence upon an event which may or may not happen. [p. 262] [84] The definition in Winter was also adopted by the Federal Court of Appeal, per Sharlow J.A., in Wawang, as follows: "I should define a contingency as an event which may or may not occur and a contingent liability as a liability which depends for its existence upon an event which may or may not happen" (para. 11). [85] Pursuant to Winter, we apply the following question to this note: Is the liability it creates to pay the full amount of $85,000 dependent for its existence on an event which may or may not happen? In our view, the liability in this case is contingent because Mr. McLarty's obligations (including
2008	Canada v. McLarty	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4636/index.do	Canada v. McLarty, [2008] 2 S.C.R. 79, 2008 SCC 26	Rothstein J.	majority	Federal Court of Appeal	Taxation	C	referred to	Winter v. Inland Revenue Commissioners, [1963] A.C. 235	SC	UK (HL)	[39] The arguments of the Minister do identify uncertainties. However, they are not uncertainties based on whether a future event will or will not occur. They do not meet the Winter test for contingent liability. 4. Reasons of Bastarache and Abella JJ. [40] I have had the opportunity to read the reasons of Bastarache and Abella JJ. They say that because the sale of the seismic data only occurs if there is insufficient revenue generated under ss. 2 and 3 of Schedule 1 to the note and because the generation of revenue is contingent, the sale of the seismic data under s. 7 of Schedule 1 is contingent and therefore the liability is contingent. I cannot agree with their approach. The Winter definition of contingent liability is "a liability which depends for its existence upon an event which may or may not happen" (p. 262 (emphasis added)). Whether liability under the note is to be satisfied from the generation of revenue or from the sale of the seismic data, when these events are viewed in the sequence they occur, it is clear the liability is to be repaid and thus its existence does not depend upon an event which may or may not happen. The terms of Schedule 1 to the note provide that the liability is to be satisfied one way or the other, either from the generation of revenue or the sale of the seismic data if the revenue generation is insufficient. The uncertainty identified by my colleagues is uncertainty as to the source from which the liability is
2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 72	SC	UK (HL)	[4] The first question to consider in an action for negligence is whether the defendant owed the plaintiff a duty of care. The question focuses on the relationship between the parties. It asks whether this relationship is so close that the one may reasonably be said to owe the other a duty to take care not to injure the other: Donoghue v. Stevenson, [1932] A.C. 562 (H.L.). Whether such a relationship exists depends on foreseeability, moderated by policy concerns: Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.). [5] In many cases, the relationship between the plaintiff and the defendant is of a type which has already been judicially recognized as giving rise to a duty of care. In such cases, precedent determines the question of duty of care and it is unnecessary to undertake a full-fledged duty of care analysis. As stated by A. M. Linden and B. Feldthusen, categories of relationships that have been recognized and relationships analogous to such pre-established categories need not be tested by the Anns formula: Canadian Tort Law (8th ed. 2006), at p. 302; Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79, at paras. 35-36.

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2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Page v. Smith, [1996] 1 A.C. 155	SC	UK (HL)	[8] Generally, a plaintiff who suffers personal injury will be found to have suffered damage. Damage for purposes of this inquiry includes psychological injury. The distinction between physical and mental injury is elusive and arguably artificial in the context of tort. As Lord Lloyd said in Page v. Smith, [1996] 1 A.C. 155 (H.L.), at p. 188: In an age when medical knowledge is expanding fast, and psychiatric knowledge with it, it would not be sensible to commit the law to a distinction between physical and psychiatric injury, which may already seem somewhat artificial, and may soon be altogether outmoded. Nothing will be gained by treating them as different "kinds" of personal injury, so as to require the application of different tests in law. [Emphasis added.] [9] This said, psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness: see Hinz v. Berry, [1970] 2 Q.B. 40 (C.A.), at p. 42; Page v. Smith, at p. 189; Linden and Feldthusen, at pp. 425-27. The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. The need to accept such upsets rather than seek redress in tort is what I take the Court of Appeal to be expressing in its quote from Vanek v. Great Atlantic & Pacific Co. of Canada (1999), 48 O.R. (3d) 228 (C.A.): "Life goes on" (para. 60). Quite simply, minor
2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Hinz v. Berry, [1970] 2 Q.B. 40	lower-level court	UK	[9] This said, psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness: see Hinz v. Berry, [1970] 2 Q.B. 40 (C.A.), at p. 42; Page v. Smith, at p. 189; Linden and Feldthusen, at pp. 425-27. The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. The need to accept such upsets rather than seek redress in tort is what I take the Court of Appeal to be expressing in its quote from Vanek v. Great Atlantic & Pacific Co. of Canada (1999), 48 O.R. (3d) 228 (C.A.): "Life goes on" (para. 60). Quite simply, minor and transient upsets do not constitute personal injury, and hence do not amount to damage.
2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., [1961] A.C. 388	SC	UK (PC)	[12] The remoteness inquiry asks whether "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (Linden and Feldthusen, at p. 360). Since The Wagon Mound (No. 1), the principle has been that "it is the foresight of the reasonable man which alone can determine responsibility" (Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co., [1961] A.C. 388 (P.C.), at p. 424).
2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co. Pty., [1967] A.C. 617	SC	UK (PC)	[13] Much has been written on how probable or likely a harm needs to be in order to be considered reasonably foreseeable. The parties raise the question of whether a reasonably foreseeable harm is one whose occurrence is probable or merely possible. In my view, these terms are misleading. Any harm which has actually occurred is "possible"; it is therefore clear that possibility alone does not provide a meaningful standard for the application of reasonable foreseeability. The degree of probability that would satisfy the reasonable foreseeability requirement was described in The Wagon Mound (No. 2) as a "real risk", i.e. "one which would occur to the mind of a reasonable man in the position of the defendan[t] . . . and which he would not brush aside as far-fetched" (Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co. Pty., [1967] A.C. 617 (P.C.), at p. 643).
2008	Mustapha v. Culligan of Canada Ltd.	5/22/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4637/index.do	Mustapha v. Culligan of Canada Ltd., [2008] 2 S.C.R. 114, 2008 SCC 27	McLachlin C.J.	unanimous	Ontario	Torts	C	referred to	Tame v. New South Wales (2002), 211 C.L.R. 317, [2002] HCA 35	SC	Australia	[15] As the Court of Appeal found, at para. 49, the requirement that a mental injury would occur in a person of ordinary fortitude, set out in Vanek, at paras. 59-61, is inherent in the notion of foreseeability. This is true whether one considers foreseeability at the remoteness or at the duty of care stage. As stated in Tame v. New South Wales (2002), 211 C.L.R. 317, [2002] HCA 35, per Gleeson C.J., this "is a way of expressing the idea that there are some people with such a degree of susceptibility to psychiatric injury that it is ordinarily unreasonable to require strangers to have in contemplation the possibility of harm to them, or to expect strangers to take care to avoid such harm" (para. 16). To put it another way, unusual or extreme reactions to events caused by negligence are imaginable but not reasonably foreseeable.
2008	Design Services Ltd. v. Canada	5/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4632/index.do	Design Services Ltd. v. Canada, [2008] 1 S.C.R. 737, 2008 SCC 22	Rothstein J.	unanimous	Federal Court of Appeal	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	[26] Proximity has generally been understood in the context of an overt act that directly causes physical loss to a plaintiff (A. M. Linden and B. Feldthusen, Canadian Tort Law (8th ed. 2006), at p. 304). However, the notion of proximity has been extended to cover certain limited circumstances in which a defendant, without causing a plaintiff to suffer personal injury or property damage, did cause financial loss to the plaintiff. Further, Canadian law recognizes that new categories where a duty of care is recognized may be established by application of the analysis set out in Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.). [27] However, as stated in Childs, at para. 15, before determining if a new duty of care should be recognized, it must first be determined whether the present situation fits within, or is analogous to, a relationship previously recognized as having a duty of care between the parties. If it does, a duty of care will be established. By first determining whether the situation fits within or is analogous to a previously recognized category, the analysis otherwise required by Anns is avoided. [35] The reason appears to be that physical damage tends "to ensure a reassuringly proximate nexus between tortious act and recoverable damage" (Caltex Oil (Aust.) Pty. Ltd. v. The Dredge "Willemstad" (1976), 11 A.L.R. 227 (H.C.), at p. 255). This is not to say that in the development of new categories under the Anns test, physical injury or property damage would necessarily be a requirement to justify a finding of proximity. However, insofar as the existing category of relational economic loss is concerned, injury or property damage to a third party has been a requirement. [45] Having found that the present situation does not fit within one of the five preexisting categories of pure economic loss, it is necessary to assess whether a new category of pure economic loss should nonetheless be established, specifically a new duty of care between an owner and subcontractors. This requires the analysis mandated in Anns. [46] The Anns test was recently described by this Court in Childs, at para. 11: In Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), Lord Wilberforce proposed a two-part test for determining whether a duty of care arises. The first stage focuses on the relationship between the plaintiff and the defendant, and asks whether it is close or "proximate" enough to give rise to a duty of care (p. 742). The second stage asks whether there are countervailing policy considerations that negative the duty of care. The two-stage approach of Anns was adopted by this Court in Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2, at pp. 10-11, and recast as follows: (1) is there "a sufficiently close relationship between the parties" or "proximity" to justify imposition of a duty and, if so, (2) are there policy considerations which ought to negative or limit the scope of the duty, the class of persons to whom it is owed or the damages to which breach may give rise?
2008	Design Services Ltd. v. Canada	5/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4632/index.do	Design Services Ltd. v. Canada, [2008] 1 S.C.R. 737, 2008 SCC 22	Rothstein J.	unanimous	Federal Court of Appeal	Torts	C	referred to	Caltex Oil (Aust.) Pty. Ltd. v. The Dredge "Willemstad" (1976), 11 A.L.R. 227	SC	Australia	[35] The reason appears to be that physical damage tends "to ensure a reassuringly proximate nexus between tortious act and recoverable damage" (Caltex Oil (Aust.) Pty. Ltd. v. The Dredge "Willemstad" (1976), 11 A.L.R. 227 (H.C.), at p. 255). This is not to say that in the development of new categories under the Anns test, physical injury or property damage would necessarily be a requirement to justify a finding of proximity. However, insofar as the existing category of relational economic loss is concerned, injury or property damage to a third party has been a requirement. [37] In Caltex, a dredge damaged an underwater pipeline that was providing petroleum from a refinery to an oil terminal across the bay. As a result, the pipeline was no longer able to carry petroleum to the terminal. Although the pipeline was owned by the refinery, the oil terminal was able to recover the cost of arranging alternative means of transportation of the petroleum from the owners of the dredge and from the company which had plotted the inaccurate navigation chart for the dredge

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2008	Design Services Ltd. v. Canada	5/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4632/index.do	Design Services Ltd. v. Canada, [2008] 1 S.C.R. 737, 2008 SCC 22	Rothstein J.	unanimous	Federal Court of Appeal	Torts	C	referred to	Ultramares Corp. v. Touche, 174 N.E. 441 (1931)	lower-level court	US	[60] The recognition of a duty of care of an owner to subcontractors in a tendering process could lead to what Cardozo C.J. of the Court of Appeals of New York coined as "liability in an indeterminate amount for an indeterminate time to an indeterminate class" (Ultramares Corp. v. Touche, 174 N.E. 441 (1931), at p. 444).
2008	Evans v. Teamsters Local Union No. 31	5/1/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4629/index.do	Evans v. Teamsters Local Union No. 31, [2008] 1 S.C.R. 661, 2008 SCC 20	Abella J.	dissenting	Yukon	Labour law	C	D	Darbishire v. Warran, [1963] 1 W.L.R. 1067	lower-level court	UK	[97] Mitigation is a limiting principle in damages, imported into the employment context from contract law (Wells v. Newfoundland, [1999] 3 S.C.R. 199, at para. 65). Professor Waddams explored the basis of the rule of mitigation in his work on The Law of Damages (loose-leaf): A plaintiff is not entitled to recover compensation for loss that could, by taking reasonable action, have been avoided. This rule rests partly on the principle of causation: losses that could reasonably have been avoided are caused by the plaintiff's inaction rather than by the defendant's wrong and partly on a policy of avoiding economic waste. [_ 15.70] In Darbishire v. Warran, [1963] 1 W.L.R. 1067 (C.A.), Pearson L.J. explained: . . . it is important to appreciate the true nature of the so-called "duty to mitigate the loss" or "duty to minimise the damage." The plaintiff is not under any actual obligation to adopt the cheaper method: if he wishes to adopt the more expensive method, he is at liberty to do so and by doing so he commits no wrong against the defendant or anyone else. The true meaning is that the plaintiff is not entitled to charge the defendant by way of damages
2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	Katz v. United States, 389 U.S. 347 (1967)	SC	US	[10] In the United States, from whose Fourth Amendment decisions Hunter v. Southam drew inspiration, a series of divided Supreme Court decisions has declined to grant any Fourth Amendment protection against "narcotic" sniffer dogs. This may be, at least in part, because the courts may fear that once it is found that a police activity amounts to an invasion of a cognizable privacy interest, the legal machinery of prior judicial authorization is presumptively imposed: Katz v. United States, 389 U.S. 347 (1967). This may have involved the U.S. courts in a form of cost-benefit analysis, as noted by K. L. Pollack: . . . in deciding these cases, the Court arguably made implicit findings that the costs of imposing a probable cause requirement outweighed the corresponding benefits to individual privacy. In these cases, the intrusion into individual interests was low, and the Court seemed unconcerned about the prospect of arbitrary government use of these searching methods. . . . [I]n pure investigatory searches, no middle standard exists between suspicionless searches and those searches based on probable cause. (K. L. Pollack, "Stretching the Terry Doctrine to the Search for Evidence of Crime: Canine Sniffs, State Constitutions, and the Reasonable Suspicion Standard" (1994), 47 Vand. L. Rev. 803, at pp. 820-21) [33] Section 8 , like the rest of the Charter , must be interpreted purposively, that is to say, to further the interests it was intended to protect. While these interests may go beyond privacy, they go "at least that far" (Hunter v. Southam, at p. 159). A privacy interest worthy of protection is one the citizen subjectively believes ought to be respected by the government and "that society is prepared to recognize as 'reasonable'" (Katz, at p. 361). In each case, "an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement" (Hunter v. Southam, at pp. 159-60).
2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	Kyllo v. United States, 533 U.S. 27 (2001)	SC	US	[43] In support of their argument that s. 8 of the Charter is not engaged because of free access to "emissions in the public domain", the Attorneys General alluded to the dissent in Kyllo v. United States, 533 U.S. 27 (2001), cited in Tessling, at para. 51: . . . public officials should not have to avert their senses or their equipment from detecting emissions in the public domain such as excessive heat, traces of smoke, suspicious odors, odorless gases, airborne particulates, or radioactive emissions, any of which could identify hazards to the community. [p. 45] This frequently quoted passage from Kyllo clearly refers to situations involving immediate public hazards, not routine crime investigation. The present appeal, however, is a case of routine crime investigation, not public hazards. Moreover, the police here were not asked to "avert their senses". The question before us relates to the circumstances in which the police can initiate an investigation using sniffer dogs. [66] I do not think Tessling is of much help to the Crown in this case. Here, as in Tessling, the carrying medium can be characterized as emanations, not detected by unaided human senses, from an object exposed to public view. However, unlike Tessling, the information provided by a drug-dog sniff, when the dog is trained to alert to the presence of controlled drugs, is entirely unlike a FLIR image in that it most definitely permits inferences about the precise contents of the source that are of interest to the police. Under the Operation Jetway program at issue in Kang-Brown, a positive alert by a sniffer dog was itself taken by the police as reasonable and probable grounds for an arrest. However, the subject matter of the sniff is not public air space. It is the concealed contents of the backpack. Dog sniffing is, in terms of the Kyllo jargon (at p. 46), a "through-the-wall" technology, as compared with Tessling, where we held that FLIR technology could only show "that some of the activities in the house generate heat. That is not enough to get the respondent over the constitutional threshold" (para. 62).
2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	[53] The opposing positions offer an all-or-nothing result — i.e. the activity is either wholly regulated by a rigid constitutional procedure or it is completely unregulated — that appears inconsistent with a "reasonableness" approach which should offer a more nuanced answer. This point was famously made by Professor Anthony G. Amsterdam writing over 30 years ago in the context of the U.S. Fourth Amendment: The fourth amendment, then, is ordinarily treated as a monolith: wherever it restricts police activities at all, it subjects them to the same extensive restrictions that it imposes upon physical entries into dwellings. To label any police activity a "search" or "seizure" within the ambit of the amendment is to impose those restrictions upon it. On the other hand, if it is not labeled a "search" or "seizure," it is subject to no significant restrictions of any kind. It is only "searches" or "seizures" that the fourth amendment requires to be reasonable: police activities of any other sort may be as unreasonable as the police please to make them. ("Perspectives on the Fourth Amendment" (1973-1974), 58 Minn. L. Rev. 349, at p. 388) The "all-or-nothing" approach was eventually rejected by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), a case which gave rise to the warrantless investigative police "stops" based on reasonable suspicion (called Terry stops). This approach was accepted in Canada in Mann. The

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2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	United States v. Place, 462 U.S. 696 (1983)	SC	US	[56] At this point, it is convenient to restate the Crown's argument, which says that what was done here was perfectly reasonable. The police inquiry began with a relatively unobtrusive examination by dogs of odours emanating from three classrooms and some lockers and eventually the small gym where a pile of backpacks were kept. Unlike M. (M.R.), there is no evidence of any body searches. The Crown emphasizes that a school is a regulated environment and the students know it. Drug-free schools are important to assure safety and promote learning. Sniffer dogs smell only the surrounding air; neither their snouts nor their handlers physically enter the students' backpacks. The dog communicates nothing about the contents except the presence of an illegal drug, which the student has been told time and time again is prohibited under a zero-tolerance policy. The student has no reasonable expectation of privacy in contraband, argues the Crown. As stated, these arguments have found favour in the United States: United States v. Place, 462 U.S. 696 (1983); United States v. Jacobsen, 466 U.S. 109 (1984), and Illinois v. Caballes, 543 U.S. 405 (2005). [57] In Place, O'Connor J., writing for the majority, commented in obiter that a canine sniff is sui generis because it "discloses only the presence or absence of narcotics, a contraband item" (p. 707). In her view, the sniff did not constitute a "search" within the meaning of the Fourth Amendment. Blackmun J., concurring in the result, suggested that a canine sniff might be a "minimally intrusive" search justifiable upon reasonable suspicion (p. 723).
2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	United States v. Jacobsen, 466 U.S. 109 (1984)	SC	US	[56] At this point, it is convenient to restate the Crown's argument, which says that what was done here was perfectly reasonable. The police inquiry began with a relatively unobtrusive examination by dogs of odours emanating from three classrooms and some lockers and eventually the small gym where a pile of backpacks were kept. Unlike M. (M.R.), there is no evidence of any body searches. The Crown emphasizes that a school is a regulated environment and the students know it. Drug-free schools are important to assure safety and promote learning. Sniffer dogs smell only the surrounding air; neither their snouts nor their handlers physically enter the students' backpacks. The dog communicates nothing about the contents except the presence of an illegal drug, which the student has been told time and time again is prohibited under a zero-tolerance policy. The student has no reasonable expectation of privacy in contraband, argues the Crown. As stated, these arguments have found favour in the United States: United States v. Place, 462 U.S. 696 (1983); United States v. Jacobsen, 466 U.S. 109 (1984), and Illinois v. Caballes, 543 U.S. 405 (2005). [57] In Place, O'Connor J., writing for the majority, commented in obiter that a canine sniff is sui generis because it "discloses only the presence or absence of narcotics, a contraband item" (p. 707). In her view, the sniff did not constitute a "search" within the meaning of the Fourth Amendment. Blackmun J., concurring in the result, suggested that a canine sniff might be a "minimally intrusive" search justifiable upon reasonable suspicion (p. 723). [58] In Jacobsen, federal agents seized a white powder leaking from a freight package in transit and identified it as cocaine. Stevens J., writing for the majority, found that the search and seizure of the cocaine was reasonable and did not violate the Fourth Amendment because "governmental conduct that can reveal whether a substance is cocaine, and no other arguably 'private' fact, compromises no legitimate privacy interest" (p. 123). [71] In the United States, numerous judges continue to assert the wider privacy interests. Brennan J. (Marshall J. concurring) in Jacobsen warned in his dissent, at p. 138, that under the Court's analysis in these cases, law enforcement officers could release a trained cocaine-sensitive dog — to paraphrase the California Court of Appeal, a "canine cocaine connoisseur" — to roam the streets at random, alerting the officers to people carrying cocaine. Cf. People v. Evans, 65 Cal. App. 3d 924, 932, 134 Cal. Rptr. 436, 440 (1977). Or, if a device were developed that, when aimed at a person, would detect instantaneously whether the person is carrying cocaine, there would be no Fourth Amendment bar, under the Court's approach, to the police setting up such a device on a street corner and scanning all passersby. In fact, the Court's analysis is so unbounded that if a device were developed that could detect, from the outside of a building, the presence of cocaine inside, there would be no constitutional obstacle to the police cruising through a residential neighborhood and using the device to identify all homes in which the drug is present. In short, under the interpretation of the Fourth Amendment first suggested in Place and first applied in this case, these surveillance techniques would not constitute searches and therefore could be freely pursued whenever and wherever law enforcement officers desire. Hence, at some point in the future, if the Court stands by the theory it has adopted today, search warrants, probable cause, and even "reasonable suspicion" may very well become notions of the past.
2008	R. v. A.M.	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4628/index.do	R. v. A.M., [2008] 1 S.C.R. 569, 2008 SCC 19	Binnie J.	concurring partially	Ontario	Constitutional law Professional law	C	referred to	Illinois v. Caballes, 543 U.S. 405 (2005)	SC	US	[56] At this point, it is convenient to restate the Crown's argument, which says that what was done here was perfectly reasonable. The police inquiry began with a relatively unobtrusive examination by dogs of odours emanating from three classrooms and some lockers and eventually the small gym where a pile of backpacks were kept. Unlike M. (M.R.), there is no evidence of any body searches. The Crown emphasizes that a school is a regulated environment and the students know it. Drug-free schools are important to assure safety and promote learning. Sniffer dogs smell only the surrounding air; neither their snouts nor their handlers physically enter the students' backpacks. The dog communicates nothing about the contents except the presence of an illegal drug, which the student has been told time and time again is prohibited under a zero-tolerance policy. The student has no reasonable expectation of privacy in contraband, argues the Crown. As stated, these arguments have found favour in the United States: United States v. Place, 462 U.S. 696 (1983); United States v. Jacobsen, 466 U.S. 109 (1984), and Illinois v. Caballes, 543 U.S. 405 (2005). [59] In Caballes, an Illinois state trooper stopped a driver, Caballes, for speeding on a highway. When the trooper radioed the police dispatcher to report the stop, a second trooper headed for this scene with a sniffer dog. While the first trooper was writing a warning ticket, the second trooper walked the dog around the car, and the dog alerted at the trunk. On the basis of the alert, the troopers searched the trunk, found marijuana and arrested Caballes. The majority of the U.S. Supreme Court held that the dog sniff did not violate the Fourth Amendment. The traffic stop was based on probable cause and was lawful. Its duration was not excessive. The use of a sniffer dog, which does not expose lawful items that otherwise would remain hidden from public view, did not implicate legitimate privacy interests, in the view of the majority. [86] Robert Bird, in his article "An Examination of the Training and Reliability of the Narcotics Detection Dog" (1996-97), 85 Ky. L.J. 405, claims that many dogs maintain "a near perfect record of narcotics detection" (p. 406). However, Justice Souter's dissent in Caballes provides a useful compilation of some of the decided cases in the United States where, on the facts, the result was otherwise: The infallible dog, however, is a creature of legal fiction. Although the Supreme Court of Illinois did not get into the sniffing averages of drug dogs, their supposed infallibility is belied by judicial opinions describing well-trained animals sniffing and alerting with less than perfect accuracy, whether owing to errors by their handlers, the limitations of the dogs themselves, or even the pervasive contamination of currency by cocaine. [pp. 411-12]

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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Binnie J.	concurring partially	Alberta	Constitutional law Professional law	C	referred to	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[49] LeBel J. and I differ as to whether sniffer-dog searches are "authorized by law". In this respect, this Court has of late become preoccupied with the pre-Charter test of police common law powers expressed by the English Court of Criminal Appeals in R. v. Waterfield, [1963] 3 All E.R. 659, and by our Court in the pre-Charter case of Dedman v. The Queen, [1985] 2 S.C.R. 2, and in the post-Charter cases of Mann and Clayton. In Dedman, Le Dain J. formulated the test for existence of a common law police power as follows: The interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference. [p. 35] Dickson C.J. put forward in his dissent the "leave it to Parliament" approach advocated here by LeBel J. Dickson C.J. wrote: It is the function of the legislature, not the courts, to authorize arbitrary police action that would otherwise be unlawful as a violation of rights traditionally protected at common law. [p. 15] Nevertheless, the contrary view espoused by Le Dain J. prevailed, and his majority view has been adopted and applied in a number of our subsequent cases, including Cloutier v. Langlois, [1990] 1 S.C.R. 158, R. v. Mellenthin, [1992] 3 S.C.R. 615, R. v. Godoy, [1999] 1 S.C.R. 311, Mann and Clayton. [50] In Clayton, writing for LeBel J., Fish J. and myself, I stated: If (as I believe) none of these cases [referred to] provides authority for what was done in this case, the "balancing test" derived from Dedman must be applied. The Court must determine whether the common law rule, if it exists, authorized the police to do what they did here. [Emphasis added; para. 80.] The common law is forever filling "gaps". It relies, as it has for hundreds of years, on various judge-created methodologies to do so. In this case, the relevant methodology adopted and applied by our Court is the Waterfield/Dedman test.
2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Binnie J.	concurring partially	Alberta	Constitutional law Professional law	C	referred to	Alabama v. White, 496 U.S. 325 (1990)	SC	US	[75] The "reasonable suspicion" standard is not a new juridical standard called into existence for the purposes of this case. "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity. A "reasonable" suspicion means something more than a mere suspicion and something less than a belief based upon reasonable and probable grounds. As observed by P. Sankoff and S. Perrault, "Suspicious Searches: What's so Reasonable About Them?" (1999), 24 C.R. (5th) 123: [T]he fundamental distinction between mere suspicion and reasonable suspicion lies in the fact that in the latter case, a sincerely held subjective belief is insufficient. Instead, to justify such a search, the suspicion must be supported by factual elements which can be adduced in evidence and permit an independent judicial assessment. . . . What distinguishes "reasonable suspicion" from the higher standard of "reasonable and probable grounds" is merely the degree of probability demonstrating that a person is involved in criminal activity, not the existence of objectively ascertainable facts which, in both cases, must exist to support the search. [pp. 125-26] Writing about "reasonable suspicion" in the context of the entrapment defence, Lamer J. in R. v. Mack, [1988] 2 S.C.R. 903, thought it unwise to elaborate "in the abstract" (p. 965). See also R. v. Cahill (1992), 13 C.R. (4th) 327 (B.C.C.A.), at p. 339. However, in Alabama v. White, 496 U.S. 325 (1990), the U.S. Supreme Court contrasted "reasonable suspicion" with reasonable grounds of belief (or, what the U.S. lawyers call "probable cause"): Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can

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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Binnie J.	concurring partially	Alberta	Constitutional law Professional law	C	referred to	Reid v. Georgia, 448 U.S. 438 (1980)	SC	US	[79] The objective of the Jetway program and similar police operations in the U.S. is therefore to identify characteristics "generally associated with narcotics traffickers" (W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (4th ed. 2004), vol. 4, at p. 503) without sweeping up "a very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure" (Reid v. Georgia, 448 U.S. 438 (1980), at p. 441). In these cases, the Charter protection is of immediate concern not only to accused drug dealers but to the general travelling public who have every right to go about their law-abiding business without being the subject of random police searches, by dog or otherwise.
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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Binnie J.	concurring partially	Alberta	Constitutional law Professional law	C	referred to	Sibron v. New York, 392 U.S. 40 (1968)	SC	US	[87] In the U.S. cases, production of false identification or travelling under an assumed name is a marker of reasonable suspicion (United States v. Sokolow, 490 U.S. 1 (1989)), as is flight from the police or "furtive actions" (Sibron v. New York, 392 U.S. 40 (1968)). Here there was none of that. The appellant seemingly cooperated with the police officer (even to the point of starting to unzip his bag until Sergeant MacPhee moved to take control of it). The appellant produced a valid government-issued identification card. There was no attempt to conceal his true identity, a fact which distinguishes this case from Florida v. Royer, 460 U.S. 491 (1983).
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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Binnie J.	concurring partially	Alberta	Constitutional law Professional law	C	referred to	United States v. Eustaquio, 198 F.3d 1068 (1999)	lower-level court	US	[92] Sergeant MacPhee, in my view, did not have reasonable suspicion at the time he tried to take control of the appellant's bag (as indeed Sergeant MacPhee tacitly accepted because he purported to proceed on consent). In fact, Sergeant MacPhee himself testified that the appellant's "demeanour" changed after the RCMP officer reached for the bag: . . . it was just a total change in demeanor from as soon as I even made the gesture of moving towards that bag it was night and day. It became very almost hostile. Like it was just a total change of demeanor. The super cooperative type of nature he had been, to now all of sudden being very upset. [Emphasis added; R.R., at p. 27.] The appellant's opposition to what Sergeant MacPhee readily acknowledged would have been a non-consensual illegal search is not something that according to the U.S. case law should be used against the appellant: United States v. Eustaquio, 198 F.3d 1068 (8th Cir. 1999). I agree. Individuals should not be penalized for asserting their constitutional rights. The after-the-fact discovery of illegal drugs does not render constitutional that which at the time was unconstitutional.
2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Deschamps J.	dissenting	Alberta	Constitutional law Professional law	C	D	Illinois v. Caballes, 543 U.S. 405 (2005)	SC	US	[133] Furthermore, the sniffer dogs have long been used as a law enforcement tool in other countries. See, for example, from Australia: Law Enforcement (Powers and Responsibilities) Act 2002 (N.S.W.), ss. 145 to 150 (drug detection dogs), and ss. 193 to 196 (firearms and explosives detection dogs); Police Powers and Responsibilities Act 2000 (Qld.), 2000, No. 6, ss. 34 to 39, as amended by Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005 (Qld.), 2005, No. 63; Australian Federal Police Act 1979 (Cth.), s. 12A; and Questions of Law Reserved (No. 3 of 1998) (1998), 71 S.A.S.R. 223 (S.C.). From the United States, see Illinois v. Caballes, 543 U.S. 405 (2005); for U.S. state court decisions, see para. 193 below. While these examples do not obviate the need to engage in a critical review of the constitutionality of the use of sniffer dogs under s. 8 of the Charter , they do suggest that the sniffer dog has served as a helpful tool for various purposes, such as ensuring public safety, being proactive in preventing and detecting crime, investigating specific crimes and dealing with exigent circumstances. [161] In certain circumstances, the use of a given investigative technique has been approved, without a requirement of specific grounds, on the basis that the accused did not have a reasonable expectation of privacy. For example, in R. v. Boersma, [1994] 2 S.C.R. 488, the police did not infringe s. 8 by walking along a dirt road and observing the marijuana crop of the accused in plain sight on Crown land. In R. v. Stillman, [1997] 1 S.C.R. 607, at para. 62, Cory J., writing for the majority, stated: "where an accused who is not in custody discards a kleenex or cigarette butt, the police may ordinarily collect and test these items without any concern about consent". Regarding sniffer dogs, the United States Supreme Court and the Supreme Court of South Australia have taken the position that no grounds are required before the police may use them: see Illinois v. Caballes; United States v. Place, 462 U.S. 696 (1983); Questions of Law Reserved (No. 3 of 1998). In Canada, however, where an accused has a reasonable expectation of privacy that engages s. 8 , it may be problematic to allow the police to use a given investigative technique without requiring grounds.
2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Deschamps J.	dissenting	Alberta	Constitutional law Professional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	[145] First, a search may be authorized either by legislation or at common law. No statute has been relied upon in this case as authorizing the use of the sniffer dog. To determine whether the use of the sniffer dog was authorized by law, I will therefore consider the common law. As I will discuss in detail below, this Court's approach to recognizing common law powers of search is based on the test set out in R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.). [148] As was mentioned above, the Crown invokes no statutory authority for the use of the sniffer dog in this case. It is therefore necessary to determine whether the use of the dog was authorized at common law pursuant to the Waterfield test and, if so, to define the scope of the power in a manner consistent with the Charter . 3.2.2.1 Development and Application of the Waterfield Test [149] This Court's approach to the recognition of police powers at common law was set out in Dedman v. The Queen, [1985] 2 S.C.R. 2, which concerned the power of the police to conduct random vehicle stops for impaired driving as part of the R.I.D.E. program. Le Dain J., writing for the majority, held that the police act lawfully only if they are exercising powers that are "conferred by statute or derived as a matter of common law from their duties": p. 28. [150] The test relied on by Le Dain J. in Dedman to determine whether a common law police power existed had been established in Waterfield, at pp. 661-62. This test has been applied in a variety of cases since Dedman. In Clayton (at para. 22), Abella J. approved of the Ontario Court of Appeal's articulation of the Waterfield test. As Doherty J.A. had explained, the test involves two specific inquiries: First, the prosecution must demonstrate that the police were acting in the exercise of a lawful duty when they engaged in the conduct in issue. Second, and in addition to showing that the police were acting in the course of their duty, the prosecution must demonstrate that the impugned conduct amounted to a justifiable use of police powers associated with that duty . . . . (R. v. Clayton (2005), 196 O.A.C. 16, at para. 37) [151] At the first stage of the Waterfield test, the law enforcement duties traditionally recognized at common law are "the preservation of the peace, the prevention of crime, and the protection of life and property": Dedman, at p. 32.

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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	Deschamps J	dissenting	Alberta	Constitutional law Professional law	C	D	People v. Dunn, 564 N.E.2d 1054 (1990)	lower-level court	US	[193] In the United States, numerous state courts have adopted the reasonable suspicion standard for sniffer-dog searches: see, e.g., People v. Dunn, 564 N.E.2d 1054 (N.Y. Ct. App. 1990), at p. 1058; State v. Pellicci, 580 A.2d 710 (N.H. Sup. Ct. 1990), at pp. 716-17; McGahan v. State, 807 P.2d 506 (Alaska Ct. App. 1991), at pp. 510-11; Commonwealth v. Johnston, 530 A.2d 74 (Pa. Super. Ct. 1987), at pp. 79-80; W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (4th ed. 2004), vol. 1, § 2.2(g), fn. 431 (citing other state decisions in which the reasonable suspicion standard was adopted for sniffer-dog searches). See also United States v. Place, at p. 723, per Blackmun J. (Marshall J. concurring).
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2008	R. v. Kang-Brown	4/25/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4627/index.do	R. v. Kang-Brown, [2008] 1 S.C.R. 456, 2008 SCC 18	LeBel J.	majority	Alberta	Constitutional law Professional law	C	referred to	Illinois v. Caballes, 543 U.S. 405 (2005)	SC	US	[15] Moreover, this is a case where the courts are ill-equipped to develop an adequate legal framework for the use of police dogs. In determining where the proper balance lies between the protection of privacy and effective law enforcement, the courts will be hampered by the fact that little is known about investigative techniques using sniffer dogs. Indeed, the record remains singularly bereft of useful information about sniffer dogs. The available information is in essence limited to the facts that they are used for investigative purposes in a variety of circumstances and that police officers believe in their overall reliability and to the praise of a particular dog deployed at the Calgary bus station. From the record, however, and from some of the authorities cited by the parties, it appears that serious doubt has occasionally been cast on the reliability of sniffer dogs (see, for example, the dissent of Souter J. of the U.S. Supreme Court in Illinois v. Caballes, 543 U.S. 405 (2005), at pp. 410-13; see also New South Wales Ombudsman, Discussion Paper: Review of Police Powers (Drug Detection Dogs) Act (June 2004)). Despite this inadequate record, this Court is nonetheless being asked to curtail Charter rights for fear of leaving a void in the law and interfering with the use of a fairly widespread police investigative technique. The Court would create a new common law rule on the basis of little more than unverified and, for us in this appeal, unverifiable assumptions.
2008	Tele-Mobile Co. v. Ontario	3/18/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4620/index.do	Tele-Mobile Co. v. Ontario, [2008] 1 S.C.R. 305, 2008 SCC 12	Abella J.	unanimous	Ontario	Criminal law	C	referred to	U.S. v. Jones, 351 F. Supp. 132 (1972)	lower-level court	US	[60] I accept Telus' concern that because of the nature of its business, it will necessarily be the object of repeated production orders but, as an American court observed in connection with banks, another entity from whom requests for information are routinely sought, such requests are neither unanticipated nor aberrational: Any further expenses incurred in connection with this investigation and examination of these records, such as the salary of employees that may be necessarily assigned to this project, are expenses to be borne by the bank. . . . They are reasonably incident to the bank's normal operations, and they are reasonable expenses that the bank can be and should be prepared to sustain when it opens and operates as a bank, knowing full well that some of its depositors will from time to time get investigated by the Internal Revenue Service. (U.S. v. Jones, 351 F. Supp. 132 (M.D. Ala. 1972), per Johnson C.J., at p. 134)
2008	Dunsmuir v. New Brunswick	3/7/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2408/index.do	Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, 2008 SCC 9	Bastarache and LeBel JJ.	majority	New Brunswick	Administrative law	C	referred to	Ridge v. Baldwin, [1963] 2 All E.R. 66	SC	UK (HL)	[85] In Canada, the modern concept of procedural fairness in administrative law was inspired by the House of Lords' landmark decision in Ridge v. Baldwin, [1963] 2 All E.R. 66, a case which involved the summary dismissal of the chief constable of Brighton. The House of Lords declared the chief constable's dismissal a nullity on the grounds that the administrative body which had dismissed him had failed to provide the reasons for his dismissal or to accord him an opportunity to be heard in violation of the rules of natural justice. Central to the reasoning in the case was Lord Reid's distinction between (i) master-servant relationships (i.e. contractual employment), (ii) offices held "at pleasure", and (iii) offices where there must be cause for dismissal, which included the chief constable's position. According to Lord Reid, only the last category of persons was entitled to procedural fairness in relation to their dismissal since both contractual employees and office holders employed "at pleasure" could be dismissed without reason (p. 72). As the authors Wade and Forsyth note that, after a period of retreat from imposing procedural fairness requirements on administrative decision makers, Ridge v. Baldwin "marked an important change of judicial policy, indicating that natural justice was restored to favour and would be applied on a wide basis" (W. Wade and C. Forsyth, Administrative Law (8th ed. 2000), at p. 438). [86] The principles established by Ridge v. Baldwin were followed by this Court in Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police, [1979] 1 S.C.R. 311. Nicholson, like its U.K. predecessor, marked the return to a less rigid approach to natural justice in Canada (see Brown and Evans, at pp. 7-5 to 7-9). Nicholson concerned the summary dismissal of a probationary police officer by a regional board of police commissioners. Laskin C.J., for the majority, at p. 328, declared the dismissal void on the ground that the officer fell into Lord Reid's third category and was therefore entitled to the same procedural protections as in Ridge v. Baldwin. [87] Although Ridge v. Baldwin and Nicholson were concerned with procedural fairness in the context of the dismissal of public office holders, the concept of fairness was quickly extended to other types of administrative decisions (see e.g. Martineau v. Matsqui Institution Disciplinary Board, [1980] 1 S.C.R. 602; Kane v. Board of Governors of the University of British Columbia, [1980] 1 S.C.R. 1105; Attorney General of Canada v. Inuit Tapirisat of Canada, [1980] 2 S.C.R. 735). In Cardinal v. Director of Kent Institution, [1985] 2 S.C.R. 643, Le Dain J. stated that the duty of fairness was a general principle of law applicable to all public authorities: This Court has affirmed that there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual . . . . [p. 653] (See also Baker, at para. 20.)
2008	Dunsmuir v. New Brunswick	3/7/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2408/index.do	Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190, 2008 SCC 9	Bastarache and LeBel JJ.	majority	New Brunswick	Administrative law	C	referred to	Malloch v. Aberdeen Corp., [1971] 2 All E.R. 1278	SC	UK (HL)	[93] Lord Wilberforce noted that attempting to separate office holders from contractual employees involves the risk of a compartmental approach which, although convenient as a solvent, may lead to narrower distinctions than are appropriate to the broader issues of administrative law. A comparative list of situations in which persons have been held entitled or not entitled to a hearing, or to observation of rules of natural justice, according to the master and servant test, looks illogical and even bizarre. (Malloch v. Aberdeen Corp., [1971] 2 All E.R. 1278 (H.L.), at p. 1294) [100] A second and more persuasive reason for the distinction is that dismissal from public office involves the exercise of delegated statutory power and should therefore be subject to public law controls like any other administrative decision (Knight, at p. 675; Malloch, at p. 1293, per Lord Wilberforce). In contrast, the dismissal of a contractual employee only implicates a public authority's private law rights as an employer. [108] It is true that the remedy of reinstatement is not available for breach of contract at common law. In this regard, it might be argued that contractual remedies, on their own, offer insufficient protection to office holders (see de Smith, Woolf & Jowell: Judicial Review of Administrative Action (5th ed. 1995), at p. 187). However, it must be kept in mind that breach of a public law duty of fairness also does not lead to full reinstatement. The effect of a breach of procedural fairness is to render the dismissal decision void ab initio (Ridge v. Baldwin, at p. 81). Accordingly, the employment is deemed to have never ceased and the office holder is entitled to unpaid wages and benefits from the date of the dismissal to the date of judgment (see England, at para. 17.224). However, an employer is free to follow the correct procedure and dismiss the office holder again. A breach of the duty of fairness simply requires that the dismissal decision be retaken. It therefore is incorrect to equate it to reinstatement (see Malloch, at p. 1284). [116] A second situation occurs when a duty of fairness flows by necessary implication from a statutory power governing the employment relationship. In Malloch, the applicable statute provided that dismissal of a teacher could only take place if the teacher was given three weeks' notice of the motion to dismiss. The House of Lords found that this necessarily implied a right for the teacher to make representations at the meeting where the dismissal motion was being considered. Otherwise, there would have been little reason for Parliament to have provided for the notice procedure in the first place (p. 1282). Whether and what type of procedural requirements result from a particular statutory power will of course depend on the specific wording at issue and will vary with the context (Knight, at p. 682).

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2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	C	not followed	Home Office v. Harman, [1983] 1 A.C. 280	SC	UK (HL)	[27] For good reason, therefore, the law imposes on the parties to civil litigation an undertaking to the court not to use the documents or answers for any purpose other than securing justice in the civil proceedings in which the answers were compelled (whether or not such documents or answers were in their origin confidential or incriminatory in nature). See Home Office v. Harman, [1983] 1 A.C. 280 (H.L.); Lac d'Amiante; Hunt v. T & N plc; Shaw Estate v. Oldroyd, [2007] B.C.J. No. 1310 (QL), 2007 BCSC 866, at para. 21; Rayman Investments and Management Inc. v. Canada Mortgage and Housing Corp., [2007] B.C.J. No. 628 (QL), 2007 BCSC 384; Wilson v. McCoy (2006), 59 B.C.L.R. (4th) 1, 2006 BCSC 1011; Laxton Holdings Ltd. v. Madill, [1987] 3 W.W.R. 570 (Sask. C.A.); Blake v. Hudson's Bay Co., [1988] 1 W.W.R. 176 (Man. Q.B.); 755568 Ontario Ltd. v. Linchris Homes Ltd. (1990), 1 O.R. (3d) 649 (Gen. Div.); Rocca Enterprises Ltd. v. University Press of New Brunswick Ltd. (1989), 103 N.B.R. (2d) 224 (Q.B.); Eli Lilly and Co. v. Interpharm Inc. (1993), 161 N.R. 137 (F.C.A.). A number of other decisions are helpfully referenced in W. A. Stevenson and J. E. Côté, Civil Procedure Encyclopedia (2003), vol. 2, at pp. 42-36 et seq., and C. Papile, "The Implied Undertaking Revisited" (2006), 32 Adv. Q. 190, at pp. 194-96. [51] As mentioned earlier, the lawsuit against the appellant and others was settled in 2006. As a result the appellant was not required to give evidence at a civil trial; nor were her examination for discovery transcripts ever read into evidence. The transcripts remain in the hands of the parties and their lawyer. Nevertheless, the implied undertaking continues. The fact that the settlement has rendered the discovery moot does not mean the appellant's privacy interest is also moot. The undertaking continues to bind. When an adverse party incorporates the answers or documents obtained on discovery as part of the court record at trial the undertaking is spent, but not otherwise, except by consent or court order. See Lac d'Amiante, at paras. 70 and 76; Shaw Estate v. Oldroyd, at paras. 20-22. It follows that decisions to the contrary, such as the decision of the House of Lords in Home Office v. Harman (where a narrow majority held that the implied undertaking not to disclose documents obtained on discovery continued even after the documents in question had been read aloud in open court), should not be followed in this country. The effect of the Harman decision has been reversed by a rule change in its country of origin.
2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (1986)	lower-level court	US	[28] The need to protect the privacy of the pre-trial discovery is recognized even in common law jurisdictions where there is no implied undertaking. See J. B. Laskin, "The Implied Undertaking" (a paper presented to the CBA-Ontario, CLE Conference on Privilege and Confidential Information in Litigation — Current Developments and Future Trends, October 19, 1991), at pp. 36-40. Rule 26(c) of the United States Federal Rules of Civil Procedure (28 U.S.C.A.) provides that a court may, upon a showing of "good cause", grant a protective order to maintain the confidentiality of information disclosed during discovery. The practical effect is that the courts routinely make confidentiality orders limited to pre-trial disclosure to protect a party or person being discovered "from annoyance, embarrassment, oppression, or undue burden or expense". See, e.g., Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (3d Cir. 1986).
2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Crest Homes plc v. Marks, [1987] 2 All E.R. 1074	SC	UK (HL)	[33] Reference was made to Crest Homes plc v. Marks, [1987] 2 All E.R. 1074, where Lord Oliver said, on behalf of the House of Lords, that the authorities "illustrate no general principle beyond this, that the court will not release or modify the implied undertaking given on discovery save in special circumstances and where the release or modification will not occasion injustice to the person giving discovery" (p. 1083). I would prefer to rest the discretion on a careful weighing of the public interest asserted by the applicant (here the prosecution of a serious crime) against the public interest in protecting the right against self-incrimination as well as upholding a litigant's privacy and promoting an efficient civil justice process. What is important is the identification of the competing values, and the weighing of one in the light of the others, rather than setting up an absolute barrier to occasioning any "injustice to the person giving discovery". Prejudice, possibly amounting to injustice, to a particular litigant may exceptionally be held justified by a higher public interest, as in the case of the accused whose solicitor-client confidences were handed over to the police in Smith v. Jones, [1999] 1 S.C.R. 455, a case referred to in the courts below, and discussed hereafter. Of course any perceived prejudice to the examinee is a factor that will always weigh heavily in the balance. It may be argued that disclosure to the police of the evil secrets of the psychopath at issue in Smith v. Jones may have been prejudicial to him but was not an "injustice" in the overall scheme of things, but such a gloss would have given cold comfort to an accused who made his disclosures in the expectation of confidentiality. If public safety trumps solicitor-client privilege despite a measure of injustice to the (unsympathetic) accused in Smith v. Jones, it can hardly be disputed in this jurisdiction that the implied undertaking rule would yield to such a higher public interest as well.
2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Rank Film Distributors Ltd. v. Video Information Centre, [1982] A.C. 380	SC	UK (HL)	[46] In reaching her decision, Kirkpatrick J.A. relied on dicta of the House of Lords in Rank Film Distributors Ltd. v. Video Information Centre, [1982] A.C. 380. Lord Fraser said: If a defendant's answers to interrogatories tend to show that he has been guilty of a serious offence I cannot think that there would be anything improper in his opponent reporting the matter to the criminal authorities with a view to prosecution, certainly if he had first obtained leave from the court which ordered the interrogatories, and probably without such leave. [p. 447] These observations, however, must be read in light of the fact that in England, unlike British Columbia, there existed at the time (since amended) "a privilege against compulsory self-incrimination by discovery or by answering interrogatories" (p. 446). There was thus absent from the English procedure the very foundation of the appellant's case, namely that she had no right to refuse to answer questions on discovery that might incriminate her, because she was obliged by statute to give the truth, the whole truth and nothing but the truth.
2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	C	referred to	Attorney-General for Gibraltar v. May, [1999] 1 W.L.R. 998	lower-level court	UK	[47] It is true that solicitor-client privilege includes a "crimes" exception , but here again there is no proper analogy to an implied undertaking. In Solosky v. The Queen, [1980] 1 S.C.R. 821, Dickson J. observed: . . . if a client seeks guidance from a lawyer in order to facilitate the commission of a crime or a fraud, the communication will not be privileged and it is immaterial whether the lawyer is an unwitting dupe or knowing participant. [p. 835] See also R. v. Campbell, [1999] 1 S.C.R. 565. Abuse of solicitor-client privilege to facilitate criminality is contrary to its purpose. Adoption of the implied undertaking to facilitate full disclosure on discovery even by crooks is of the very essence of its purpose. In England, the weight of authority now seems to favour requiring leave of the court where the protected material relates to alleged criminality. See Attorney-General for Gibraltar v. May, [1999] 1 W.L.R. 998 (C.A.), at pp. 1007-8; Bank of Crete S.A. v. Koskotas (No. 2), [1992] 1 W.L.R. 919 (Ch. D.), at p. 922; Sybron Corp. v. Barclays Bank Plc., [1985] 1 Ch. 299, at p. 326. The same practice prevails in Australia: Bailey v. Australian Broadcasting Corp., [1995] 1 Qd. R. 476 (S.C.); Commonwealth v. Temwood Holdings Pty Ltd. (2001), 25 W.A.R. 31, [2001] WASC 282.
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2008	Juman v. Doucette	3/6/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2407/index.do	Juman v. Doucette, [2008] 1 S.C.R. 157, 2008 SCC 8	Binnie J.	unanimous	British Columbia	Civil procedure	R		Federal Rules of Civil Procedure, 28 U.S.C.A. r. 26(c).	statute	US	[28] The need to protect the privacy of the pre-trial discovery is recognized even in common law jurisdictions where there is no implied undertaking. See J. B. Laskin, "The Implied Undertaking" (a paper presented to the CBA-Ontario, CLE Conference on Privilege and Confidential Information in Litigation — Current Developments and Future Trends, October 19, 1991), at pp. 36-40. Rule 26(c) of the United States Federal Rules of Civil Procedure (28 U.S.C.A.) provides that a court may, upon a showing of "good cause", grant a protective order to maintain the confidentiality of information disclosed during discovery. The practical effect is that the courts routinely make confidentiality orders limited to pre-trial disclosure to protect a party or person being discovered "from annoyance, embarrassment, oppression, or undue burden or expense". See, e.g., Cipollone v. Liggett Group, Inc., 785 F.2d 1108 (3d Cir. 1986),
2008	British Columbia v. Zastowny	2/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2402/index.do	British Columbia v. Zastowny, [2008] 1 S.C.R. 27, 2008 SCC 4	Rothstein J.	unanimous	British Columbia	Torts	C	referred to	State Rail Authority of New South Wales v. Wiegold (1991), 25 N.S.W.L.R. 500	lower-level court	UK	[25] Bastarache J. dissented in H.L. but his views on the specific issue of awarding damages for wage loss for periods of incarceration were similar to those of Fish J. In writing for himself and two other judges, he found that to compensate a plaintiff for lost wages due to incarceration would "undermine the principles of our criminal justice system" (para. 344). In concluding as much, Bastarache J. pointed to Samuels J.A.'s reasons in the Australian case State Rail Authority of New South Wales v. Wiegold (1991), 25 N.S.W.L.R. 500 (C.A.), at p. 514: If the plaintiff has been convicted and sentenced for a crime, it means that the criminal law has taken him to be responsible for his actions, and has imposed an appropriate penalty. He or she should therefore bear the consequences of the punishment, both direct and indirect. If the law of negligence were to say, in effect, that the offender was not responsible for his actions and should be compensated by the tortfeasor, it would set the determination of the criminal court at nought. It would generate the sort of clash between civil and criminal law that is apt to bring the law into disrepute. [Emphasis added]
2008	British Columbia v. Zastowny	2/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2402/index.do	British Columbia v. Zastowny, [2008] 1 S.C.R. 27, 2008 SCC 4	Rothstein J.	unanimous	British Columbia	Torts	C	referred to	Clunis v. Camden and Islington Health Authority, [1998] Q.B. 978	lower-level court	UK	[27] The ex turpi doctrine has been applied by the courts of the United Kingdom on a basis similar to that found appropriate in Hall v. Hebert and H.L. In Clunis v. Camden and Islington Health Authority, [1998] Q.B. 978 (C.A.), the plaintiff had been discharged from a hospital where he had been detained under the U.K.'s Mental Health Act 1983. His mental condition deteriorated and two months later he stabbed a stranger to death. He pleaded guilty to manslaughter. He subsequently brought an action against his local health authority for negligence. He claimed that in consequence of the health authority's breach of duty he would be detained for longer than he otherwise would have been and was unlikely to regain his liberty for many years. The Court of Appeal found that he had no cause of action because his claim was "essentially based" on an illegal act. Lord Justice Beldam stated, at p. 990: [T]he plaintiff's claim is essentially based on his illegal act of manslaughter; he must be taken to have known what he was doing and that it was wrong, notwithstanding that the degree of his culpability was reduced by reason of mental disorder. The court ought not to allow itself to be made an instrument to enforce obligations alleged to arise out of the plaintiff's own criminal act and we would therefore allow the appeal on this ground. As pointed out by the United Kingdom Law Commission, Consultation Paper No. 160, The Illegality Defence in Tort (2001), at _4.100: Clunis v. Camden and Islington Health Authority . . . seems entirely justifiable if the rationale of consistency is accepted: it would be quite inconsistent to

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2008	British Columbia v. Zastowny	2/8/2008	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2402/index.do	British Columbia v. Zastowny, [2008] 1 S.C.R. 27, 2008 SCC 4	Rothstein J.	unanimous	British Columbia	Torts	C	referred to	Worrall v. British Railways Board, [1999] E.W.J. No. 2025 (QL)	lower-level court	UK	[28] A similar conclusion was reached in Worrall v. British Railways Board, [1999] E.W.J. No. 2025 (QL) (C.A.), in which Lord Justice Mummery stated, at para. 34: Having been convicted of those offences the plaintiff must be treated in this action as fully and personally responsible in law for his deliberate criminal acts and for the consequences of them, including financial loss resulting from the criminal conviction. It would be inconsistent with his criminal conviction to attribute to the negligent defendant in this action any legal responsibility for the financial consequences of crimes which he has been found guilty of having deliberately committed.
2007	Google Inc. v. Equustek Solutions Inc.	6/28/2017	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do	Google Inc. v. Equustek Solutions Inc., 2017 SCC 34, [2017] 1 S.C.R. 824	Abella J.	majority	British Columbia	Injunctions	C	referred to	ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA	international	ECJ	[39] Groberman J.A. pointed to the international support for this approach: I note that the courts of many other jurisdictions have found it necessary, in the context of orders against Internet abuses, to pronounce orders that have international effects. Several such cases are cited in the arguments of [International Federation of Film Producers Associations and International Federation of the Phonographic Industry], including APC v. Auchan Telecom, 11/60013, Judgment (28 November 2013) (Tribunal de Grande Instance de Paris); McKeogh v. Doe (Irish High Court, case no. 20121254P); Mosley v. Google, 11/07970, Judgment (6 November 2013) (Tribunal de Grande Instance de Paris); Max Mosley v. Google (see "Case Law, Hamburg District Court: Max Mosley v. Google Inc. online: Inform's Blog https://inform.wordpress.com/2014/02/05/case-law-hamburg-district-court-max-mosley-v-google-inc-google-go-down-again-this-time-in-hamburg-dominic-crossley/) and ECJ Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12 [2014], CURIA.[3]
2007	Jedfro Investments (U.S.A.) Ltd. v. Jacyk	12/20/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2398/index.do	Jedfro Investments (U.S.A.) Ltd. v. Jacyk, [2007] 3 S.C.R. 679, 2007 SCC 55	McLachlin C.J.	unanimous	Ontario	Contract	C	referred to	Paal Wilson & Co. A/S v. Partenreederei Hannah Blumenthal, [1983] 1 All E.R. 34	SC	UK (HL)	[17] It is suggested that if both parties are found to have abandoned a contract, that will terminate it. However, abandonment discharges a contract only if it amounts to a new contract in which the parties agree to abandon the old one. As Lord Diplock stated in Paal Wilson & Co. A/S v. Partenreederei Hannah Blumenthal, [1983] 1 All E.R. 34 (H.L.), at pp. 48-49: To the formation of the contract of abandonment, the ordinary principles of the English law of contract apply. To create a contract by exchange of promises between two parties where the promise of each party constitutes the consideration for the promise of the other what is necessary is that the intention of each as it has been communicated to and understood by the other (even though that which has been communicated does not represent the actual state of mind of the communicator) should coincide. That is what English lawyers mean when they resort to the latin phrase consensus ad idem and the words that I have italicised are essential to the concept of consensus ad idem, the lack of which prevents the formation of a binding contract in English law.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	H.C. 292/83, Temple Mount Faithful v. Jerusalem District Police Commander, 38(2) P.D. 449	SC	Israel	[149] The case of Israel is unique because of the fundamental role played by the Jewish religion in that country. Freedom of conscience, faith, religion and worship is guaranteed to every individual in Israel: H.C. 292/83, Temple Mount Faithful v. Jerusalem District Police Commander, 38(2) P.D. 449. In addition, the Foundations of Law Act, 1980, 5740-1980, 34 L.S.I. 181 (1979-80), explicitly authorizes the courts to use Jewish religious law to fill in gaps in legislation: Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case-law or by analogy, it shall decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage. In the context of that statute, the word "Israel" refers to Judaism and the Jewish people: R. Lapidoth, "Freedom of Religion and of Conscience in Israel" (1998), 47 Cath. U. L. Rev. 441, at p. 444. The courts can also determine the limits of the Jewish religion itself. For example, in Cr. A. 112/50, Yosifof v. Attorney-General, 5 P.D. 481, the court held that a legal prohibition on the practice of bigamy did not infringe the freedom of religion of a Jewish man who was a member of a particular community because that practice was not mandatory according to the Jewish religion.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Brett v. Brett, [1969] 1 All E.R. 1007	lower-level court	UK	[140] A husband's failure to consent to a get does not seem to lead to sanctions other than those available in family law. Rather, it gives rise to an assessment of its impact on the wife's financial independence. In Brett v. Brett, [1969] 1 All E.R. 1007, the Court of Appeal considered a Jewish wife's application for support against her husband, who was disinclined to give her a get. In deciding on the amount of support the husband would have to pay the wife, the court stated that he could pay less support if he gave her a get within three months. The following comment on this point by Professor Adrienne Barnett should be noted, however: "[a]lthough the ruling in Brett v. Brett was acceptable to the rabbinical authorities in 1969, they no longer accept it, and regard it as a coerced get": "Getting a 'Get' — The Limits of Law's Authority?" (2000), 8 Fem. Legal Stud. 241, at p. 252.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	In the Marriage of Steinmetz (1980), 6 F.L.R. 554	lower-level court	Australia	[87] Australian courts too have provided remedies for a husband's refusal to give his wife a get. In In the Marriage of Shulsinger (1977), 13 A.L.R. 537, the Family Court of Australia held that a husband's undertaking to a family court that he would obtain a get did not violate his freedom of religion, concluding: [The trial judge] was concerned with . . . the serious question of the injustice that would arise if the husband sought and obtained a divorce in Australia, but refused to relieve his wife of the obligations of the marriage. It is contrary to all notions of justice to allow such a possibility to arise in a court, and to say that the court can do nothing. [Emphasis added; p. 541.] And in In the Marriage of Steinmetz (1980), 6 F.L.R. 554, the Family Court of Australia awarded the wife a greater amount of spousal maintenance in order to "encourage" the husband to give her a religious divorce.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983)	lower-level court	US	[146] A New York court has also enforced a separation agreement and the Jewish marriage contract (ketubah) in the same way as it would have done in the case of a secular marriage contract. In Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983), the court enforced the spouses' agreements to appear before the beth din. In interpreting the ketubah signed by the parties, the New York Court of Appeals noted that the case "can be decided solely upon the application of neutral principles of contract law, without reference to any religious principle" (pp. 574-75). The approach taken by this court is based on the fact that the decision to grant a get is not a religious act. According to the court, granting a get is a secular act, since "the provisions of the Ketubah relied upon by plaintiff constitute nothing more than an agreement to refer the matter of a religious divorce to a nonjudicial forum" (Avitzur, at p. 574).
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Jane Doe v. John Doe, Jerusalem Fam. Ct., No. 19270/03, December 21, 2004	lower-level court	Israel	[152] However, in a more recent case, Jane Doe v. John Doe, a family court (Jerusalem, No. 19270/03, December 21, 2004) accepted that a wife aggrieved by her husband's failure to consent to a get could receive financial compensation.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Civ. 2e, April 21, 1982, Bull. civ. II, No. 62	SC	France	[136] The earliest cases recognizing the right to compensation for refusal to consent to a get were based on the theory of an abuse of rights resulting from malicious intent on the husband's part (L. de Naurois, obs. under Trib. civ. Metz, April 27, 1955, Trib. civ. Grenoble, May 7, 1958, Paris 1re, February 4, 1959, J.C.P. 1960.II.11632; Civ. 2e, December 13, 1972, D. 1973.493). The Court of Cassation subsequently stated that for the husband, a get is merely an option that is a matter for his freedom of conscience and in respect of which an improper decision can give rise only to damages; however, the court noted the malicious purpose behind the husband's actions (Civ. 2e, April 21, 1982, Bull. civ. II, No. 62). Intent to harm was no longer found to be a requirement in two subsequent cases, though (Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728, and Civ. 2e, June 15, 1988, Bull. civ. II, No. 146). Finally, in a later decision, the court reiterated that, for the husband, giving a get is merely an option that is a matter for his conscience and in respect of which an improper decision can give rise only to damages (Civ. 2e, November 21, 1990, D. 1991.434).

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2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728	SC	France	[136] The earliest cases recognizing the right to compensation for refusal to consent to a get were based on the theory of an abuse of rights resulting from malicious intent on the husband's part (L. de Naurois, obs. under Trib. civ. Metz, April 27, 1955, Trib. civ. Grenoble, May 7, 1958, Paris 1re, February 4, 1959, J.C.P. 1960.II.11632; Civ. 2e, December 13, 1972, D. 1973.493). The Court of Cassation subsequently stated that for the husband, a get is merely an option that is a matter for his freedom of conscience and in respect of which an improper decision can give rise only to damages; however, the court noted the malicious purpose behind the husband's actions (Civ. 2e, April 21, 1982, Bull. civ. II, No. 62). Intent to harm was no longer found to be a requirement in two subsequent cases, though (Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728, and Civ. 2e, June 15, 1988, Bull. civ. II, No. 146). Finally, in a later decision, the court reiterated that, for the husband, giving a get is merely an option that is a matter for his conscience and in respect of which an improper decision can give rise only to damages (Civ. 2e, November 21, 1990, D. 1991.434). [137] The developments in French law have not been immune to criticism. Some have said that it is not true that giving a get is merely an option. These critics maintain that improper conduct on the husband's part constitutes delictual fault and that there is no reason why a court should not order the husband to grant the get, or even that it would be "hypocritical" to deny a penalty (astreinte) and that awarding damages to the aggrieved spouse basically amounts to giving effect to religious law: É. Agostini, obs. under Civ. 2e, November 21, 1990, D. 1991.434; É. Agostini, obs. under Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728; C. Larroumet, Annot. under Civ. 2e, December 13, 1972, D. 973.493. Others have said that denying the religious nature of the get amounts to disregarding the text that requires one to be granted, that assessing cases in which a get must be issued is beyond the jurisdiction of the secular courts and that it must be asked whether the obligation is not a purely personal one tied to the performance of a religious act: P. Barbier,
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Civ. 2e, June 15, 1988, Bull. civ. II, No. 146	SC	France	[136] The earliest cases recognizing the right to compensation for refusal to consent to a get were based on the theory of an abuse of rights resulting from malicious intent on the husband's part (L. de Naurois, obs. under Trib. civ. Metz, April 27, 1955, Trib. civ. Grenoble, May 7, 1958, Paris 1re, February 4, 1959, J.C.P. 1960.II.11632; Civ. 2e, December 13, 1972, D. 1973.493). The Court of Cassation subsequently stated that for the husband, a get is merely an option that is a matter for his freedom of conscience and in respect of which an improper decision can give rise only to damages; however, the court noted the malicious purpose behind the husband's actions (Civ. 2e, April 21, 1982, Bull. civ. II, No. 62). Intent to harm was no longer found to be a requirement in two subsequent cases, though (Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728, and Civ. 2e, June 15, 1988, Bull. civ. II, No. 146). Finally, in a later decision, the court reiterated that, for the husband, giving a get is merely an option that is a matter for his conscience and in respect of which an improper decision can give rise only to damages (Civ. 2e, November 21, 1990, D. 1991.434).
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Civ. 2e, November 21, 1990, D. 1991.434	SC	France	[136] The earliest cases recognizing the right to compensation for refusal to consent to a get were based on the theory of an abuse of rights resulting from malicious intent on the husband's part (L. de Naurois, obs. under Trib. civ. Metz, April 27, 1955, Trib. civ. Grenoble, May 7, 1958, Paris 1re, February 4, 1959, J.C.P. 1960.II.11632; Civ. 2e, December 13, 1972, D. 1973.493). The Court of Cassation subsequently stated that for the husband, a get is merely an option that is a matter for his freedom of conscience and in respect of which an improper decision can give rise only to damages; however, the court noted the malicious purpose behind the husband's actions (Civ. 2e, April 21, 1982, Bull. civ. II, No. 62). Intent to harm was no longer found to be a requirement in two subsequent cases, though (Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728, and Civ. 2e, June 15, 1988, Bull. civ. II, No. 146). Finally, in a later decision, the court reiterated that, for the husband, giving a get is merely an option that is a matter for his conscience and in respect of which an improper decision can give rise only to damages (Civ. 2e, November 21, 1990, D. 1991.434). [137] The developments in French law have not been immune to criticism. Some have said that it is not true that giving a get is merely an option. These critics maintain that improper conduct on the husband's part constitutes delictual fault and that there is no reason why a court should not order the husband to grant the get, or even that it would be "hypocritical" to deny a penalty (astreinte) and that awarding damages to the aggrieved spouse basically amounts to giving effect to religious law: É. Agostini, obs. under Civ. 2e, November 21, 1990, D. 1991.434; É. Agostini, obs. under Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728; C. Larroumet, Annot. under Civ. 2e, December 13, 1972, D. 973.493. Others have said that denying the religious nature of the get amounts to disregarding the text that requires one to be granted, that assessing cases in which a get must be issued is beyond the jurisdiction of the secular courts and that it must be asked whether the obligation is not a purely personal one tied to the performance of a religious act: P. Barbier,
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	R. (S.B.) v. Governors of Denbigh High School, [2007] 1 A.C. 100, [2006] UKHL 15	SC	UK (HL)	[139] In England, the main source of protection for freedom of religion is art. 9 of the European Convention on Human Rights, 213 U.N.T.S. 221. Religious debates in England often concern interference with or restrictions on the practice of religion or on religious expression. The threshold for interference with the freedom of religious practice is quite high. Thus, in a recent House of Lords case, R. (S.B.) v. Governors of Denbigh High School, [2007] 1 A.C. 100, [2006] UKHL 15, Lord Bingham noted that "there remains a coherent and remarkably consistent body of authority [from the Strasbourg institutions] which our domestic courts must take into account and which shows that interference is not easily established" (para. 24). In his view, the educational institution's decision to exclude a student who insisted on wearing the jilbab had to be upheld. Lord Bingham found that the dress code was very clear and that it was open to the complainant to attend another school. In his opinion, there was no interference with the freedom of religious practice in the case. He added that, even if there had been interference, it would have been justified under art. 9(2) of the European Convention on Human Rights. In this regard, he observed that the dress code had been developed in co-operation with and been approved by several institutions in Muslim communities
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696 (1976)	SC	US	[142] In the United States, freedom of religion is protected by the First Amendment to the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The First Amendment has two components: the first prohibits the promotion of a religion, while the second grants every individual the free exercise of freedom of belief and conscience. In the United States, the courts may not interpret religious laws or interfere with the practice of religion: Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696 (1976).
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Schwartz v. Schwartz, 583 N.Y.S.2d 716 (1992)	lower-level court	US	[144] The New York courts have drawn on the principles underlying those provisions to invoke equity and prevent husbands from using the get to force their wives to give them advantages. Thus, in Schwartz v. Schwartz, 583 N.Y.S.2d 716 (1992), the Supreme Court applied the "clean hands" doctrine to deny a husband an equal division of property on the basis that his refusal to grant a get was unacceptable (see Greenawalt).
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Giahn v. Giahn, N.Y. Sup. Ct., April 13, 2000, unreported	lower-level court	US	[145] In Giahn v. Giahn, April 13, 2000 (cited in Benjamin, at p. 188), the New York Supreme Court penalized a husband's use of the get to force his wife to make concessions. The court relied on Schwartz to hold that the husband's refusal to grant a get was unacceptable. To compensate for that abuse, all the assets of the marriage were awarded to the wife.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Segal v. Segal, 650 A.2d 996 (1994)	lower-level court	US	[147] In a more recent New Jersey case, Segal v. Segal, 650 A.2d 996 (1994), the Superior Court invalidated a separation agreement signed by both parties, because the wife had signed it under the threat of not being given a get.

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2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	C	D	Cr. A. 112/50, Yosifof v. Attorney-General, 5 P.D. 481	lower-level court	Israel	[149] The case of Israel is unique because of the fundamental role played by the Jewish religion in that country. Freedom of conscience, faith, religion and worship is guaranteed to every individual in Israel: H.C. 292/83, Temple Mount Faithful v. Jerusalem District Police Commander, 38(2) P.D. 449. In addition, the Foundations of Law Act, 1980, 5740-1980, 34 L.S.I. 181 (1979-80), explicitly authorizes the courts to use Jewish religious law to fill in gaps in legislation: Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case-law or by analogy, it shall decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage. In the context of that statute, the word "Israel" refers to Judaism and the Jewish people: R. Lapidoth, "Freedom of Religion and of Conscience in Israel" (1998), 47 Cath. U. L. Rev. 441, at p. 444. The courts can also determine the limits of the Jewish religion itself. For example, in Cr. A. 112/50, Yosifof v. Attorney-General, 5 P.D. 481, the court held that a legal prohibition on the practice of bigamy did not infringe the freedom of religion of a Jewish man [illegible]
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	R		N.Y. Domestic Relations Law § 253 (Consol. 1990)	lower-level statute	US	[143] Courts in the state of New York have decided cases relating to the get. Since that state has a large Orthodox Jewish community, the situation of the agunah seems to be a serious social problem: K. Greenawalt, "Religious Law and Civil Law: Using Secular Law to Assure Observance of Practices with Religious Significance" (1998), 71 S. Cal. L. Rev. 781, at p. 812. In New York, there are a number of legislative provisions that apply specifically to the get. For example, s. 253 of the Domestic Relations Law (Consol. 1990) requires a party who commences divorce proceedings to certify that there are no barriers to remarriage. Since 1993, judges can also take account of any barriers to remarriage when dividing up assets and determining support. At the time of the 1993 amendments, the Governor of New York stated that "[t]his bill was overwhelmingly adopted by the state legislature because it deals with a tragically unfair condition that is almost universally acknowledged": B. Benjamin, "Judaism and the Laws of Divorce", [2001] UCL Jurisprudence Rev. 177, at p. 188.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Deschamps J.	dissenting	Quebec	Constitutional law Contract	R		United States Constitution, First Amendment	constitution	Us	2.2.3 United States [142] In the United States, freedom of religion is protected by the First Amendment to the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The First Amendment has two components: the first prohibits the promotion of a religion, while the second grants every individual the free exercise of freedom of belief and conscience. In the United States, the courts may not interpret religious laws or interfere with the practice of religion: Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696 (1976)
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	H.C. 292/83, Temple Mount Faithful v. Jerusalem District Police Commander, 38(2) P.D. 449	SC	Israel	[73] Other jurisdictions have similarly concluded that the invocation of freedom of religion does not, by itself, grant immunity from the need to weigh the assertion against competing values or harm. Two examples suffice. In H.C. 292/83, Temple Mount Faithful v. Jerusalem District Police Commander, 38(2) P.D. 449, the Israeli Supreme Court allowed a petition from some Jewish worshippers seeking to pray in a location where a clash with Muslim worshippers appeared inevitable. Barak J. warned: Freedom of conscience, belief, religion and worship is a relative one. It has to be balanced with other rights and interests which also deserve protection, like private and public property, and freedom of movement. One of the interests to be taken into consideration is public order and security.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Christian Education South Africa v. Minister of Education (2000), 10 B. Const. L.R. 1051	CC	South Africa	[74] And in Christian Education South Africa v. Minister of Education (2000), 10 B. Const. L.R. 1051 (S. Afr. Const. Ct.), Sachs J., for a unanimous court, explored the limitations of religious freedom in a challenge to a law prohibiting corporal punishment of students in schools. Christian Education South Africa, an association of 196 independent Christian schools, claimed that corporal punishment was mandated by the Bible. In a decision upholding the prohibition against punishment, Sachs J. explained: The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law. [para. 35]
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	D. v. France, Application No. 10180/82, December 6, 1983, D.R. 35, p. 199	international	ECHR	[84] The use of damages to compensate someone whose spouse has refused to provide a get was upheld by the European Commission of Human Rights. In D. v. France, Application No. 10180/82, December 6, 1983, D.R. 35, p. 199, the husband had been ordered by a French court to pay his ex-wife 25 000 francs to compensate her for his refusal to deliver a get. The husband applied to the Commission, arguing that his right to freedom of conscience and religion under the European Convention on Human Rights was violated by this award of damages. The Commission rejected his application, noting that "under Hebrew law it is customary to hand over the letter of repudiation after the civil divorce has been pronounced, and that no man with genuine religious convictions would contemplate delaying the remittance of this letter to his ex-wife" (p. 202). It further held that "in refusing to hand over the letter of repudiation establishing the religious divorce to his ex-wife, the applicant was not manifesting his religion in observance or practice within the meaning of Article 9, para. 1 of the Convention" (p. 202).
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Trib. civ. Seine, February 22, 1957, Gaz. Pal. 1957.1.246	lower-level court	France	[85] French courts have held that the refusal to provide the get is a delictual fault. The remedy provided is the payment of damages to compensate the wife. In Trib. civ. Seine, February 22, 1957, Gaz. Pal. 1957.1.246, for example, the husband had divorced his wife under civil law but refused to deliver a get to her. The Tribunal civil de la Seine held: [TRANSLATION] Whereas the get is a purely religious act of repudiation that can have no effect — from a civil standpoint — on the breakdown of the marital relationship, to which effect has already been given by the divorce; and whereas it cannot therefore be properly maintained that the granting of a get is contrary to public order. [p. 246] Finding that providing a get did not require any special form of worship, the Tribunal deemed that the husband's refusal to provide the get was a delictual fault and the wife was awarded substantial damages. (See also Civ. 2e, December 13, 1972, D. 1973.493.)

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2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Civ. 2e, December 13, 1972, D. 1973.493	lower-level court	France	[85] French courts have held that the refusal to provide the get is a delictual fault. The remedy provided is the payment of damages to compensate the wife. In Trib. civ. Seine, February 22, 1957, Gaz. Pal. 1957.1.246, for example, the husband had divorced his wife under civil law but refused to deliver a get to her. The Tribunal civil de la Seine held: [TRANSLATION] Whereas the get is a purely religious act of repudiation that can have no effect — from a civil standpoint — on the breakdown of the marital relationship, to which effect has already been given by the divorce; and whereas it cannot therefore be properly maintained that the granting of a get is contrary to public order. [p. 246] Finding that providing a get did not require any special form of worship, the Tribunal deemed that the husband's refusal to provide the get was a delictual fault and the wife was awarded substantial damages. (See also Civ. 2e, December 13, 1972, D. 1973.493.) [136] The earliest cases recognizing the right to compensation for refusal to consent to a get were based on the theory of an abuse of rights resulting from malicious intent on the husband's part (L. de Naurois, obs. under Trib. civ. Metz, April 27, 1955, Trib. civ. Grenoble, May 7, 1958, Paris 1re, February 4, 1959, J.C.P. 1960.II.11632; Civ. 2e, December 13, 1972, D. 1973.493). The Court of Cassation subsequently stated that for the husband, a get is merely an option that is a matter for his freedom of conscience and in respect of which an improper decision can give rise only to damages; however, the court noted the malicious purpose behind the husband's actions (Civ. 2e, April 21, 1982, Bull. civ. II, No. 62). Intent to harm was no longer found to be a requirement in two subsequent cases, though (Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728, and Civ. 2e, June 15, 1988, Bull. civ. II, No. 146). Finally, in a later decision, the court reiterated that, for the husband, giving a get is merely an option that is a matter for his conscience and in respect of which an improper decision can give rise only to damages (Civ. 2e, November 21, 1990, D. 1991.434). [137] The developments in French law have not been immune to criticism. Some have said that it is not true that giving a get is merely an option. These critics maintain that improper conduct on the husband's part constitutes delictual fault and that there is no reason why a court should not order the husband to grant the get, or even that it would be "hypocritical" to deny a penalty (astreinte) and that awarding damages to the aggrieved spouse basically amounts to giving effect to religious law: É. Agostini, obs. under Civ. 2e, November 21, 1990, D. 1991.434; É. Agostini, obs. under Civ. 2e, June 5, 1985, J.C.P. 1987.II.20728; C. Larroumet, Annot. under Civ. 2e, December 13, 1972, D. 973.493. Others have said that denying the religious nature of the get amounts to disregarding the text that requires one to be granted, that assessing cases in which a get must be issued is beyond the jurisdiction of the secular courts and that it must be asked whether the obligation is not a purely personal one tied to the performance of a religious act: P. Barbier, "Le problème du 'Gueth'", Gaz. Pal. 1987.484.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Brett v. Brett, [1969] 1 All E.R. 1007	lower-level court	UK	[86] In the United Kingdom, courts have also been willing to attach civil consequences to a husband's refusal to provide a get and have recognized that the inability to remarry within one's religion represents a serious compensable injury. In Brett v. Brett, [1969] 1 All E.R. 1007, the English Court of Appeal ordered an additional lump sum spousal support payment by the husband if he refused to deliver a get by a certain date.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	In the Marriage of Shulsinger (1977), 13 A.L.R. 537	lower-level court	Australia	[87] Australian courts too have provided remedies for a husband's refusal to give his wife a get. In In the Marriage of Shulsinger (1977), 13 A.L.R. 537, the Family Court of Australia held that a husband's undertaking to a family court that he would obtain a get did not violate his freedom of religion, concluding: [The trial judge] was concerned with . . . the serious question of the injustice that would arise if the husband sought and obtained a divorce in Australia, but refused to relieve his wife of the obligations of the marriage. It is contrary to all notions of justice to allow such a possibility to arise in a court, and to say that the court can do nothing. [Emphasis added; p. 541.] And in In the Marriage of Steinmetz (1980), 6 F.L.R. 554, the Family Court of Australia awarded the wife a greater amount of spousal maintenance in order to "encourage" the husband to give her a religious divorce.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983)	lower-level court	US	[88] American courts, relying primarily on the rationale that obtaining a get is not solely a religious act but one that has the secular purpose of finalizing the dissolution of the marriage, have been willing to order parties to submit to the jurisdiction of the beth din. In Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983), the New York Court of Appeals found that a clause in a Jewish marriage contract, requiring both parties to appear before the beth din upon the breakdown of the marriage for the purposes of obtaining a get was enforceable and did not violate the constitutional prohibition against excessive entanglement between church and state. (See also Waxstein v. Waxstein, 395 N.Y.S.2d 877 (Sup. Ct. 1976) (aff'd 394 N.Y.S.2d 253 (App. Div. 1977)); Rubin v. Rubin, 348 N.Y.S.2d 61 (Fam. Ct. 1973); and Minkin v. Minkin, 434 A.2d 665 (N.J. Super. Ct. Ch. Div. 1981).) Unlike Avitzur and other American cases, this Court has not been asked either to order specific performance or, as previously noted, to determine the enforceability of a Jewish marriage contract, and the reference to these cases should not be taken as endorsing either remedy.
2007	Bruker v. Marcovitz	12/14/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2397/index.do	Bruker v. Marcovitz, [2007] 3 S.C.R. 607, 2007 SCC 54	Abella J.	majority	Quebec	Constitutional law Contract	C	referred to	Waxstein v. Waxstein, 395 N.Y.S.2d 877 (1976), aff'd 394 N.Y.S.2d 253 (1977)	lower-level court	US	[88] American courts, relying primarily on the rationale that obtaining a get is not solely a religious act but one that has the secular purpose of finalizing the dissolution of the marriage, have been willing to order parties to submit to the jurisdiction of the beth din. In Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983), the New York Court of Appeals found that a clause in a Jewish marriage contract, requiring both parties to appear before the beth din upon the breakdown of the marriage for the purposes of obtaining a get was enforceable and did not violate the constitutional prohibition against excessive entanglement between church and state. (See also Waxstein v. Waxstein, 395 N.Y.S.2d 877 (Sup. Ct. 1976) (aff'd 394 N.Y.S.2d 253 (App. Div. 1977)); Rubin v. Rubin, 348 N.Y.S.2d 61 (Fam. Ct. 1973); and Minkin v. Minkin, 434 A.2d 665 (N.J. Super. Ct. Ch. Div. 1981).) Unlike Avitzur and other American cases, this Court has not been asked either to order specific performance or, as previously noted, to determine the enforceability of a Jewish marriage contract, and the reference to these cases should not be taken as endorsing either remedy.
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2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	C	referred to	Civ. 1re, November 24, 1954, J.C.P. 1955.II.8565, obs. H. B.	SC	FRance	78 A professional seller is subject to a presumption of knowledge of latent defects in the good sold (Civ. 1re, November 24, 1954, J.C.P. 1955.II.8565, obs. H.B.; also Civ. 1re, January 19, 1965, D. 1965.389, and obs. G. Cornu, Rev. trim. dr. civ. 1965.665). This presumption is almost irrebuttable; the only exception is where it would have been impossible to detect the defect, and the parties are a professional seller and a professional buyer [TRANSLATION] "from the same field of expertise". This exception has rarely been applied by the courts, which have interpreted it narrowly: Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; also Huet, at pp. 348-49, and P. le Tourneau, La responsabilité civile (3rd ed. 1982), at p. 375, No. 1183.
2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	C	referred to	Civ. 1re, January 19, 1965, D. 1965.389, obs. Cornu	SC	FRance	78 A professional seller is subject to a presumption of knowledge of latent defects in the good sold (Civ. 1re, November 24, 1954, J.C.P. 1955.II.8565, obs. H.B.; also Civ. 1re, January 19, 1965, D. 1965.389, and obs. G. Cornu, Rev. trim. dr. civ. 1965.665). This presumption is almost irrebuttable; the only exception is where it would have been impossible to detect the defect, and the parties are a professional seller and a professional buyer [TRANSLATION] "from the same field of expertise". This exception has rarely been applied by the courts, which have interpreted it narrowly: Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; also Huet, at pp. 348-49, and P. le Tourneau, La responsabilité civile (3rd ed. 1982), at p. 375, No. 1183.
2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	C	referred to	Com., November 6, 1978, J.C.P. 1979.II.19178, obs. Ghestin	SC	FRance	78 A professional seller is subject to a presumption of knowledge of latent defects in the good sold (Civ. 1re, November 24, 1954, J.C.P. 1955.II.8565, obs. H.B.; also Civ. 1re, January 19, 1965, D. 1965.389, and obs. G. Cornu, Rev. trim. dr. civ. 1965.665). This presumption is almost irrebuttable; the only exception is where it would have been impossible to detect the defect, and the parties are a professional seller and a professional buyer [TRANSLATION] "from the same field of expertise". This exception has rarely been applied by the courts, which have interpreted it narrowly: Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; also Huet, at pp. 348-49, and P. le Tourneau, La responsabilité civile (3rd ed. 1982), at p. 375, No. 1183. 79 Developments in French law relating to the presumption of knowledge on the part of professional sellers have incorporated the rules governing the presumption into the legal framework applicable to limitation of liability clauses and have confirmed that the presumption is almost irrebuttable. As a result, the analysis of the presumption of knowledge on the part of professional sellers also applies to the review of limitation of liability clauses. This means that such clauses are valid in principle (art. 1645 F.C.C.), but that they are inapplicable in cases involving professional sellers. On an exceptional basis, a professional seller will be able to invoke a limitation of liability clause if the buyer is a professional from the same area of expertise and if it would not have been impossible to detect the defect: Com., October 8, 1973, J.C.P. 1975.II.17927, obs. J. Ghestin; Civ. 3e, October 30, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392. Thus, a professional seller will always be liable where it would have been impossible for the buyer to detect the defect, regardless of the buyer's status.
2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	C	referred to	Com., October 8, 1973, J.C.P. 1975.II.17927, obs. Ghestin	SC	FRance	79 Developments in French law relating to the presumption of knowledge on the part of professional sellers have incorporated the rules governing the presumption into the legal framework applicable to limitation of liability clauses and have confirmed that the presumption is almost irrebuttable. As a result, the analysis of the presumption of knowledge on the part of professional sellers also applies to the review of limitation of liability clauses. This means that such clauses are valid in principle (art. 1645 F.C.C.), but that they are inapplicable in cases involving professional sellers. On an exceptional basis, a professional seller will be able to invoke a limitation of liability clause if the buyer is a professional from the same area of expertise and if it would not have been impossible to detect the defect: Com., October 8, 1973, J.C.P. 1975.II.17927, obs. J. Ghestin; Civ. 3e, October 30, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392. Thus, a professional seller will always be liable where it would have been impossible for the buyer to detect the defect, regardless of the buyer's status.
2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	C	referred to	Civ. 3e, October 30, 1978, J.C.P. 1979.II.19178	SC	FRance	79 Developments in French law relating to the presumption of knowledge on the part of professional sellers have incorporated the rules governing the presumption into the legal framework applicable to limitation of liability clauses and have confirmed that the presumption is almost irrebuttable. As a result, the analysis of the presumption of knowledge on the part of professional sellers also applies to the review of limitation of liability clauses. This means that such clauses are valid in principle (art. 1645 F.C.C.), but that they are inapplicable in cases involving professional sellers. On an exceptional basis, a professional seller will be able to invoke a limitation of liability clause if the buyer is a professional from the same area of expertise and if it would not have been impossible to detect the defect: Com., October 8, 1973, J.C.P. 1975.II.17927, obs. J. Ghestin; Civ. 3e, October 30, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392. Thus, a professional seller will always be liable where it would have been impossible for the buyer to detect the defect, regardless of the buyer's status.
2007	ABB Inc. v. Domtar Inc.	11/22/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2393/index.do	ABB Inc. v. Domtar Inc., [2007] 3 S.C.R. 461, 2007 SCC 50	LeBel and Deschamps JJ.	unanimous	Quebec	Sale	R		Code civil (France), arts. 1641, 1642, 1643, 1644, 1645.	statute	France	74 Following this survey of the rules relating to latent defects in Quebec civil law, it may be of interest to consider the extent to which these rules resemble the rules of French law or those that are applied in the rest of Canada. In fact, every provision of the C.C.L.C. respecting the warranty against latent defects is a restatement of the rules of the French Civil Code ("F.C.C."). It will therefore be interesting to see how the issues before the Court have been analysed in French law. Moreover, a brief review of the common law rules will show that they differ significantly from the applicable rules of Quebec law and French law. 3.6.3.1 French Law 75 In French law, the conditions for enforcing the warranty against latent defects are essentially the same as in Quebec law: the defect must be serious, must have existed before ownership was transferred, and must be latent (arts. 1641 and 1642 F.C.C.). 76 For the determination as to whether a defect is latent, the professional buyer is subject to a rebuttable presumption of knowledge of the defect: A. Bénabent, Droit civil: Les contrats spéciaux civils et commerciaux (5th ed. 2001), No. 226; see also O. Barret, "Vente", in Répertoire de droit civil (2nd ed. (loose-leaf)), vol. X, Nos. 563 and 565, and J. Huet, Les principaux contrats spéciaux (2nd ed. 2001), at pp. 329-30. This presumption is stronger where the buyer is from the same field of expertise as the seller. However, professional buyers can rebut the presumption at any time by showing that it would have been impossible for them to detect the defect: Barret, Nos. 569 and 571, and Bénabent, No. 226. 77 When the conditions for enforcing the warranty are met, the buyer has a redhibitory or an estimatory action against the seller (art. 1644 F.C.C.). It is also open to the buyer to seek damages if the seller knew about the defect (art. 1645 F.C.C.) or is presumed to have known about it. However, these actions may be subject to the application of limitation of liability clauses (art. 1643 F.C.C.). 79 Developments in French law relating to the presumption of knowledge on the part of professional sellers have incorporated the rules governing the presumption into the legal framework applicable to limitation of liability clauses and have confirmed that the presumption is almost irrebuttable. As a result, the analysis of the presumption of knowledge on the part of professional sellers also applies to the review of limitation of liability clauses. This means that such clauses are valid in principle (art. 1645 F.C.C.), but that they are inapplicable in cases involving professional sellers. On an exceptional basis, a professional seller will be able to invoke a limitation of liability clause if the buyer is a professional from the same area of expertise and if it would not have been impossible to detect the defect: Com., October 8, 1973, J.C.P. 1975.II.17927, obs. J. Ghestin; Civ. 3e, October 30, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392; Com., November 6, 1978, J.C.P. 1979.II.19178, obs. J. Ghestin, and obs. G. Cornu, Rev. trim. dr. civ. 1979.392. Thus, a professional seller will always be liable where it would have been impossible for the buyer to detect the defect, regardless of the buyer's status.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2007	R. v. Singh	11/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2390/index.do	R. v. Singh, [2007] 3 S.C.R. 405, 2007 SCC 48	Fish J.	dissenting	British Columbia	Constitutional law	C	D	Miranda v. Arizona, 384 U.S. 436 (1966)	SC	US	89 For more than 40 years, it has been the law in the United States that where a suspect "indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease": Miranda v. Arizona, 384 U.S. 436 (1966), at pp. 473-74. And yet, as Wharton puts it, "[n]umerous studies in the years following this decision have concluded that Miranda had little impact on the ability of the police to obtain statements": Wharton's Criminal Procedure (14th ed. (loose-leaf)), at p. 19-9. 90 Moreover, after nearly a decade of experience with Miranda, the U.S. Supreme Court reaffirmed its underlying rationale in these terms: A reasonable and faithful interpretation of the Miranda opinion must rest on the intention of the Court in that case to adopt "fully effective means . . . to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored . . . ." 384 U.S. [436], at 479. The critical safeguard identified in the passage at issue is a person's "right to cut off questioning." Id., at 474. Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his "right to cut off questioning" was "scrupulously honored." (Michigan v. Mosley, 423 U.S. 96 (1975), at pp. 103-4) 91 In Mosley, upon the detainee's request, "the police . . . immediately ceased the interrogation, resumed questioning only after the passage of a significant period of time and the provision of a fresh set of warnings, and restricted the second interrogation to a crime that had not been a subject of the earlier interrogation" (p. 106). The Court was therefore satisfied that the detainee's "right to cut off questioning" had been "scrupulously honored", within the meaning of Miranda. 92 More recently, after an additional quarter-century under this investigatory regime, the U.S. Supreme Court affirmed that "Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts". See Dickerson v. United States, 530 U.S. 428 (2000), at p. 432, where the Court held that Congress could not circumvent or override Miranda by making voluntariness
2007	R. v. Singh	11/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2390/index.do	R. v. Singh, [2007] 3 S.C.R. 405, 2007 SCC 48	Fish J.	dissenting	British Columbia	Constitutional law	C	D	Michigan v. Mosley, 423 U.S. 96 (1975)	SC	US	90 Moreover, after nearly a decade of experience with Miranda, the U.S. Supreme Court reaffirmed its underlying rationale in these terms: A reasonable and faithful interpretation of the Miranda opinion must rest on the intention of the Court in that case to adopt "fully effective means . . . to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored . . . ." 384 U.S. [436], at 479. The critical safeguard identified in the passage at issue is a person's "right to cut off questioning." Id., at 474. Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his "right to cut off questioning" was "scrupulously honored." (Michigan v. Mosley, 423 U.S. 96 (1975), at pp. 103-4)
2007	R. v. Singh	11/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2390/index.do	R. v. Singh, [2007] 3 S.C.R. 405, 2007 SCC 48	Fish J.	dissenting	British Columbia	Constitutional law	C	D	Dickerson v. United States, 530 U.S. 428 (2000)	SC	US	92 More recently, after an additional quarter-century under this investigatory regime, the U.S. Supreme Court affirmed that "Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts". See Dickerson v. United States, 530 U.S. 428 (2000), at p. 432, where the Court held that Congress could not circumvent or override Miranda by making voluntariness the sole criterion of admissibility of a detainee's statements to the police.
2007	R. v. Singh	11/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2390/index.do	R. v. Singh, [2007] 3 S.C.R. 405, 2007 SCC 48	Charron J.	majority	British Columbia	Constitutional law	C	referred to	Blackburn v. Alabama, 361 U.S. 199 (1960)	SC	US	30 Of course, not every involuntary confession is false. While the confession rule's primary concern is with reliability, it is well established that voluntariness is a broader concept. As this Court stated in Oickle (at para. 70): "Wigmore perhaps summed up the point best when he said that voluntariness is 'shorthand for a complex of values': Wigmore on Evidence (Chadbourn rev. 1970), vol. 3, § 826, at p. 351." These values include respect for the individual's freedom of will, the need for law enforcement officers themselves to obey the law, and the overall fairness of the criminal justice system: see Oickle, at paras. 69-70, citing Blackburn v. Alabama, 361 U.S. 199 (1960), at p. 207.
2007	Lumbermens Mutual Casualty Co. v. Herbison	10/19/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2388/index.do	Lumbermens Mutual Casualty Co. v. Herbison, [2007] 3 S.C.R. 393, 2007 SCC 47	Binnie J.	unanimous	Ontario	Insurance	C	referred to	Kangas v. Aetna Casualty & Surety Co., 235 N.W.2d 42 (1975)	lower-level court	US	11 In my view, Cronk J.A. was correct to uphold the finding of the trial judge that the shooting was an act independent of the ownership, use or operation of Wolfe's truck. The approach taken by the majority did not give adequate weight to Wolfe's separate, distinct and intervening act of negligence in firing the rifle at a target 1,000 feet away that he could not see, and which turned out to be the unfortunate Mr. Herbison. As the Ontario Court of Appeal remarked in Alchimowicz v. Continental Insurance Co. of Canada (1996), 37 C.C.L.I. (2d) 284, "[a]s liberally as one may choose to interpret legislation which provides benefits to persons who are injured, it must be remembered that this is automobile legislation" (para. 9). Amos itself rejected a simple "but for" test. In para. 21, Major J. quoted with approval from Kangas v. Aetna Casualty & Surety Co., 235 N.W.2d 42 (1975), where the Michigan Court of Appeals stated, at p. 50: . . . there still must be a causal connection between the injury sustained and the ownership, maintenance or use of the automobile and which causal connection is more than incidental, fortuitous or but for. [Emphasis added.]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2007	Kerr v. Danier Leather Inc.	10/12/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2386/index.do	Kerr v. Danier Leather Inc., [2007] 3 S.C.R. 331, 2007 SCC 44	Binnie J.	unanimous	Ontario	Commercial law	C	referred to	Shaw v. Digital Equipment Corp., 82 F.3d 1194 (1996)	lower-level court	US	33 The appellants no longer dispute the trial judge's finding that Danier's prospectus provided "full, true and plain disclosure of all material facts" when it was receipted on May 6, 1998. However, they cite Shaw v. Digital Equipment Corp., 82 F.3d 1194 (1st Cir. 1996), for the proposition that an issuer should not be allowed to "exploit its informational trading advantage, at the expense of investors, by delaying disclosure of material nonpublic negative news until after completion of the offering" (p. 1204). As to intra-quarterly results, Shaw states: [G]iven that at any point in a quarter, the remainder of the period may not mirror the quarter-to-date, is there a sufficient probability that unexpectedly disastrous quarter-to-date performance will carry forward to the end of the quarter, such that a reasonable investor would likely consider the interim performance important to the overall mix of information available? . . . [T]he question is whether the nondisclosure of interim facts rendered the prospectus materially incomplete. [p. 1210] The appellants argue that Shaw's "materially incomplete" test applies at least to the extent of obliging issuers to correct misinformation, and this duty (grounded in s. 130(1) itself) exists independently of the prospectus disclosure requirements of ss. 56 to 58. The separate and continuing obligation on issuers is to disclose any material facts arising after the date of the prospectus and before closing that make any of the factual assertions implied in the forecast untrue. The gist of the appellants' complaint is succinctly summarized in their factum as follows: . . . Danier management decided not to disclose this [the intra-quarterly] information to Danier's board, counsel, auditors, underwriters, or to the market. Rather, they closed the offering and collected $67,950,000 in proceeds. Two weeks after closing, [Danier] finally disclosed the information and a revised, substantially lower, forecast for Q4 and FY 1998. The market price of Danier's shares immediately fell. In contrast to the Wortsman Family Trust, which
2007	Kerr v. Danier Leather Inc.	10/12/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2386/index.do	Kerr v. Danier Leather Inc., [2007] 3 S.C.R. 331, 2007 SCC 44	Binnie J.	unanimous	Ontario	Commercial law	C	referred to	Re Anderson, Clayton Shareholders' Litigation, 519 A.2d 669 (1986)	lower-level court	US	57 In Re Anderson, Clayton Shareholders' Litigation, 519 A.2d 669 (1986), the Court of Chancery of Delaware declined to apply the business judgment rule to determine whether accurate disclosure had been made to shareholders in proxy disclosures and supplemental disclosures, stating: . . . one of the underlying reasons for the great deference the business judgment rule carries with it, is not present in a setting of this kind. The quality of disclosure is inherently something that the court itself must ultimately evaluate. [p. 675]
2007	Named Person v. Vancouver Sun	10/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2384/index.do	Named Person v. Vancouver Sun, [2007] 3 S.C.R 253, 2007 SCC 43	LeBel J.	dissenting in part	British Columbia	Courts	C	D	Roviaro v. United States, 353 U.S. 53 (1957)	SC	US	114 The rationale underlying the decisions in Babcock and Hiscock is in my view applicable, with necessary adaptations, to the situation now before the Court. Under an absolute interpretation of informer privilege, the mere fact that an informer is involved would suffice to compel the judge to protect any information that might tend to identify the informer unless either the informer waived this privilege or the possibility of establishing the innocence of an accused would be compromised if secrecy were maintained. In my opinion, Hiscock and Babcock demonstrate the importance of ensuring that the courts have the power to review the reasons given for shielding certain information from public scrutiny and to refuse to grant an application for disclosure where an attempt is being made to divert the rule of confidentiality from its intended purpose, namely to foster the proper administration of justice and protect the public interest therein. These judgments clearly illustrate why it is important not to interpret the informer privilege rule as preventing the trial judge from asking whether the proposed use of the privilege for a specific purpose is consistent with the very reason for its existence. As Burton J. of the United States Supreme Court stated in Roviaro v. United States, 353 U.S. 53 (1957), "[t]he scope of the privilege is limited by its underlying purpose" (p. 60)
2007	Named Person v. Vancouver Sun	10/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2384/index.do	Named Person v. Vancouver Sun, [2007] 3 S.C.R 253, 2007 SCC 43	LeBel J.	dissenting in part	British Columbia	Courts	C	D	Spector v. Ageda, [1971] 3 All E.R. 417	lower-level court	UK	138 I found the submissions of the intervener Law Society of British Columbia with regard to the legal principles applicable to this aspect of the case to be particularly helpful. For instance, the Law Society quite rightly pointed out that a lawyer's relationship with his or her client is a fiduciary one, as this Court reaffirmed in a recent judgment (Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24), and that for this reason, the lawyer has a duty to disclose to his or her client any relevant information that he or she may properly disclose (R. v. Henry (1990), 61 C.C.C. (3d) 455 (Que. C.A.), at pp. 464-65). This duty to disclose serves a number of purposes, one of which is to enable the client to give informed instructions to the lawyer. Another is to protect the integrity of the solicitor-client relationship. This duty is so important that, according to some, a lawyer who is unable or unwilling to discharge it must refuse or cease to represent the client in question (Spector v. Ageda, [1971] 3 All E.R. 417 (Ch. D.), at p. 430).
2007	Named Person v. Vancouver Sun	10/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2384/index.do	Named Person v. Vancouver Sun, [2007] 3 S.C.R 253, 2007 SCC 43	Bastarache J.	majority	British Columbia	Courts	C	referred to	Powell v. Chief Constable of North Wales Constabulary, [1999] E.W.J. No. 6844 (QL)	lower-level court	UK	25 Moreover, the informer himself or herself cannot unilaterally decide to "waive" the privilege. The authors of The Law of Evidence in Canada write, at p. 883, that "[t]he privilege belongs to both the Crown and the informer and thus the informer alone cannot 'waive' the privilege and neither can a party in a civil proceeding": J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999) (emphasis in original). Courts in the United Kingdom have found that a court may refuse to disclose an informer's identity even if he or she has explicitly requested disclosure: see Powell v. Chief Constable of North Wales Constabulary, [1999] E.W.J. No. 6844 (QL) (C.A.), and Savage v. Chief Constable of Hampshire, [1997] 1 W.L.R. 1061 (C.A.).
2007	Named Person v. Vancouver Sun	10/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2384/index.do	Named Person v. Vancouver Sun, [2007] 3 S.C.R 253, 2007 SCC 43	Bastarache J.	majority	British Columbia	Courts	C	referred to	Savage v. Chief Constable of Hampshire, [1997] 1 W.L.R. 1061	lower-level court	UK	25 Moreover, the informer himself or herself cannot unilaterally decide to "waive" the privilege. The authors of The Law of Evidence in Canada write, at p. 883, that "[t]he privilege belongs to both the Crown and the informer and thus the informer alone cannot 'waive' the privilege and neither can a party in a civil proceeding": J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999) (emphasis in original). Courts in the United Kingdom have found that a court may refuse to disclose an informer's identity even if he or she has explicitly requested disclosure: see Powell v. Chief Constable of North Wales Constabulary, [1999] E.W.J. No. 6844 (QL) (C.A.), and Savage v. Chief Constable of Hampshire, [1997] 1 W.L.R. 1061 (C.A.).
2007	Named Person v. Vancouver Sun	10/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2384/index.do	Named Person v. Vancouver Sun, [2007] 3 S.C.R 253, 2007 SCC 43	Bastarache J.	majority	British Columbia	Courts	C	referred to	Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978)	SC	US	33 In addition to its longstanding role as a common law rule required by the rule of law, the open court principle gains importance from its clear association with free expression protected by s. 2 (b) of the Charter . In the context of this appeal, it is important to note that s. 2 (b) provides that the state must not interfere with an individual's ability to "inspect and copy public records and documents, including judicial records and documents" (Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326, at p. 1338, citing Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), at p. 597). La Forest J. adds at para. 24 of CBC: "[e]ssential to the freedom of the press to provide information to the public is the ability of the press to have access to this information" (emphasis added). Section 2 (b) also protects the ability of the press to have access to court proceedings (CBC, at para. 23; Ruby v. Canada (Solicitor General), [2002] 4 S.C.R. 3, 2002 SCC 75, at para. 53).
2007	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)	10/5/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2383/index.do	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency), [2007] 3 S.C.R. 217, 2007 SCC 42	Rothstein J.	majority	Federal Court of Appeal	Taxation	C	referred to	D'Aguiar v. Guyana Commissioner of Inland Revenue, [1970] T.R. 31	SC	UK (PC)	27 As A.Y.S.A. does not claim to fall under any of the first three Pemsel heads, it is the fourth head that is relevant to the case at bar. In Vancouver Society, the majority held that under the fourth head, the purposes of the organization must be of (a) "public benefit" or "beneficial to the community" and (b) "in a way the law regards as charitable" (para. 176). Recognizing that this reasoning was circular and that the law was not clear, Iacobucci J., at para. 177, adopted the following test from D'Aguiar v. Guyana Commissioner of Inland Revenue, [1970] T.R. 31, at p. 33: [The Court] must first consider the trend of those decisions which have established certain objects as charitable under this heading, and ask whether, by reasonable extension or analogy, the instant case may be considered to be in line with these. Secondly, it must examine certain accepted anomalies to see whether they fairly cover the objects under consideration. Thirdly — and this is really a cross-check upon the others — it must ask whether, consistently with the objects declared, the income and property in question can be applied for purposes clearly falling outside the scope of charity; if so, the argument for charity must fail. Iacobucci J. then added to the test: To this I would add the general requirement, outlined in Verge v. Somerville, supra, at p. 499, that the purpose must also be "for the benefit of the

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2007	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)	10/5/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2383/index.do	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency), [2007] 3 S.C.R. 217, 2007 SCC 42	Rothstein J.	majority	Federal Court of Appeal	Taxation	C	referred to	Inland Revenue Commissioners v. City of Glasgow Police Athletic Association, [1953] 1 All E.R. 747	SC	UK (HL)	36 While in some cases athletic associations have been denied charitable status (e.g. Inland Revenue Commissioners v. City of Glasgow Police Athletic Association, [1953] 1 All E.R. 747 (H.L.); Laing v. Commissioner of Stamp Duties, [1948] N.Z.L.R. 154 (S.C.)), commentators have described the suggestion that healthy sports generally are not charitable as obiter (Tudor on Charities (9th ed. 2003), at pp. 116-18; H. Picarda, The Law and Practice Relating to Charities (3rd ed. 1999), at p. 128). Other cases have distinguished Re Nottage and found sporting activities to be charitable when connected to a purpose falling under one of the first three Pemsel heads. For example, in Mariette, a gift for sporting facilities at a school was held to be charitable as being for educational purposes. Similarly in McMullen, a trust to provide facilities for pupils of schools and universities to play football and other sports was also held to be charitable as part of education.
2007	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)	10/5/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2383/index.do	A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency), [2007] 3 S.C.R. 217, 2007 SCC 42	Rothstein J.	majority	Federal Court of Appeal	Taxation	R		Charities Act 2006 (U.K.), 2006, c. 50, s. 2(2)(g).	statute	UK	44 Finally, it is necessary to consider whether what is proposed is an incremental change. A.Y.S.A. argues that as some sporting organizations are already charities, it would be incremental to broaden charitable status to youth amateur fitness sports. The government submits that 21 percent of all non-profit organizations in the country are sports and recreation organizations, and that the potential recognition of these organizations as charities could have a significant impact on the income tax system. I agree with the government that this would seem to be closer to wholesale reform than incremental change, and is best left to Parliament. While it may be desirable as a matter of policy to give sports associations the tax advantages of charitable status, it is a task better suited to Parliament than the courts. In this regard, I note that in the United Kingdom, the charitable status of "the advancement of amateur sport" was brought about through statute (Charities Act 2006 (U.K.), 2006, c. 50, s. 2(2)(g)). As stated by the majority in Vancouver Society, substantial change in the definition of charity must come from the legislature rather than the courts.
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	2.2 The Anns Test 115 Police officers have multiple duties. There is no question that one of them is the duty to investigate crime. This duty exists at common law and, in Ontario, is embodied in s. 42 of the Police Services Act, R.S.O. 1990, c. P.15, which describes the general duties of a police officer. Although "investigating crime" is not specifically listed, several of the listed duties are related to, or form part of, the police investigation into crime. Section 42(1) reads as follows: 42.—(1) The duties of a police officer include, (a) preserving the peace; (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention; (c) assisting victims of crime; (d) apprehending criminals and other offenders and others who may lawfully be taken into custody; (e) laying charges and participating in prosecutions; (f) executing warrants that are to be executed by police officers and performing related duties;
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Brooks v. Commissioner of Police of the Metropolis, [2005] 1 W.L.R. 1495, [2005] UKHL 24	SC	UK (HL)	120 U.K. authorities holding that no duty of care is owed by the police to individual members of the public in the context of the investigation of crime are: Hill v. Chief Constable of West Yorkshire, [1988] 2 All E.R. 238 (H.L.), at pp. 243-44; Alexandrou v. Oxford, [1993] 4 All E.R. 328 (C.A.); Osman v. Ferguson, [1993] 4 All E.R. 344 (C.A.); Cowan v. Chief Constable of the Avon and Somerset Constabulary, [2001] E.W.J. No. 5088 (QL), [2001] EWCA Civ 1699; and Brooks v. Commissioner of Police of the Metropolis, [2005] 1 W.L.R. 1495, [2005] UKHL 24, at paras. 19-23 and 33. See also Calveley v. Chief Constable of the Merseyside Police, [1989] 1 All E.R. 1025 (H.L.), at pp. 1030-32, in support of the proposition that the police do not owe a duty of care in the context of an internal police investigation and disciplinary proceeding against police officers. 147 This opposition of interests has been recognized by courts in other countries as a sufficient reason not to impose a duty of care. The imposition of a duty of care in negligence owed to suspects has been held to be inconsistent with a police officer's duty to fully investigate the conduct in question. For example, Australian courts have reasoned that to impose a duty of care in negligence to a person whose conduct is under investigation would conflict with and constrain the proper performance of the police officers' duty to fully investigate the conduct in question: see Tame v. New South Wales, at paras. 231 and 298-99; Gruber v. Backhouse, at paras. 29-30 and 35-39. Similarly, in England, the House of Lords has refused to extend the duty of care on the basis of a conflict with the "fearless and efficient discharge by police officers of their vitally important public duty of investigating crime": Calveley v. Chief Constable of the Merseyside Police, at p. 1030; see also Hill v. Chief Constable of West Yorkshire, at pp. 240-41; Brooks v. Commissioner of Police of the Metropolis, at para. 30

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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Courtney v. State of Tasmania, [2000] TASSC 83	lower-level court	Australia	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWCA 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).
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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35	SC	Australia	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWCA 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).

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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18	lower-level court	Australia	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWCA 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Duke v. State of New South Wales, [2005] NSWSC 632	lower-level court	Australia	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWCA 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).
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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWCA 92, leave to appeal denied, [2005] HCA Trans 21	lower-level court	Australia	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWSC 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Simpson v. Attorney General, [1994] 3 N.Z.L.R. 66	lower-level court	New Zealand	121 Australian authorities holding that no duty of care is owed to suspects in the context of a police investigation are Emanuele v. Hedley (1997), 137 F.L.R. 339 (A.C.T.S.C.), at p. 359; Courtney v. State of Tasmania, [2000] TASSC 83; Wilson v. State of New South Wales (2001), 53 N.S.W.L.R. 407, [2001] NSWSC 869, at para. 63; Tame v. New South Wales (2002), 191 A.L.R. 449, [2002] HCA 35, at para. 231; Gruber v. Backhouse (2003), 190 F.L.R. 122, [2003] ACTSC 18, at para. 41; Duke v. State of New South Wales, [2005] NSWSC 632, at para. 23; and in New Zealand, Gregory v. Gollan, [2006] NZHC 426, at paras. 16-17. See also the discussion in Sullivan v. Moody (2001), 183 A.L.R. 404, [2001] HCA 59, at para. 60. Cases holding that no duty of care is owed to individual members of the public in the broader investigatory context are Cran v. State of New South Wales (2004), 62 N.S.W.L.R. 95, [2004] NSWSC 92, at para. 50 (leave to appeal to HCA denied, [2005] HCA Trans 21); and in New Zealand, Simpson v. Attorney General, [1994] 3 N.Z.L.R. 667 (C.A.).
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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Kelly v. Curtis, 21 F.3d 1544 (1994)	lower-level court	US	122 For American authorities supporting the proposition that police do not owe a duty of care to suspects, see Gregoire v. Biddle, 177 F.2d 579 (2d Cir. 1949), at p. 581; Thompson v. Olson, 798 F.2d 552 (1st Cir. 1986), at p. 556; Kompare v. Stein, 801 F.2d 883 (7th Cir. 1986), at p. 890; Kelly v. Curtis, 21 F.3d 1544 (11th Cir. 1994), at p. 1551; Orsatti v. New Jersey State Police, 71 F.3d 480 (3d Cir. 1995), at p. 484; Schertz v. Waupaca County, 875 F.2d 578 (7th Cir. 1989), at p. 583. Also relevant are the remarks of Scalia J. in Castle Rock v. Gonzales, 125 S.Ct. 2796 (2005), at p. 2810.
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2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	Charron J.	dissenting on cross-appeal	Ontario	Professional law Torts	C	D	Dorset Yacht Co. v. Home Office, [1970] A.C. 1004	SC	UK (HL)	142 I do not mean to suggest that if a duty of care towards suspects is recognized, police officers will become "so apprehensive, easily dissuaded from doing their duty and intent on preserving public funds from costly claims" that they will be incapable of carrying out their assigned duties (Dorset Yacht Co. v. Home Office, [1970] A.C. 1004 (H.L.), at p. 1033, per Lord Reid). Like Lord Reid, in my view, the police are made of sterner stuff. Rather, my point is that the overly cautious approach that may result from the imposition of conflicting duties would seriously undermine society's interest in having the police investigate crime and apprehend offenders. Mr. Hill purports to answer this argument by denying that the police officer would be faced with such concerns because, he argues, the officer could always safely stand behind the reasonable and probable grounds standard. I will have more to say about the reasonable and probable grounds standard below. For the moment, however, let me simply say that I am dubious that a police officer, who has spent time in impaired driving court and who has witnessed countless legal debates about whether the arresting officer had the requisite reasonable and probable grounds to believe the suspect had been driving while impaired, would regard this standard as a sufficient safety net. Therefore, I am not persuaded that the potential ramifications of imposing on police these conflicting duties can be so easily answered by an appeal to the reasonable and probable grounds standard.
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	McLachlin C.J.	majority	Ontario	Professional law Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	20 The test for determining whether a person owes a duty of care involves two questions: (1) Does the relationship between the plaintiff and the defendant disclose sufficient foreseeability and proximity to establish a prima facie duty of care; and (2) If so, are there any residual policy considerations which ought to negate or limit that duty of care? (See Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), as affirmed and explained by this Court in a number of cases (Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79, at paras. 25 and 29-39; Edwards v. Law Society of Upper Canada, [2001] 3 S.C.R. 562, 2001 SCC 80, at para. 9; Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69, at paras. 47-50; Childs v. Desormeaux, [2006] 1 S.C.R. 643, 2006 SCC 18, at para. 47).) 25 Proximity may be seen as providing an umbrella covering types of relationships where a duty of care has been found by the courts. The vast number of negligence cases proceed on the basis of a type of relationship previously recognized as giving rise to a duty of care. The duty of care of the motorist to other users of the highway; the duty of care of the doctor to his patient; the duty of care of the solicitor to her client — these are but a few of the relationships where sufficient proximity to give rise to a prima facie duty of care is recognized, provided foreseeability is established. The categories of relationships characterized by sufficient proximity to attract legal liability are not closed, however. From time to time, claims are made that relationships hitherto unconsidered by courts support a duty of care giving rise to legal liability. When such cases arise, the courts must consider whether the claim for sufficient proximity is established. If it is, and the prima facie duty is not negated for policy reasons at the second stage of the Anns test, the new category will thereafter be recognized as capable of giving rise to a duty of care and legal liability. The result is a concept of liability for negligence which provides a large measure of certainty, through settled categories of liability — attracting relationships, while permitting expansion to meet new circumstances and evolving conceptions of justice. 27 Before moving on to the analysis of proximity in depth, it is worth pausing to state explicitly that this judgment is concerned only with a very particular relationship — the relationship between a police officer and a particularized suspect that he is investigating. There are particular considerations relevant to proximity and policy applicable to this relationship, including: the reasonable expectations of a party being investigated by the police, the seriousness of the interests at stake for the suspect, the legal duties owed by police to suspects under their governing statutes and the Charter and the importance of balancing the need for police to be able to investigate effectively with the protection of the fundamental rights of a suspect or accused person. It might well be that both the considerations informing the analysis of both proximity and policy would be different in the context of other relationships involving the police, for example, the relationship between the police and a victim, or the relationship between a police chief and the family of a victim. This decision deals only with the relationship between the police and a suspect being investigated. If a new relationship is alleged to attract liability of the police in negligence in a future case, it will be necessary to engage in a fresh Anns analysis, sensitive to the different considerations which might obtain when police interact with persons other than suspects that they are investigating. Such an approach will also ensure that the law of tort is developed in a manner that is sensitive to the benefits of recognizing liability in novel situations where appropriate, but at the same time, sufficiently incremental and gradual to maintain a reasonable degree of certainty in the law. Further, I cannot accept the suggestion that cases dealing with the relationship between the police and victims or between a police chief and the family of a victim are determinative here, although aspects of the analysis in those cases may be applicable and informative in the case at bar. (See Odhavji and Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police (1998), 160 D.L.R. (4th) 697 (Ont. Ct. (Gen. Div.)).) I note that Jane Doe is a lower court decision and that debate continues over the content and scope of the ratio in that case. I do not purport to resolve these disputes on this appeal. In fact, and with great respect to the Court of Appeal who relied to some extent on this case, I find the Jane Doe decision of little assistance in the case at bar. 31 In accordance with the usual rules governing proof of a cause of action, the plaintiff has the formal onus of establishing the duty of care: Odhavji and Childs, at para. 13, should not be read as changing this fundamental rule. Uncertainty may arise as to which factors fall to be considered at this part of the stage one analysis, and which should be reserved to the second stage "policy" portion of the analysis. The principle that animates the first stage of the Anns test — to determine whether the relationship is in principle sufficiently close or "proximate" to attract legal liability — governs the nature of considerations that arise at this stage. "The proximity analysis involved at the first stage of the Anns test focuses on factors arising from the relationship between the plaintiff and the defendant", for example
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	McLachlin C.J.	majority	Ontario	Professional law Torts	C	referred to	Brooks v. Commissioner of Police of the Metropolis, [2005] 1 W.L.R. 1495, [2005] UKHL 24	SC	UK (HL)	57 The record does not support the conclusion that recognizing potential liability in tort significantly changes the behaviour of police. Indeed, some of the evidence suggests that tort liability has no adverse effect on the capacity of police to investigate crime. This supports the conclusion of the majority in the Court of Appeal below that the "'chilling effect' scenario" remains speculative and that concern about preventing a "chilling effect" on the investigation of crime is not (on the basis of present knowledge) a convincing policy rationale for negating a duty of care (para. 63). (For a sampling of the empirical evidence on point, see e.g.: A. H. Garrison, "Law Enforcement Civil Liability Under Federal Law and Attitudes on Civil Liability: A Survey of University, Municipal and State Police Officers" (1995), 18 Police Stud. 19; T. Hughes, "Police officers and civil liability: 'the ties that bind'?" (2001), 24 Policing: An International Journal of Police Strategies & Management 240, at pp. 253-54, 256 and 257-58; M. S. Vaughn, T. W. Cooper and R. V. del Carmen, "Assessing Legal Liabilities in Law Enforcement: Police Chiefs' Views" (2001), 47 Crime & Delinquency 3; D. E. Hall et al., "Suing cops and corrections officers: Officer attitudes and experiences about civil liability" (2003), 26 Policing: An International Journal of Police Stategies & Management 529, at pp. 544-45.) Whatever the situation may have been in the United Kingdom (see Brooks v. Commissioner of Police of the Metropolis, [2005] 1 W.L.R. 1495, [2005] UKHL 24; Hill v. Chief Constable of West Yorkshire, [1988] 2 All E.R. 238 (H.L.)), the studies adduced in this case do not support the proposition that recognition of tort liability for negligent police investigation will impair it.
2007	Hill v. Hamilton-Wentworth Regional Police Services Board	10/4/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2382/index.do	Hill v. Hamilton-Wentworth Regional Police Services Board, [2007] 3 S.C.R. 129, 2007 SCC 41	McLachlin C.J.	majority	Ontario	Professional law Torts	C	referred to	Hill v. Chief Constable of West Yorkshire, [1988] 2 All E.R. 238	SC	UK (HL)	57 The record does not support the conclusion that recognizing potential liability in tort significantly changes the behaviour of police. Indeed, some of the evidence suggests that tort liability has no adverse effect on the capacity of police to investigate crime. This supports the conclusion of the majority in the Court of Appeal below that the "'chilling effect' scenario" remains speculative and that concern about preventing a "chilling effect" on the investigation of crime is not (on the basis of present knowledge) a convincing policy rationale for negating a duty of care (para. 63). (For a sampling of the empirical evidence on point, see e.g.: A. H. Garrison, "Law Enforcement Civil Liability Under Federal Law and Attitudes on Civil Liability: A Survey of University, Municipal and State Police Officers" (1995), 18 Police Stud. 19; T. Hughes, "Police officers and civil liability: 'the ties that bind'?" (2001), 24 Policing: An International Journal of Police Strategies & Management 240, at pp. 253-54, 256 and 257-58; M. S. Vaughn, T. W. Cooper and R. V. del Carmen, "Assessing Legal Liabilities in Law Enforcement: Police Chiefs' Views" (2001), 47 Crime & Delinquency 3; D. E. Hall et al., "Suing cops and corrections officers: Officer attitudes and experiences about civil liability" (2003), 26 Policing: An International Journal of Police Stategies & Management 529, at pp. 544-45.) Whatever the situation may have been in the United Kingdom (see Brooks v. Commissioner of Police of the Metropolis, [2005] 1 W.L.R. 1495, [2005] UKHL 24; Hill v. Chief Constable of West Yorkshire, [1988] 2 All E.R. 238 (H.L.)), the studies adduced in this case do not support the proposition that recognition of tort liability for negligent police investigation will impair it.
2007	Syl Apps Secure Treatment Centre v. B.D.	7/27/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2378/index.do	Syl Apps Secure Treatment Centre v. B.D., [2007] 3 S.C.R. 83, 2007 SCC 38	Abella J.	unanimous	Ontario	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	23 The analytic divining rod used by this Court for determining whether a duty of care exists was first proposed in Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), adopted by this Court in Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2, and definitively refined in Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79. It was confirmed in Edwards v. Law Society of Upper Canada, [2001] 3 S.C.R. 562, 2001 SCC 80, and Childs v. Desormeaux, [2006] 1 S.C.R. 643, 2006 SCC 18. 32 This means, the Court recognized, that policy is relevant at both the "proximity" stage and the "residual policy concerns" stage of the Anns test. The difference is that under proximity, the relevant questions of policy relate to factors arising from the particular relationship between the plaintiff and the defendant. In contrast, residual policy considerations are concerned not so much with "the relationship between the parties, but with the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally" (Cooper, at para. 37).

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2007	Syl Apps Secure Treatment Centre v. B.D.	7/27/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2378/index.do	Syl Apps Secure Treatment Centre v. B.D., [2007] 3 S.C.R. 83, 2007 SCC 38	Abella J.	unanimous	Ontario	Torts	C	referred to	M. v. Newham London Borough Council, [1994] 2 W.L.R. 554	lower-level court	UK	54 There is, in addition to the other possibilities for undermining the statutory duty to keep the child's interests uppermost, another potential conflict. The Syl Apps Secure Treatment Centre and Mr. Baptiste are providing services to R.D. in a treatment context, a context that invokes medical paradigms of confidentiality and privacy. Numerous courts have recognized that a doctor does not owe a duty of care to the parent of his or her patient because that would create a situation of conflicting duties of care. In M. v. Newham London Borough Council, [1994] 2 W.L.R. 554 (Eng. C.A.), a mother's claim against her child's treating psychiatrist where the child had been apprehended by the local authority, was dismissed on the ground that the psychiatrist did not owe a duty of care to the mother. Sir Thomas Bingham M.R. explained: [T]he mother was not in any meaningful sense the psychiatrist's patient. The psychiatrist's duty was to act in the interests of the child, and that might very well mean acting in a way that would be adverse to the personal interests of the mother; she was concerned with those interests only to the extent that they could have an impact on the interests of the child. In this situation of potential conflict, I do not think the psychiatrist can arguably be said to have owed a duty of care to the mother . . . . [Emphasis added; p. 574.]
2007	Syl Apps Secure Treatment Centre v. B.D.	7/27/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2378/index.do	Syl Apps Secure Treatment Centre v. B.D., [2007] 3 S.C.R. 83, 2007 SCC 38	Abella J.	unanimous	Ontario	Torts	C	referred to	Sullivan v. Moody (2001), 207 C.L.R. 562, [2001] HCA 59	SC	Australia	54 There is, in addition to the other possibilities for undermining the statutory duty to keep the child's interests uppermost, another potential conflict. The Syl Apps Secure Treatment Centre and Mr. Baptiste are providing services to R.D. in a treatment context, a context that invokes medical paradigms of confidentiality and privacy. Numerous courts have recognized that a doctor does not owe a duty of care to the parent of his or her patient because that would create a situation of conflicting duties of care. In M. v. Newham London Borough Council, [1994] 2 W.L.R. 554 (Eng. C.A.), a mother's claim against her child's treating psychiatrist where the child had been apprehended by the local authority, was dismissed on the ground that the psychiatrist did not owe a duty of care to the mother. Sir Thomas Bingham M.R. explained: [T]he mother was not in any meaningful sense the psychiatrist's patient. The psychiatrist's duty was to act in the interests of the child, and that might very well mean acting in a way that would be adverse to the personal interests of the mother; she was concerned with those interests only to the extent that they could have an impact on the interests of the child. In this situation of potential conflict, I do not think the psychiatrist can arguably be said to have owed a duty of care to the mother . . . . [Emphasis added; p. 574.]
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Bastarache J.	concurring in the result	Federal Court of Appeal	Intellectual property	C	referred to	British Leyland Motor Corp. v. Armstrong Patents Co., [1986] 1 All E.R. 850	SC	UK (HL)	95 Contrary to what Rothstein J. seems to argue at para. 4, the previous analysis does not suggest that the simple fact of a work being attached to a consumer good would preclude that work from copyright protection: the Act is clear that protection extends to, inter alia, works produced or reproduced "in any material form whatever" (s. 3(1)). The "merely incidental" analysis goes to secondary liability under s. 27(2) only; rather than being about what is and is not copyrightable, its intention is to prevent that section from being improperly leveraged to use the Copyright Act as a protection of commercial interests completely unrelated to copyright's intended domain. Thus, the sale of a t-shirt with a reproduction of a painting on its front may constitute the sale of the work (the painting); on the other hand, the location of a small logo on the corner of a shirt pocket would not thereby transform an otherwise plain shirt into a copyrighted work, as the logo qua copyrighted work would be merely incidental to the shirt being sold (and, as noted above, any value the logo has as identifying a brand would be protected by trade-mark law, rather than by copyright). To take a slightly different example, a copyrighted instruction booklet included in the box of some consumer good would, as copyrighted work, be merely incidental to the good for the purposes of s. 27(2) ; see British Leyland Motor Corp. v. Armstrong Patents Co., [1986] 1 All E.R. 850 (H.L.)
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Abella J.	dissenting	Federal Court of Appeal	Intellectual property	C	D	Bouchet v. Kyriacopoulos (1964), 45 C.P.R. 265	lower-level court	UK	117 A copyright holder's ability to alienate its interest either through licensing or assignment is perfectly consistent with the statutory scheme. Vertical and horizontal divisibility is, arguably, a hallmark of copyright: see Bouchet v. Kyriacopoulos (1964), 45 C.P.R. 265 (Ex. Ct.). And, as Binnie J. noted in Théberge, at para. 12, the economic objectives of copyright law are furthered through the transferability of either full or partial copyright interests.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	United States Naval Institute v. Charter Communications, Inc., 936 F.2d 692 (1991)	lower-level court	US	43 Under U.S. copyright law, "the licensor may be liable to the exclusive licensee for copyright infringement, if the licensor exercises rights that have theretofore been exclusively licensed": Nimmer on Copyright (loose-leaf), vol. 3, at pp. 12-58 and 12-59; United States Naval Institute v. Charter Communications, Inc., 936 F.2d 692 (2d Cir. 1991), at p. 695; Architectronics, Inc. v. Control Systems, Inc., 935 F.Supp. 425 (S.D.N.Y. 1996), at p. 434.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	Architectronics, Inc. v. Control Systems, Inc., 935 F.Supp. 425 (1996)	lower-level court	US	43 Under U.S. copyright law, "the licensor may be liable to the exclusive licensee for copyright infringement, if the licensor exercises rights that have theretofore been exclusively licensed": Nimmer on Copyright (loose-leaf), vol. 3, at pp. 12-58 and 12-59; United States Naval Institute v. Charter Communications, Inc., 936 F.2d 692 (2d Cir. 1991), at p. 695; Architectronics, Inc. v. Control Systems, Inc., 935 F.Supp. 425 (S.D.N.Y. 1996), at p. 434.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	Griggs Group Ltd. v. Evans, [2004] F.S.R. 31, [2003] EWHC 2914	lower-level court	UK	45 Under the Copyright, Designs and Patents Act 1988 (U.K.), 1988, c. 48, the exclusive licensee lacks the capacity to sue the copyright owner-licensor. Under s. 101(1) of the U.K. Act, [a]n exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment. U.K. commentators have taken this provision to mean that "[t]he exclusive licensee may sue in his own name to restrain infringements occurring after the grant of the licence as if the licence had been an assignment", and that "[e]xcept as against the owner of the right he has the same rights and remedies for infringement of the right as if the licence had been an assignment": H. Laddie et al., The Modern Law of Copyright and Designs (3rd ed. 2000), vol. 1, at p. 905; see also L. Bently and B. Sherman, Intellectual Property Law (2nd ed. 2004), at pp. 254-55. Consequently, the exclusive licensee is able to sue third parties but not the owner-licensor for infringement: Griggs Group Ltd. v. Evans, [2004] F.S.R. 31, [2003] EWHC 2914 (Ch), at para. 58.

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2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	R		17 U.S.C. § 101.	statute	US	44 However, there are some notable differences between the American and the Canadian statutes. Under the U.S. Act (17 U.S.C. § 101), a "transfer of copyright ownership" is defined as an assignment, mortgage, exclusive license, or any other conveyance, alienation or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license. Unlike the Canadian Act, the U.S. statute appears to put exclusive licensees on equal footing with assignees. Under U.S. copyright law, there would be no functional difference between an "exclusive license" and an "assignment". The two terms had emerged from the 1909 Act, which had put assignees but not exclusive licensees on equal footing with copyright owners. That distinction has since been eliminated under the current Act: Nimmer on Copyright, at pp. 10-1 to 10-22. Because exclusive licensees are equated with copyright owners, the exclusive licensee can sue for infringement as an owner, which means that it can sue even the owner-licensor for copyright infringement.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	R		Copyright Act 1968 (Cth.), No. 63, s. 10(1).	statute	Australia	5 I note that the "incidental" approach is similar to the Australian approach to this issue. However, the Australian approach was prescribed by statute and not by judges. In 1998, the Australian Parliament made a deliberate policy decision to amend its Copyright Act 1968, (Cth.), No. 63, to exclude "accessories" from the domain of copyright for the purposes of parallel importation (Copyright Amendment Act (No. 1) 1998 (Cth.), No. 104, Schedule 2). Under s. 10(1) of the Australian Copyright Act 1968, as amended, an infringing work includes a work that was "imported without the licence of the owner of the copyright, [and] would have constituted an infringement of that copyright if the article had been made in Australia by the importer, but does not include: . . . (g) a non-infringing accessory whose importation does not constitute an infringement of that copyright". The Australian Act defines "accessory" so as to include the labels and packaging that accompany an article. The Canadian Copyright Act, in contrast, has not exempted accessories or incidental works from the protection of copyright, and it is not for this Court to create such an exemption.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	R		Copyright Amendment Act (No. 1) 1998 (Cth.), No. 104, Schedule 2.	statute	Australia	5 I note that the "incidental" approach is similar to the Australian approach to this issue. However, the Australian approach was prescribed by statute and not by judges. In 1998, the Australian Parliament made a deliberate policy decision to amend its Copyright Act 1968, (Cth.), No. 63, to exclude "accessories" from the domain of copyright for the purposes of parallel importation (Copyright Amendment Act (No. 1) 1998 (Cth.), No. 104, Schedule 2). Under s. 10(1) of the Australian Copyright Act 1968, as amended, an infringing work includes a work that was "imported without the licence of the owner of the copyright, [and] would have constituted an infringement of that copyright if the article had been made in Australia by the importer, but does not include: . . . (g) a non-infringing accessory whose importation does not constitute an infringement of that copyright". The Australian Act defines "accessory" so as to include the labels and packaging that accompany an article. The Canadian Copyright Act, in contrast, has not exempted accessories or incidental works from the protection of copyright, and it is not for this Court to create such an exemption.
2007	Euro-Excellence Inc. v. Kraft Canada Inc.	7/26/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2377/index.do	Euro-Excellence Inc. v. Kraft Canada Inc., [2007] 3 S.C.R. 20, 2007 SCC 37	Rothstein J.	majority	Federal Court of Appeal	Intellectual property	R		Copyright, Designs and Patents Act 1988 (U.K.), 1988, c. 48, ss. 90(1), 92(1), 101(1).	statute	UK	45 Under the Copyright, Designs and Patents Act 1988 (U.K.), 1988, c. 48, the exclusive licensee lacks the capacity to sue the copyright owner-licensor. Under s. 101(1) of the U.K. Act, [a]n exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment. U.K. commentators have taken this provision to mean that "[t]he exclusive licensee may sue in his own name to restrain infringements occurring after the grant of the licence as if the licence had been an assignment", and that "[e]xcept as against the owner of the right he has the same rights and remedies for infringement of the right as if the licence had been an assignment": H. Laddie et al., The Modern Law of Copyright and Designs (3rd ed. 2000), vol. 1, at p. 905; see also L. Bently and B. Sherman, Intellectual Property Law (2nd ed. 2004), at pp. 254-55. Consequently, the exclusive licensee is able to sue third parties but not the owner-licensor for infringement: Griggs Group Ltd. v. Evans, [2004] F.S.R. 31, [2003] EWHC 2914 (Ch), at para. 58.
2007	R. v. Steele	7/20/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2376/index.do	R. v. Steele, [2007] 3 S.C.R. 3, 2007 SCC 36	Fish J.	unanimous	British Columbia	Criminal law	C	discussed	Bailey v. United States, 516 U.S. 137 (1995)	SC	US	30 The U.S. Supreme Court reached a like conclusion in Bailey v. United States, 516 U.S. 137 (1995), which concerned the meaning of "use" in § 924(c)(1) of 18 U.S.C. — a provision similar to s. 85(1) of the Criminal Code . Speaking for the court in Bailey, Justice O'Connor found that "use" requires more than mere possession and that evidence of proximity and accessibility of a firearm was insufficient to support a conviction for its use under the statute. To establish use, she stated, "the Government must show active employment of the firearm" (p. 144 (emphasis added)). She later stated: The active-employment understanding of "use" certainly includes brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm. We note that this reading compels the conclusion that even an offender's reference to a firearm in his possession could satisfy §924(c)(1). Thus, a reference to a firearm calculated to bring about a change in the circumstances of the predicate offense is a "use," just as the silent but obvious and forceful presence of a gun on a table can be a "use." [p. 148] 34 In my view, this understanding of "use" reflects the two underlying purposes of s. 85 . As we have seen, moreover, the U.S. Supreme Court in Bailey adopted a similar "active employment" test in a similar statutory context.
2007	Dell Computer Corp. v. Union des consommateurs	7/13/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2374/index.do	Dell Computer Corp. v. Union des consommateurs, [2007] 2 S.C.R. 801, 2007 SCC 34	Deschamps J.	majority	Quebec	Arbitration Contract International law	C	referred to	Fondation M. v. Banque X., BGE 122 III 139 (1996)	lower-level court	Switzerland	75 Some authors argue that the competence-competence principle requires the court to limit itself to a prima facie analysis of the application and to refer the parties to arbitration unless the arbitration agreement is manifestly tainted by a defect rendering it invalid or inapplicable: F. Bachand, "Does Article 8 of the Model Law Call for Full or Prima Facie Review of the Arbitral Tribunal's Jurisdiction?" According to Professor Bachand, this interpretation is confirmed by the legislative history of the Model Law. This approach has also been adopted in a number of countries; France, for example, has formally incorporated the approach in art. 1458 of its Code de procédure civile. The prima facie test has also been adopted in Switzerland by way of judicial interpretation: decision of the 1st Civil Court dated April 29, 1996 in Fondation M. v. Banque X., BGE 122 III 139 (1996), cited by Gaillard and Savage, at p. 409.
2007	Dell Computer Corp. v. Union des consommateurs	7/13/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2374/index.do	Dell Computer Corp. v. Union des consommateurs, [2007] 2 S.C.R. 801, 2007 SCC 34	Deschamps J.	majority	Quebec	Arbitration Contract International law	R		Code de procédure civile (France), arts. 1458, 1492.	statute	France	48 Bill 91 established the legal framework applicable to arbitration. Not all arbitration proceedings are subject to the same rules. First, Title I on arbitration proceedings applies only if the parties have not stipulated that they intend to opt out of it. In addition, the facts of the case must call for application of the Code of Civil Procedure either because the foreign parties have chosen it in accordance with a provision authorizing them to do so in a law that would otherwise govern this proceeding or because the circumstances of the proceeding necessitate the application of Quebec law. Second, Title II of Book VII of the Code of Civil Procedure contains special provisions on the recognition and execution of arbitration awards made outside Quebec. Third, art. 940.6 C.C.P. provides that Title I on arbitration proceedings is to be interpreted in light, where applicable, of the Model Law and certain documents related to it "[w]here matters of extraprovincial or international trade are at issue in an arbitration". As Professor Marquis notes, the words "mettant en cause des intérêts du commerce" in the French version of art. 940.6 have an [TRANSLATION] "unfamiliar sound in Quebec law": L. Marquis, "Le droit français et le droit québécois de l'arbitrage conventionnel", in H. P. Glenn, ed., Droit québécois et droit français: communauté, autonomie, concordance (1993), 447, at p. 483. In fact, they were taken straight from the French Code de procédure civile: [TRANSLATION] 1492. Arbitration is international where matters of international trade are at issue. Because the same words are used, Quebec authors agree that art. 940.6 C.C.P. has imported the concept of international arbitration from French law: S. Guillemard, Le droit international privé face au contrat de vente cyberspatial (2006), at pp. 73-74; S. Thuilleaux, L'arbitrage commercial au Québec: Droit interne — Droit international privé (1991), at p. 129; L. Marquis, "La notion d'arbitrage commercial international en droit québécois" (1991-1992), 37 McGill L.J. 448, at pp. 465 and 469. 75 Some authors argue that the competence-competence principle requires the court to limit itself to a prima facie analysis of the application and to refer the parties to arbitration unless the arbitration agreement is manifestly tainted by a defect rendering it invalid or inapplicable: F. Bachand, "Does Article 8 of the Model Law Call for Full or Prima Facie Review of the Arbitral Tribunal's Jurisdiction?" According to Professor Bachand, this interpretation is confirmed by the legislative history of the Model Law. This approach has also been adopted in a number of countries; France, for example, has formally incorporated the approach in art. 1458 of its Code de procédure civile. The prima facie test has also been adopted in Switzerland by way of judicial interpretation: decision of the 1st Civil Court dated April 29, 1996 in Fondation M. v. Banque X., BGE

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2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	C	discussed	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	61 An alternative approach adopted by my colleague Abella J. is to proceed solely by way of the two-step pre-Charter test first expressed by an English court in R. v. Waterfield, [1963] 3 All E.R. 659 (C.A.), although since then sparingly used in that country and then usually for a different purpose (see P. Healy, "Investigative Detention in Canada", [2005] Crim. L.R. 98). On that view there is no need to articulate a Charter analysis because in theory the Court will develop the common law in a manner that is consistent with the Charter . My colleague writes: The statement that a detention which is lawful is not arbitrary should not be understood as exempting the authorizing law, whether it is common law or statutory, from Charter scrutiny. [para. 21] We thus agree on the need for "Charter scrutiny". It seems to me problematic in a case like this, however, to say the authorizing law is subject to Charter scrutiny without in fact subjecting the authorizing law to any recognizable Charter scrutiny. My preference is to conduct "Charter scrutiny" using our usual Charter framework of analysis rather than calling in aid a British case like Waterfield decided almost 20 years before the Canadian Charter came into existence. No reason is given by my colleague for creating a different scheme of Charter scrutiny for common law police powers from that which the courts have developed for statute law (and applied, as will be seen, to other areas of the common law). The Oakes test, unlike Waterfield, is based on the wording of the Charter itself. Moreover, common law police powers illustrate a serious difficulty, I believe, with my colleague's approach. On occasion an Attorney General will argue (as here) that a common law which authorizes police conduct that infringes individual Charter freedoms may be justified in the larger interest of society. In a number of cases we have held that a common law power may infringe a Charter right but nevertheless be upheld under s. 1 , or as it is sometimes put, we have found a Charter infringement but not a Charter violation. Conflating in a Waterfield-type analysis the consideration of the individual's ss. 8 and 9 rights and society's s. 1 interests can only add to the problematic elasticity of common law police powers, and sidestep the real policy debate in which competing individual and societal interests are required to be clearly articulated in the established framework of Charter analysis. 68 A detention unsupported by law is arbitrary. As stated in Mann, at para. 15: Absent a law to the contrary, individuals are free to do as they please. By contrast, the police (and more broadly, the state) may act only to the extent that they are empowered to do so by law. Police powers are not co-extensive with their duties. Dickson C.J. made the point in his dissent in Dedman, at p. 12, quoting Professor Leigh: The police have long functioned under a regime of wide duties but limited powers. That is to say, that while they are under general duties to prevent crime, and breaches of the peace and to detect criminals, they do not have all those powers which, it might be thought, would be reasonably necessary
2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	C	referred to	Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	81 The detention and searches in this case do not come within the narrowly targeted police power of investigative detention based on "individualized suspicion" initially formulated in Simpson and elaborated upon in Mann as follows: The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer's suspicion that there is a clear nexus between the individual to be detained and a recent or on-going criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlying the officer's reasonable suspicion that the particular individual is implicated in the criminal activity under investigation. [Emphasis added; para. 34.] Mann and Simpson used the "articulable cause" justification found in the U.S. Fourth Amendment jurisprudence for so-called Terry stops, see Terry v. Ohio, 392 U.S. 1 (1968); Indianapolis v. Edmond, 531 U.S. 32 (2000), at p. 44. I do not believe that Mann can or should be divorced from this pedigree. Moreover, I think it is crucial to distinguish between what the police knew at the time of the detention, and what they knew after the initial detention when for the first time they had an unobscured look at the occupants. In Mann, the police had a good view of the person stopped before the stop, and proceeded to stop the detainee because his physical appearance matched that of the crime suspect "to the tee" (para. 5). Here, there was proximity of the vehicle to the crime scene in terms of time and location, but nothing else at the time their vehicle was stopped linked the vehicle or the occupants to the description given by the 911 caller, as the trial judge noted: I am satisfied neither officer knew the occupants were black when they stopped the car. [para. 43] Even after stopping the car, the only relevant description of the individuals from the 911 call was that they were all black (trial judge, at paras. 6 and 9-10). Accordingly, I agree on this point with the trial judge who concluded, using the language of Simpson, that: . . . did the officers have grounds to stop the vehicle for an investigative detention? They did not, because they lacked articulable cause to detain the vehicle and occupants. It cannot be said there existed objectively a constellation of discernible facts giving rise to articulable cause to detain the applicants for investigation. [para. 49] 111 Even in the United States where a gun culture is far more entrenched than in this country, courts have on occasion recognized that

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2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	C	referred to	Perry v. State of Florida, 422 So.2d 957 (1982)	lower-level court	US	99 The importance of the particular facts cannot be overemphasized. If instead of a gun call, the 911 caller had reported that a hostage or kidnapped child was being spirited out of the parking lot in the trunk of an unidentified car, and the information was considered reliable, few judges would question the authority at common law of the police to act. Equally, few would deny the validity of a police roadblock following a local jail break in an attempt to round up escaping prisoners: Perry v. State of Florida, 422 So.2d 957 (Fla. Dist. Ct. App. 1982). The present case is not one of "imminent danger". It lacks the urgency of a kidnapping or the existence of "dangerous criminals in fresh flight" (Murray, at p. 203) who were "capable, indeed, of firing on pursuing officers" (Murray, at p. 204). On the other hand, a "gun call" imports a threat to public order including real concerns for the safety of the investigating officers. Canadian society has emphatically rejected the existence of the sort of "gun culture" that affects some societies, and rightly expects the police to be able to respond effectively to 911 "gun calls". Here, the proximity in terms of place (the blockade was limited to cars exiting the property where the guns had been sighted) and proximity in time (the police were on the scene within five minutes of the 911 call) greatly increased the likelihood of effective police action. (While the effectiveness itself of police action does not confer legitimacy, the absence of likely effectiveness would argue strongly against a valid blockade.) The tip was hot. Quick police action promised success. As in Dedman, the interference with exiting motorists was "of relatively short duration and of slight inconvenience" (p. 36)
2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	C	referred to	United States v. Clipper, 973 F.2d 944 (1992)	lower-level court	US	111 Even in the United States where a gun culture is far more entrenched than in this country, courts have on occasion recognized that "gun calls" raise issues of a different order from other situations; see, e.g., United States v. Clipper, 973 F.2d 944 (D.C. Cir. 1992), per Buckley J. for the court, at p. 951: The hazards that the illegal use of firearms presents to officer and citizen alike are well documented. Therefore, a police officer responding to a tip involving guns may properly take these hazards into consideration when balancing the suspect's interests against the "need for law enforcement officers to protect themselves and other prospective victims of violence." Terry, 392 U.S. at 24 . . . . The U.S. court contrasted a gun call with a tip involving possession of drugs: If there is any doubt about the reliability of an anonymous tip in the latter case, the police can limit their response to surveillance or engage in "controlled buys." Where guns are involved, however, there is the risk that an attempt to "wait out" the suspect might have fatal consequences.
2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	C	referred to	Printz v. United States, 521 U.S. 898 (1997)	SC	US	112 The respondents cited numerous U.S. precedents to support their argument, noting that the trial judge had found that in the United States there is no "firearm exception" to the usual Fourth Amendment jurisprudence (para. 64). This is true but it is not surprising in a society where the right to bear arms is sometimes asserted to be a personal right guaranteed by the Second Amendment (see Printz v. United States, 521 U.S. 898 (1997), per Thomas J. concurring at p. 938, fn. 2). Canadian society marches to the beat of a different drummer where firearms are concerned.
2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	R		Crimes Act 1961 (N.Z.), 1961, No. 43, s. 317B.	statute	New Zealand	75 I agree with the critics that Waterfield is an odd godfather for common law police powers. In its country of origin it has lived a rather modest existence, in part because the U.K. Parliament has been far more active than the Canadian Parliament in defining police powers, see e.g. the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, ss. 1 and 4. The same is true of the various legislatures in Australia and New Zealand. The Tasmanian Police Powers (Vehicle Interception) Act 2000 (Tas.), 2000, No. 46, for example, provides at s. 5 that a senior police officer may establish a roadblock on a public street or road-related area if he or she reasonably believes that: (a) it would significantly improve the prospects of apprehending or locating a person who (i) has committed an offence punishable upon indictment, or (ii) is or may be endangering the property, life or safety of another person; (b) it is necessary to establish the roadblock for the protection of life or property; or (c) an offence has been, is being or is likely to be committed and that, for the purpose of performing his or her functions, it is necessary to detain a vehicle, a driver or a passenger in or on a vehicle. See also the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002 (N.S.W.), 2002, No. 103, s. 37; the Queensland Police Powers and Responsibilities Act 2000 (Qld.), 2000, No. 5, s. 26; the South Australia Summary Offences Act 1953 (S.A.), 1953, s. 74B, and the New Zealand Crimes Act 1961 (N.Z.), 1961, No. 43, s. 317B
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2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Binnie J.	concurring	Ontario	Constitutional law Criminal law	R		Police Powers (Vehicle Interception) Act 2000 (Tas.), 2000, No. 46, s. 5.	lower-level statute	Australia	75 I agree with the critics that Waterfield is an odd godfather for common law police powers. In its country of origin it has lived a rather modest existence, in part because the U.K. Parliament has been far more active than the Canadian Parliament in defining police powers, see e.g. the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, ss. 1 and 4. The same is true of the various legislatures in Australia and New Zealand. The Tasmanian Police Powers (Vehicle Interception) Act 2000 (Tas.), 2000, No. 46, for example, provides at s. 5 that a senior police officer may establish a roadblock on a public street or road-related area if he or she reasonably believes that: (a) it would significantly improve the prospects of apprehending or locating a person who (i) has committed an offence punishable upon indictment, or (ii) is or may be endangering the property, life or safety of another person; (b) it is necessary to establish the roadblock for the protection of life or property; or (c) an offence has been, is being or is likely to be committed and that, for the purpose of performing his or her functions, it is necessary to detain a vehicle, a driver or a passenger in or on a vehicle. See also the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002 (N.S.W.), 2002, No. 103, s. 37; the Queensland Police Powers and Responsibilities Act 2000 (Qld.), 2000, No. 5, s. 26; the South Australia Summary Offences Act 1953 (S.A.), 1953, s. 74B, and the New Zealand Crimes Act 1961 (N.Z.), 1961, No. 43, s. 317B.
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2007	R. v. Clayton	7/6/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2372/index.do	R. v. Clayton, [2007] 2 S.C.R. 725, 2007 SCC 32	Abella J.	majority	Ontario	Constitutional law Criminal law	C	referred to	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	21 The statement that a detention which is lawful is not arbitrary should not be understood as exempting the authorizing law, whether it is common law or statutory, from Charter scrutiny. Previous decisions of this Court are clear that where a detention by police is authorized by law, the law authorizing detention is also subject to Charter scrutiny: R. v. Hufsky, [1988] 1 S.C.R. 621; R. v. Ladouceur, [1990] 1 S.C.R. 1257. The courts can and should develop the common law in a manner consistent with the Charter : Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835, at pp. 875-78. The common law regarding police powers of detention, developed building on R. v. Waterfield, [1963] 3 All E.R. 659 (C.A.), and Dedman v. The Queen, [1985] 2 S.C.R. 2, is consistent with Charter values because it requires the state to justify the interference with liberty based on criteria which focus on whether the interference with liberty is necessary given the extent of the risk and the liberty at stake, and no more intrusive to liberty than reasonably necessary to address the risk. The standard of justification must be commensurate with the fundamental rights at stake. 22 The key question in this appeal, therefore, is whether the police were acting within the scope of their common law police powers when they detained Clayton and Farmer. These common law powers were described by Doherty J.A. in his reasons at paras. 35-37 with great clarity, requiring no further refinement here: The powers and duties of constables at common law were described in R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.) at 661: In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty. The powers of police constables at common law, often described as the ancillary police power, as set out in Waterfield have been accepted by the Supreme Court of Canada as part of the Canadian common law in several decisions rendered both before and after the proclamation of the Charter : see e.g. Knowlton v. The Queen (1973), 10 C.C.C. (2d) 377 (S.C.C.) at 379-80; Dedman v. The Queen (1985), 20 C.C.C. (3d) 97 (S.C.C.); R. v. Godoy (1999), 131 C.C.C. (3d) 129 (S.C.C.) at 135-36; R. v. Mann [(2004), 185 C.C.C. (3d) 308 (S.C.C.)], at 320-1. The power of the police to detain for investigative purposes in some circumstances and the power to search as an incident of arrest are two of the better known examples of the exercise of the common law ancillary police power: R. v. Mann, supra; R. v. Caslake (1998), 121 C.C.C. (3d) 97 (S.C.C.) at 107-108.
2007	Canada (Attorney General) v. JTI-Macdonald Corp.	6/28/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2369/index.do?q=brazil	Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30	McLachlin C.J.	unanimous	Quebec	Constitutional law	R		ninc megjelölve	law in general	Australia	138 The reasonableness of the government's requirement is supported by the fact that Australia, Belgium, Switzerland, Finland, Singapore and Brazil require warnings at least as large as Canada's, and the minimum size in the European Union is 48 percent of the package. The WHO Framework Convention stipulates that warning labels "should" cover at least 50 percent and "shall" cover at least 30 percent of the package.
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2007	Canada (Attorney General) v. JTI-Macdonald Corp.	6/28/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2369/index.do?q=brazil	Canada (Attorney General) v. JTI-Macdonald Corp., [2007] 2 S.C.R. 610, 2007 SCC 30	McLachlin C.J.	unanimous	Quebec	Constitutional law	R		ninc megjelölve	law in general	Brazil	138 The reasonableness of the government's requirement is supported by the fact that Australia, Belgium, Switzerland, Finland, Singapore and Brazil require warnings at least as large as Canada's, and the minimum size in the European Union is 48 percent of the package. The WHO Framework Convention stipulates that warning labels "should" cover at least 50 percent and "shall" cover at least 30 percent of the package.
2007	R. v. Couture	6/15/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2367/index.do	R. v. Couture, [2007] 2 S.C.R. 517, 2007 SCC 28	Charron J.	majority	British Columbia	Criminal law	C	referred to	Hawkins v. United States, 358 U.S. 74 (1958)	SC	US	46 However, it is far from clear that the question is an "all or nothing" proposition. Other options would be available. For example, in some Australian states, the spouse is a compellable witness for the prosecution but the trial judge has a discretion to exempt the witness from testifying: Crimes Act 1958 (Vic.), s. 400. In the United States, the accused's spouse is competent but the testimony is subject to various privileges, including the spouse's privilege not to testify against the accused: see, for example, Hawkins v. United States, 358 U.S. 74 (1958), and Trammel v. United States, 445 U.S. 40 (1980), at p. 44. (See Law Commission of Canada, Beyond Conjugality: Recognizing and supporting close personal adult relationships (2001); A. Manson, Spousal Testimony in Criminal Cases in Canada (September 2001); and Stewart.
2007	R. v. Couture	6/15/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2367/index.do	R. v. Couture, [2007] 2 S.C.R. 517, 2007 SCC 28	Charron J.	majority	British Columbia	Criminal law	C	referred to	Trammel v. United States, 445 U.S. 40 (1980)	SC	US	46 However, it is far from clear that the question is an "all or nothing" proposition. Other options would be available. For example, in some Australian states, the spouse is a compellable witness for the prosecution but the trial judge has a discretion to exempt the witness from testifying: Crimes Act 1958 (Vic.), s. 400. In the United States, the accused's spouse is competent but the testimony is subject to various privileges, including the spouse's privilege not to testify against the accused: see, for example, Hawkins v. United States, 358 U.S. 74 (1958), and Trammel v. United States, 445 U.S. 40 (1980), at p. 44. (See Law Commission of Canada, Beyond Conjugality: Recognizing and supporting close personal adult relationships (2001); A. Manson, Spousal Testimony in Criminal Cases in Canada (September 2001); and Stewart. 136 While all six judges in the majority agreed that the "natural repugnance" consideration was not a consideration with regard to admitting hearsay statements, they disagreed about whether trial judges should consider whether admitting a spouse's hearsay statements would result in "unfairness" to the accused by compromising his or her marital harmony. In writing for four members of the Court, Lamer C.J. and Iacobucci J. in their joint opinion argued that only prejudice of this sort is relevant to the exercise of a trial judge's residual discretion. L'Heureux-Dubé J. disagreed, finding at para. 108: The admission of evidence through a hearsay exception should not depend in any way upon an abstract measuring of "unfairness" to the accused. In my view, it is not open to an accused to argue that he or she will be unfairly convicted merely because a rule of evidence, in this case the spousal incompetence rule, did not apply in his or her favour. [Emphasis in original.] This was because, in her view, there was little or no impact on the policy considerations protected by spousal incompetency when a spouse's statements were tendered through the principled exception to hearsay: The main rationale for the spousal incompetence rule loses much of its conviction where the evidence is tendered via a third party and not by the spouse on the witness stand. This is so for several reasons. First, the spouse who makes the statement is not put through the stress of having to decide whether or not to testify, as this choice is already made by the time the trial occurs and the Crown seeks to admit the statement. Thus, he or she is not put in the position of having to actually stand and convict his or her spouse at trial. There is none of the internal and external pressure, in and of itself damaging to marital harmony, which exists where a spouse must decide whether to give damning testimony or face a charge of contempt. Second, the husband and wife will not be put through the strain of actually sitting through the difficult testimony at trial, and having to face each other directly as "accuser" and "accused". Finally, as Louisell and Mueller point out, most of the damaging effect to the marriage will already have occurred by the trial. In the majority of cases, the marital bond will have been broken by the actual makig of the statement, or conversely, it will have survived to trial and will not be made
2007	R. v. Couture	6/15/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2367/index.do	R. v. Couture, [2007] 2 S.C.R. 517, 2007 SCC 28	Charron J.	majority	British Columbia	Criminal law	R		Crimes Act 1958 (Vic.), s. 400.	lower-level statute	Australia	46 However, it is far from clear that the question is an "all or nothing" proposition. Other options would be available. For example, in some Australian states, the spouse is a compellable witness for the prosecution but the trial judge has a discretion to exempt the witness from testifying: Crimes Act 1958 (Vic.), s. 400. In the United States, the accused's spouse is competent but the testimony is subject to various privileges, including the spouse's privilege not to testify against the accused: see, for example, Hawkins v. United States, 358 U.S. 74 (1958), and Trammel v. United States, 445 U.S. 40 (1980), at p. 44. (See Law Commission of Canada, Beyond Conjugality: Recognizing and supporting close personal adult relationships (2001); A. Manson, Spousal Testimony in Criminal Cases in Canada (September 2001); and Stewart.

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2007	R. v. Hape	6/7/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2364/index.do	R. v. Hape, [2007] 2 S.C.R. 292, 2007 SCC 26	LeBel J.	majority	Ontario	Constitutional law Statutes	C	referred to	Trendtex Trading Corp. v. Central Bank of Nigeria, [1977] 1 Q.B. 529	lower-level court	UK	36 The English tradition follows an adoptionist approach to the reception of customary international law. Prohibitive rules of international custom may be incorporated directly into domestic law through the common law, without the need for legislative action. According to the doctrine of adoption, the courts may adopt rules of customary international law as common law rules in order to base their decisions upon them, provided there is no valid legislation that clearly conflicts with the customary rule: I. Brownlie, Principles of Public International Law (6th ed. 2003), at p. 41. Although it has long been recognized in English common law, the doctrine received its strongest endorsement in the landmark case of Trendtex Trading Corp. v. Central Bank of Nigeria, [1977] 1 Q.B. 529 (C.A.). Lord Denning considered both the doctrine of adoption and the doctrine of transformation, according to which international law rules must be implemented by Parliament before they can be applied by domestic courts. In his opinion, the doctrine of adoption represents the correct approach in English law. Rules of international law are incorporated automatically, as they evolve, unless they conflict with legislation. He wrote, at p. 554: It is certain that international law does change. I would use of international law the words which Galileo used of the earth: "But it does move." International law does change: and the courts have applied the changes without the aid of any Act of Parliament. . . . . . . Seeing that the rules of international law have changed — and do change — and that the courts have given effect to the changes without any Act of Parliament, it follows to my mind inexorably that the rules of international law, as existing from time to time, do form part of our English law. It follows, too, that a decision of this court — as to what was the ruling of international law 50 or 60 years ago — is not binding on this court today. International law knows no rule of stare decisis. If this court today is satisfied that the rule of international law on a subject has changed from what it was 50 or 60
2007	R. v. Hape	6/7/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2364/index.do	R. v. Hape, [2007] 2 S.C.R. 292, 2007 SCC 26	LeBel J.	majority	Ontario	Constitutional law Statutes	C	referred to	Abbasi v. Secretary of State for Foreign and Commonwealth Affairs, [2002] E.W.J. No. 4947 (QL), [2002] EWCA Civ. 1598	lower-level court	UK	51 The principle of comity does not offer a rationale for condoning another state's breach of international law. Indeed, the need to uphold international law may trump the principle of comity (see for example the English Court of Appeal's decision in Abbasi v. Secretary of State for Foreign and Commonwealth Affairs, [2002] E.W.J. No. 4947 (QL), [2002] EWCA Civ. 1598, in respect of a British national captured by U.S. forces in Afghanistan who was transferred to Guantanamo Bay and detained for several months without access to a lawyer or a court).
2007	R. v. Teskey	6/7/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2365/index.do	R. v. Teskey, [2007] 2 S.C.R. 267, 2007 SCC 25	Abella J.	dissenting	Alberta	Criminal law	C	D	Robbie the Pict v. Her Majesty's Advocate, [2003] ScotHC 12	lower-level court	UK	30 The foundation for the presumption was summarized in Robbie the Pict v. Her Majesty's Advocate, [2003] ScotHC 12, as follows at para. 8: Every judge is bound, both by his judicial oath and by the ethical obligation incumbent on anyone who exercises a judicial function, to behave honourably, sincerely and impartially towards litigants and those who represent them. These obligations are the cornerstones of judicial integrity. A litigant is entitled to expect integrity of the judge; but he in turn must give the judge his trust. That is the only basis on which litigation can be conducted in an atmosphere of confidence rather than suspicion.
2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	McLachlin C.J.	dissenting in part on the appeals	British Columbia	Commercial law Courts Professional law	C	D	Hilton v. Barker Booth and Eastwood, [2005] 1 All E.R. 651	SC	UK (HL)	132 When does a conflict of interest arise? This is the question at the heart of Strother's appeals. The answer is that a conflict arises when a lawyer puts himself or herself in a position of having irreconcilable duties or interests: Hilton v. Barker Booth and Eastwood, [2005] 1 All E.R. 651 (H.L.); R. v. Neil, [2002] 3 S.C.R. 631, 2002 SCC 70. It follows that the first question where conflict of interest is alleged is what duty the lawyer owed to the client alleging the conflict. The second question is whether the lawyer owed a duty to another client, or held a personal interest, that conflicted with the first duty. 135 The lawyer owes the client a duty to act loyally for the client in performing as agreed in the retainer. The duty of loyalty is not a duty in the air. It is attached to the obligations the lawyer has undertaken pursuant to the retainer. It is not conflict of loyalties in the abstract that raises problems, but conflicting duties — duties that are determined by the retainer. The problem, to use the language of Hilton, arises when the lawyer "has conflicting duties to two clients" (para. 44) and cannot prefer one to the other — that in performing his "contractual duties" (para. 35) to one (or taking a personal interest in the matter), he will be in breach of his contractual duties to the other. 141 This view of the matter does not conflict with the traditional view of the fiduciary duty owed by lawyer to client. The fiduciary duty between lawyer and client is rooted in the contract between them. It enhances the contract by imposing a duty of loyalty with respect to the obligations undertaken, but it does not change the contract's terms. Rather, it must be molded to those terms. The classic statement of Mason J. of the High Court of Australia in Hospital Products Ltd. v. United States Surgical Corp. (1984), 156 C.L.R. 41, at p. 97, has been endorsed by the Privy Council in Kelly v. Cooper, [1993] A.C. 205, at p. 215 (per Lord Browne-Wilkinson), and in Hilton, at para. 30: . . . the existence of a basic contractual relationship has in many situations provided a foundation for the erection of a fiduciary relationship. In these situations it is the contractual foundation which is all important because it is the contract that regulates the basic rights and liabilities of the parties. The fiduciary relationship, if it is to exist at all, must accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them. The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction. [Emphasis added.]
2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	McLachlin C.J.	dissenting in part on the appeals	British Columbia	Commercial law Courts Professional law	C	D	Kelly v. Cooper, [1993] A.C. 205	SC	UK (PC)	141 This view of the matter does not conflict with the traditional view of the fiduciary duty owed by lawyer to client. The fiduciary duty between lawyer and client is rooted in the contract between them. It enhances the contract by imposing a duty of loyalty with respect to the obligations undertaken, but it does not change the contract's terms. Rather, it must be molded to those terms. The classic statement of Mason J. of the High Court of Australia in Hospital Products Ltd. v. United States Surgical Corp. (1984), 156 C.L.R. 41, at p. 97, has been endorsed by the Privy Council in Kelly v. Cooper, [1993] A.C. 205, at p. 215 (per Lord Browne-Wilkinson), and in Hilton, at para. 30: . . . the existence of a basic contractual relationship has in many situations provided a foundation for the erection of a fiduciary relationship. In these situations it is the contractual foundation which is all important because it is the contract that regulates the basic rights and liabilities of the parties. The fiduciary relationship, if it is to exist at all, must accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them. The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction. [Emphasis added.]
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2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	Binnie J.	majority	British Columbia	Commercial law Courts Professional law	C	referred to	Hilton v. Barker Booth and Eastwood, [2005] 1 All E.R. 651	SC	UK (HL)	39 A critical issue in this case is the scope of Monarch's contractual retainer with Davis in 1998. Davis acknowledges "that a solicitor's duty of single-minded loyalty to his client's interest had its roots in the fiduciary nature of the solicitor-client relationship but that duty '. . . may have to be moulded and informed by the terms of the contractual relationship'" (Davis factum, at para. 80, citing Hilton v. Barker Booth and Eastwood, [2005] 1 All E.R. 651 (H.L.)). At para. 30 of the Hilton case, Lord Walker elaborated: On this issue of liability both sides have been content for the case to be dealt with as a claim for breach of contract. However, the content of BBE's contractual duty, so far as relevant to this case, has roots in the parties' relationship of trust and confidence. 51 Monarch claims (and the Court of Appeal agreed) that even after the expiry of the "exclusive" retainer in 1997, Davis was conflicted out of acting for Darc and Sentinel by reason of its ongoing solicitor-client relationship with Monarch. As the House of Lords recently noted in relation to conflicting contractual duties, "a solicitor who has conflicting duties to two clients may not prefer one to another. . . . [T]he fact that he [the lawyer] has chosen to put himself in an impossible position does not exonerate him from liability" (Hilton, at para. 44). The same principle applies to a lawyer getting into a position of conflicting fiduciary duties. As Monarch's fiduciary, Strother's duty was to "avoid situations where he has, or potentially may, develop a conflict": Ramrakha v. Zinner (1994), 157 A.R. 279 (C.A.), at para. 73, as cited in Neil, at para. 25. The general rule is of long standing but I do not think it applied here to prevent Davis and Strother from acting for Sentinel. As stated in Neil, at para. 15: An unnecessary expansion of the duty may be as inimical to the proper functioning of the legal system as would its attenuation. The issue always is to determine what rules are sensible and necessary and how best to achieve an appropriate balance among the competing interests. This is not to say that in Neil the Court advocated the resolution of conflict issues on a case-by-case basis through a general balancing of interests, the outcome of which would be difficult to predict in advance. In MacDonald Estate, similarly, the legal rule was arrived at after balancing various interests, including trading off a client's ability to choose counsel against other considerations such as lawyer mobility. Once arrived at, however, the MacDonald Estate rule protecting against disclosure of confidential information is applied as a "bright line" rule. The client's right to confidentiality trumps the lawyer's desire for mobility. So it is with Neil. The "bright line" rule is the product of the balancing of interests not the gateway to further internal balancing. In Neil, the Court stated (at para. 29): The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — even if the two mandates are unrelated — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.
2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	Binnie J.	majority	British Columbia	Commercial law Courts Professional law	C	referred to	Ramrakha v. Zinner (1994), 157 A.R. 279	lower-level court	UK	51 Monarch claims (and the Court of Appeal agreed) that even after the expiry of the "exclusive" retainer in 1997, Davis was conflicted out of acting for Darc and Sentinel by reason of its ongoing solicitor-client relationship with Monarch. As the House of Lords recently noted in relation to conflicting contractual duties, "a solicitor who has conflicting duties to two clients may not prefer one to another. . . . [T]he fact that he [the lawyer] has chosen to put himself in an impossible position does not exonerate him from liability" (Hilton, at para. 44). The same principle applies to a lawyer getting into a position of conflicting fiduciary duties. As Monarch's fiduciary, Strother's duty was to "avoid situations where he has, or potentially may, develop a conflict": Ramrakha v. Zinner (1994), 157 A.R. 279 (C.A.), at para. 73, as cited in Neil, at para. 25. The general rule is of long standing but I do not think it applied here to prevent Davis and Strother from acting for Sentinel. As stated in Neil, at para. 15: An unnecessary expansion of the duty may be as inimical to the proper functioning of the legal system as would its attenuation. The issue always is to determine what rules are sensible and necessary and how best to achieve an appropriate balance among the competing interests. This is not to say that in Neil the Court advocated the resolution of conflict issues on a case-by-case basis through a general balancing of interests, the outcome of which would be difficult to predict in advance. In MacDonald Estate, similarly, the legal rule was arrived at after balancing various interests, including trading off a client's ability to choose counsel against other considerations such as lawyer mobility. Once arrived at, however, the MacDonald Estate rule protecting against disclosure of confidential information is applied as a "bright line" rule. The client's right to confidentiality trumps the lawyer's desire for mobility. So it is with Neil. The "bright line" rule is the product of the balancing of interests not the gateway to further internal balancing. In Neil, the Court stated (at para. 29): The bright line is provided by the general rule that a lawyer may not represent one client whose interests are directly adverse to the immediate interests of another current client — even if the two mandates are unrelated — unless both clients consent after receiving full disclosure (and preferably independent legal advice), and the lawyer reasonably believes that he or she is able to represent each client without adversely affecting the other.

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2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	Binnie J.	majority	British Columbia	Commercial law Courts Professional law	C	referred to	Kelly v. Cooper, [1993] A.C. 205	SC	UK (PC)	55 The clients' respective "interests" that require the protection of the duty of loyalty have to do with the practice of law, not commercial prosperity. Here the alleged "adversity" between concurrent clients related to business matters. This is not to say that commercial interests can never be relevant. The American Restatement offers the example of two business competitors who seek to retain a single law firm in respect of competing applications for a single broadcast licence, i.e. a unique opportunity. The Restatement suggests that acting for both without disclosure and consent would be improper because the subject matter of both retainers is the same licence (Restatement (Third) of Law Governing Lawyers, vol. 2, at § 121 (2000)). The lawyer's ability to provide even-handed representation is put in issue. However, commercial conflicts between clients that do not impair a lawyer's ability to properly represent the legal interests of both clients will not generally present a conflict problem. Whether or not a real risk of impairment exists will be a question of fact. In my judgment, the risk did not exist here provided the necessary even-handed representation had not been skewed by Strother's personal undisclosed financial interest. Condominium lawyers act with undiminished vigour for numerous entrepreneurs competing in the same housing market; oil and gas lawyers advise without hesitation exploration firms competing in the oil patch, provided, of course, that information confidential to a particular client is kept confidential. There is no reason in general why a tax practitioner such as Strother should not take on different clients syndicating tax schemes to the same investor community, notwithstanding the restricted market for these services in a business in which Sentinel and Monarch competed. In fact, in the case of some areas of high specialization, or in small communities or other situations of scarce legal resources, clients may be taken to have consented to a degree of overlapping representation inherent in such law practices, depending on the evidence: Bolkiah v. KPMG, [1999] 2 A.C. 222 (H.L.), at p. 235; Kelly v. Cooper, [1993] A.C. 205 (P.C.). The more sophisticated the client, the more readily the inference of implied consent may be drawn. The thing the lawyer must not do is keep the client in the dark about matters he or she knows to be relevant to the retainer: Neil, at para. 19. As Story J. commented almost two centuries ago: No man can be supposed to be indifferent to the knowledge of facts, which work directly on his interests, or bear on the freedom of his choice of counsel. When a client employs an attorney, he has a right to presume, if the latter be silent on the point, that he has no engagements, which interfere, in any degree, with his exclusive devotion to the cause confided to him; that he has no interest, which may betray his judgment, or endanger his fidelity. (Williams v. Reed, 29 F. Cas. 1386 (1824)) The client cannot be taken to have consented to conflicts of which it is ignorant. The prudent practice for the lawyer is to obtain informed consent.
2007	Strother v. 3464920 Canada Inc.	6/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2363/index.do	Strother v. 3464920 Canada Inc., [2007] 2 S.C.R. 177, 2007 SCC 24	Binnie J.	majority	British Columbia	Commercial law Courts Professional law	C	referred to	Warman International Ltd. v. Dwyer (1995), 128 A.L.R. 201	SC	Australia	89 To the same effect, the High Court of Australia noted in Warman International Ltd. v. Dwyer (1995), 128 A.L.R. 201, at pp. 211-12: . . . the stringent rule requiring a fiduciary to account for profits can be carried to extremes and . . . in cases outside the realm of specific assets, the liability of the fiduciary should not be transformed into a vehicle for the unjust enrichment of the plaintiff. In Warman itself, the Court found that two years was the appropriate period for which defendants should be ordered to account. From the profits so determined, an allowance for the expenses, skill, expertise, effort and resources contributed by the defendants was to be deducted

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2007	British Columbia (Attorney General) v. Lafarge Canada Inc.	5/31/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2361/index.do	British Columbia (Attorney General) v. Lafarge Canada Inc., [2007] 2 S.C.R. 86, 2007 SCC 23	Binnie and LeBel JJ.	majority	British Columbia	Constitutional law	C	referred to	Attorney-General for Ontario v. Winner, [1954] A.C. 541	SC	UK (PC)	64 Historically, the federal navigation and shipping power has been broadly construed (Queddy River Driving Boom Co. v. Davidson (1883), 10 S.C.R. 222). The transportation needs of the country cannot be allowed to be hobbled by local interests. Nothing would be more futile than a ship denied the space to land or collect its cargo and condemned like the Flying Dutchman to forever travel the seas. Authority for the proposition that transportation undertakings need facilities to pick up and drop cargo, if any is required, is to be found in Attorney-General for Ontario v. Winner, [1954] A.C. 541 (P.C.). Effective regulation of harbour facilities are as essential to shipping as airports to aeronautics. As stated by Estey J. in Johannesson v. Rural Municipality of West St. Paul, [1952] 1 S.C.R. 292, at p. 319: . . . it is impossible to separate the flying in the air from the taking off and landing on the ground and it is, therefore, wholly impractical, particularly when considering the matter of jurisdiction, to treat them as independent one from the other. Similarly, MacKinnon J.A. (later A.C.J.O.) observed in Re Orangeville Airport Ltd. and Town of Caledon (1976), 11 O.R. (2d) 546 (C.A.), at p. 549: . . . airports are an integral and vital part of aeronautics and aerial navigation, and cannot be severed from that subject-matter so as to fall under a different legislative jurisdiction. See also Hamilton Harbour Commissioners, at p. 480. Nevertheless, there are limits. Federal undertakings such as the VPA are not, on that account, wholly exempt from valid provincial laws of general application that in their operation do not "bear upon those subjects in what makes them specifically of federal jurisdiction", per Beetz J. in Bell Canada (1988), at p. 762. (1) There Is No Explicit Federal Jurisdiction Over "Port Lands". Such Authority Must Be Derived From the Federal Power Over Navigation and Shipping,
2007	Pecore v. Pecore	5/3/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2355/index.do	Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17	Rothstein J.	majority	Ontario	Estates	C	referred to	Pettitt v. Pettitt, [1970] A.C. 777	SC	UK (HL)	42 There has been some debate amongst courts and commentators over what amount of evidence is required to rebut a presumption. With regard to the presumption of resulting trust, some cases appear to suggest that the criminal standard, or at least a standard higher than the civil standard, is applicable: see e.g. Bayley v. Trusts and Guarantee Co., [1931] 1 D.L.R. 500 (Ont. S.C., App. Div.), at p. 505; Johnstone v. Johnstone (1913), 12 D.L.R. 537 (Ont. S.C., App. Div.), at p. 539. As for the presumption of advancement, some cases seem to suggest that only slight evidence will be required to rebut the presumptions: see e.g. Pettitt v. Pettitt, [1970] A.C. 777 (H.L.), at p. 814; McGrath v. Wallis, [1995] 2 F.L.R. 114 (Eng. C.A.), at pp. 115 and 122; Dreger (Litigation Guardian of) v. Dreger (1994), 5 E.T.R. (2d) 250 (Man. C.A.), at para. 31. 87 The traditional presumption of advancement as between husband and wife has been largely abandoned, both judicially (Pettitt v. Pettitt, [1970] A.C. 777 (H.L.), and Rathwell v. Rathwell, [1978] 2 S.C.R. 436) and legislatively (New Brunswick, Marital Property Act, S.N.B. 1980, c. M-1.1, s. 15(1); Prince Edward Island, Family Law Act, R.S.P.E.I. 1988, c. F-2.1, s. 14(1); Nova Scotia, Matrimonial Property Act, R.S.N.S. 1989, c. 275, s. 21(1); Newfoundland and Labrador, Family Law Act, R.S.N.L. 1990, c. F-2, s. 31(1); Ontario, Family Law Act, R.S.O. 1990, c. F.3, s. 14; Northwest Territories and Nunavut, Family Law Act, S.N.W.T. 1997, c. 18, s. 46(1); Saskatchewan, The Family Property Act, S.S. 1997, c. F-6.3, s. 50(1); Yukon, Family Property and Support Act, R.S.Y. 2002, c. 83, s. 7(2)).
2007	Pecore v. Pecore	5/3/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2355/index.do	Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17	Rothstein J.	majority	Ontario	Estates	C	referred to	Lohia v. Lohia, [2001] EWCA Civ 1691 (BAILII)	lower-level court	UK	43 The weight of recent authority, however, suggests that the civil standard, the balance of probabilities, is applicable to rebut the presumptions: Burns Estate v. Mellon (2000), 48 O.R. (3d) 641 (C.A.), at paras. 5-21; Lohia v. Lohia, [2001] EWCA Civ 1691 (BAILII), at paras. 19-21; Dagle, at p. 210; Re Wilson, at para. 52. See also Sopinka et al., at p. 116. This is also my view. I see no reason to depart from the normal civil standard of proof. The evidence required to rebut both presumptions, therefore, is evidence of the transferor's contrary intention on the balance of probabilities.
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2007	Pecore v. Pecore	5/3/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2355/index.do	Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17	Rothstein J.	majority	Ontario	Estates	C	referred to	Matter of Halpern, 303 N.Y. 33 (1951)	lower-level court	US	52 While not entirely analogous, the American notion of the "Totten trust" (sometimes referred to as the "Bank account trust") is now recognized as valid in most states in the United States; an individual places money in a bank account with the instruction that upon his or her death, whatever is in that bank account will pass to a named beneficiary: see Restatement (Third) of Trusts (2003), at para. 26 of Part 2, Chapter 5. The Totten trust is so named for the leading case establishing its validity: see Matter of Totten, 179 N.Y. 112 (1904). While a Totten trust does not deal with joint accounts as such, it recognizes the practicality of the depositor having control of an account during his or her lifetime but allowing the depositor's named beneficiary of that account to claim the funds remaining in the account upon the death of the depositor without the disposition being treated as testamentary: see e.g. Matter of Berson, 566 N.Y.S.2d 74 (App. Div. 1991); Matter of Halpern, 303 N.Y. 33 (1951).
2007	Pecore v. Pecore	5/3/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2355/index.do	Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17	Rothstein J.	majority	Ontario	Estates	C	referred to	Shephard v. Cartwright, [1955] A.C. 43	SC	UK (HL)	56 The traditional rule is that evidence adduced to show the intention of the transferor at the time of the transfer "ought to be contemporaneous, or nearly so", to the transaction: see Clemens v. Clemens Estate, [1956] S.C.R. 286, at p. 294, citing Jeans v. Cooke (1857), 24 Beav. 513, 53 E.R. 456. Whether evidence subsequent to a transfer is admissible has often been a question of whether it complies with the Viscount Simonds' rule in Shephard v. Cartwright, [1955] A.C. 431 (H.L.), at p. 445, citing Snell's Principles of Equity (24th ed. 1954), at p. 153: The acts and declarations of the parties before or at the time of the purchase, [or of the transfer] or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration . . . . But subsequent declarations are admissible as evidence only against the party who made them . . . . The reason that subsequent acts and declarations have been viewed with mistrust by courts is because a transferor could have changed his or her mind subsequent to the transfer and because donors are not allowed to retract gifts. As noted by Huband J.A. in Dreger, at para. 33: "Self-serving statements after the event are too easily fabricated in order to bring about a desired result." 57 Some courts, however, have departed from the restrictive — and somewhat abstruse — rule in Shephard v. Cartwright. In Neazor v. Hoyle (1962), 32 D.L.R. (2d) 131 (Alta. S.C., App. Div.), for example, a brother transferred land to his sister eight years before he died and the trial judge considered the conduct of the parties during the years after the transfer to see whether they treated the land as belonging beneficially to the brother or the sister. 58 The rule has also lost much of its force in England. In Lavelle v. Lavelle, [2004] EWCA Civ 223 (BAILII), at para. 19, Lord Phillips, M.R., had this to say about Shephard v. Cartwright and certain other authorities relied on by the appellant in that case: It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. [Emphasis added.]
2007	Pecore v. Pecore	5/3/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2355/index.do	Pecore v. Pecore, [2007] 1 S.C.R. 795, 2007 SCC 17	Rothstein J.	majority	Ontario	Estates	C	referred to	Lavelle v. Lavelle, [2004] EWCA Civ 223 (BAILII)	lower-level court	UK	58 The rule has also lost much of its force in England. In Lavelle v. Lavelle, [2004] EWCA Civ 223 (BAILII), at para. 19, Lord Phillips, M.R., had this to say about Shephard v. Cartwright and certain other authorities relied on by the appellant in that case: It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. [Emphasis added.]
2007	Council of Canadians with Disabilities v. VIA Rail Canada Inc.	3/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2352/index.do	Council of Canadians with Disabilities v. VIA Rail Canada Inc., [2007] 1 S.C.R. 650, 2007 SCC 15	Abella J.	majority	Federal Court of Appeal	Administrative law Transportation	C	referred to	Maine Human Rights Commission v. City of South Portland, 508 A.2d 948 (1986)	lower-level court	US	132 Other relevant factors include the impact and availability of external funding, including tax deductions (Brock v. Tarrant Film Factory Ltd. (2000), 37 C.H.R.R. D/305 (Ont. Bd. Inq.)); the likelihood that bearing the net cost would threaten the survival of the enterprise or alter its essential character (Quesnel v. London Educational Health Centre (1995), 28 C.H.R.R. D/474 (Ont. Bd. Inq.)); and whether new barriers were erected when affordable, accessibility-enhancing alternatives were available (Maine Human Rights Commission v. City of South Portland, 508 A.2d 948 (Me. 1986), at pp. 956-57).
2007	Council of Canadians with Disabilities v. VIA Rail Canada Inc.	3/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2352/index.do	Council of Canadians with Disabilities v. VIA Rail Canada Inc., [2007] 1 S.C.R. 650, 2007 SCC 15	Abella J.	majority	Federal Court of Appeal	Administrative law Transportation	R		Americans with Disabilities Act, 42 U.S.C. § 12162 (2000).	statute	US	159 In the United States, the Americans with Disabilities Act, 42 U.S.C. § 12162 (2000), provides that "it shall be considered discrimination . . . for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation . . . unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed . . . in regulations". For American rail cars, accessibility is defined by technical standards provided in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles, 36 CFR Part 1192 (1999), adopted by the Department of Transportation, many of which are substantially the same as the CSA Barrier-Free Design Standard for personal wheelchairs.
2007	Council of Canadians with Disabilities v. VIA Rail Canada Inc.	3/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2352/index.do	Council of Canadians with Disabilities v. VIA Rail Canada Inc., [2007] 1 S.C.R. 650, 2007 SCC 15	Abella J.	majority	Federal Court of Appeal	Administrative law Transportation	R		Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles, 36 CFR Part 1192 (1999).	statute	US	159 In the United States, the Americans with Disabilities Act, 42 U.S.C. § 12162 (2000), provides that "it shall be considered discrimination . . . for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation . . . unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed . . . in regulations". For American rail cars, accessibility is defined by technical standards provided in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles, 36 CFR Part 1192 (1999), adopted by the Department of Transportation, many of which are substantially the same as the CSA Barrier-Free Design Standard for personal wheelchairs. 184 The American equivalent of the Agency, the Architectural and Transportation Barriers Compliance Board has explicitly rejected the relevance of a service-based "network defence" where barriers to accessible transportation exist. In developing its regulatory guidelines, the Board was asked to "permit operational procedures to substitute for compliance with the technical provisions" of the Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles: Final Guidelines, 56 Fed. Reg. 45530 (September 6, 1991), at p. 45532. The Board rejected this approach, stating: . . . the Board's statutory mandate is to ensure accessibility of the built environment, including instances in which operational procedures might fail. Thus, for example, the Board cannot assume that the strength, agility and attention of a driver will be sufficient to prevent a heavy wheelchair from rolling off a lift. Neither is it appropriate, as one transit operator suggested, to assume that fellow passengers will have the strength or skill to assist persons with disabilities to board vehicles. It is just as inappropriate to expect other passengers to lift a wheelchair user into a vehicle as it is to assume others should lift a wheelchair over a curb or carry someone up a flight of stairs to enter a building.
2007	Council of Canadians with Disabilities v. VIA Rail Canada Inc.	3/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2352/index.do	Council of Canadians with Disabilities v. VIA Rail Canada Inc., [2007] 1 S.C.R. 650, 2007 SCC 15	Abella J.	majority	Federal Court of Appeal	Administrative law Transportation	R		Disability Discrimination Act 1995 (U.K.), 1995, c. 50, s. 46.	statute	UK	158 British standards direct rail service providers to provide one personal wheelchair-sized space in each class of passenger accommodation. In Part V of the Disability Discrimination Act 1995 (U.K.), 1995, c. 50, s. 46 authorizes the Secretary of State to enact rail vehicle accessibility regulations ensuring accessibility for persons who must remain in their wheelchairs. These mandatory British standards under the Rail Vehicle Accessibility Regulations 1998, S.I. 1998/2456, are based on a reference wheelchair only slightly smaller than the "personal wheelchair" standard under the CSA Barrier-Free Design Standard.

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2007	R. v. Spencer	3/8/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2347/index.do	R. v. Spencer, [2007] 1 S.C.R. 500, 2007 SCC 11	Deschamps J.	majority	British Columbia	Criminal law	C	referred to	Director of Public Prosecutions v. Ping Lin, [1976] A.C. 574	SC	UK (HL)	14 To the extent that any distinction in law may be asserted between the traditional "confessions rule" in Ibrahim v. The King, [1914] A.C. 599 (P.C.), at p. 609, per Lord Sumner, and this Court's decision in Oickle, the latter must prevail. In my view, however, Lord Sumner's formulation of the "narrow" rule does not mean that any quid pro quo will automatically render a statement involuntary. Indeed, Lord Sumner required that in order for a statement to be admissible, it must not have been "obtained from [the accused] either by fear of prejudice or hope of advantage". In the subsequent case of Director of Public Prosecutions v. Ping Lin, [1976] A.C. 574 (H.L.), at p. 595, Lord Morris asked: "was it as a result of something said or done by a person in authority that an accused was caused or led to make a statement".
2007	Canada (Attorney General) v. Hislop	3/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2346/index.do	Canada (Attorney General) v. Hislop, [2007] 1 S.C.R. 429, 2007 SCC 10	LeBel and Rothstein JJ.	majority	Ontario	Constitutional law	C	referred to	In re Spectrum Plus Ltd. (in liquidation), [2005] 2 A.C. 680, [2005] UKHL 41	SC	UK (HL)	87 The House of Lords recently adopted this view in the course of its discussion of prospective overruling: In re Spectrum Plus Ltd. (in liquidation), [2005] 2 A.C. 680, [2005] UHKL 41. The words of Lord Nicholls at para. 34 are particularly apt: [Blackstone's declaratory] theory is still valid when applied to cases where a previous decision is overruled as wrong when given. Most overruling occurs on this basis. These cases are to be contrasted with [those] where the later decision represents a response to changes in social conditions and expectations. Then, on any view, the declaratory approach is inapt. In this context [this] approach has long been discarded. It is at odds with reality.
2007	Canada (Attorney General) v. Hislop	3/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2346/index.do	Canada (Attorney General) v. Hislop, [2007] 1 S.C.R. 429, 2007 SCC 10	LeBel and Rothstein JJ.	majority	Ontario	Constitutional law	C	referred to	United States v. Johnson, 457 U.S. 537 (1982	SC	US	97 There must be change, but what kind of change will be enough? Given the often incremental nature of changes in judge-made law in a common law system, the question is bound to raise difficulties. Various formulas have been suggested. For example, at a time when it appeared to be moving towards a broad recognition of prospective overruling, the U.S. Supreme Court relied on a notion of a "clear break with the past". The limitation on proactive remedies could be considered after litigants had established such a change (see United States v. Johnson, 457 U.S. 537 (1982), at p. 549).
2007	Canada (Attorney General) v. Hislop	3/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2346/index.do	Canada (Attorney General) v. Hislop, [2007] 1 S.C.R. 429, 2007 SCC 10	LeBel and Rothstein JJ.	majority	Ontario	Constitutional law	C	referred to	Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)	SC	US	98 On other occasions, the same court crafted different formulas. In an earlier case, in 1971, it relied on a test which tended to look at both the nature of the change and of some of its consequences (Chevron Oil Co. v. Huson, 404 U.S. 97 (1971), at pp. 106-7). It identified three relevant considerations: First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed. . . . Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." . . . Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." See also: J. E. Fisch, "Retroactivity and Legal Change: An Equilibrium Approach" (1997), 110 Harv. L. Rev. 1055, at pp. 1060-63; C. Sampford,
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	Eur. Court H.R., Chahal v. United Kingdom, Judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V	international	ECHR	80 Finally, I note the special advocate system employed by the Special Immigration Appeals Commission ("SIAC") in the United Kingdom. SIAC and the special advocate system were created in response to Chahal v. United Kingdom, 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1831, in which the European Court of Human Rights had held that the procedure then in place was inadequate. The court in Chahal commented favourably on the idea of security-cleared counsel instructed by the court, identifying it as being Canadian in origin (perhaps referring to the procedure developed by SIRC). 125 A case raising similar issues is the decision of the House of Lords in A. v. Secretary of State for the Home Department, [2005] 3 All E.R. 169, [2004] UKHL 56 ("Re A"). This was an appeal brought by nine foreign nationals who were suspected of involvement in terrorism, but were not charged with any crime. The United Kingdom government sought to deport them, but in most cases this was impossible due to a risk of torture. So most of the individuals were detained at Belmarsh Prison under s. 23 of the Anti-terrorism, Crime and Security Act 2001 (U.K.), 2001, c. 24. This provision empowered the government to detain suspected international terrorists under the provisions governing detention pending deportation, despite the fact that removal from the United Kingdom was temporarily or indefinitely prevented, in derogation from art. 5 of the European Convention on Human Rights: see Chahal.
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	M. v. Secretary of State for the Home Department, [2004] 2 All E.R. 863, [2004] EWCA Civ 324, aff'g [2004] UKSIAC 17/2002 (BAILII), March 8, 2004	lower-level court	UK	84 Despite these difficulties, SIAC itself has commented favourably on the assistance provided by special advocates, stating that as a result of the "rigorous cross-examination" of the government's evidence by the special advocate, it was satisfied that the government's assertions were unsupported by the evidence (M. v. Secretary of State for the Home Department, [2004] UKSIAC 17/2002 (BAILII), March 8, 2004, at para. 10). The England and Wales Court of Appeal upheld SIAC's decision: [2004] 2 All E.R. 863, [2004] EWCA Civ 324.
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	Rasul v. Bush, 542 U.S. 466 (2004)	SC	US	90 This leaves Mr. Almrei's argument that the IRPA imposes arbitrary detention because it prevents review of the detention of foreign nationals until 120 days after the certificate is confirmed. Whether through habeas corpus or statutory mechanisms, foreign nationals, like others, have a right to prompt review to ensure that their detention complies with the law. This principle is affirmed in s. 10 (c) of the Charter . It is also recognized internationally: see Rasul v. Bush, 542 U.S. 466 (2004); Zadvydas v. Davis, 533 U.S. 678 (2001); art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 ("European Convention on Human Rights"); Slivenko v. Latvia [GC], No. 48321/99, ECHR 2003-X, p. 229. While the government accepts this principle, it argues that the 120-day period in s. 84(2) is sufficiently prompt, relying, as did the courts below, on the fact that foreign nationals can apply for release and depart from Canada at any time.
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	Zadvydas v. Davis, 533 U.S. 678 (2001)	SC	US	90 This leaves Mr. Almrei's argument that the IRPA imposes arbitrary detention because it prevents review of the detention of foreign nationals until 120 days after the certificate is confirmed. Whether through habeas corpus or statutory mechanisms, foreign nationals, like others, have a right to prompt review to ensure that their detention complies with the law. This principle is affirmed in s. 10 (c) of the Charter . It is also recognized internationally: see Rasul v. Bush, 542 U.S. 466 (2004); Zadvydas v. Davis, 533 U.S. 678 (2001); art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 ("European Convention on Human Rights"); Slivenko v. Latvia [GC], No. 48321/99, ECHR 2003-X, p. 229. While the government accepts this principle, it argues that the 120-day period in s. 84(2) is sufficiently prompt, relying, as did the courts below, on the fact that foreign nationals can apply for release and depart from Canada at any time. 124 These conclusions are consistent with English and American authority. Canada, it goes without saying, is not alone in facing the problem of detention in the immigration context in situations where deportation is difficult or impossible. Courts in the United Kingdom and the United States have suggested that detention in this context can be used only during the period where it is reasonably necessary for deportation purposes: R. v. Governor of Durham Prison, ex parte Singh, [1984] 1 All E.R. 983 (Q.B.); Zadvydas
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	Slivenko v. Latvia [GC], No. 48321/99, ECHR 2003-X	international	ECHR	90 This leaves Mr. Almrei's argument that the IRPA imposes arbitrary detention because it prevents review of the detention of foreign nationals until 120 days after the certificate is confirmed. Whether through habeas corpus or statutory mechanisms, foreign nationals, like others, have a right to prompt review to ensure that their detention complies with the law. This principle is affirmed in s. 10 (c) of the Charter . It is also recognized internationally: see Rasul v. Bush, 542 U.S. 466 (2004); Zadvydas v. Davis, 533 U.S. 678 (2001); art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 ("European Convention on Human Rights"); Slivenko v. Latvia [GC], No. 48321/99, ECHR 2003-X, p. 229. While the government accepts this principle, it argues that the 120-day period in s. 84(2) is sufficiently prompt, relying, as did the courts below, on the fact that foreign nationals can apply for release and depart from Canada at any time.

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2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	C	referred to	R. v. Governor of Durham Prison, ex parte Singh, [1984] 1 All E.R. 983	lower-level court	UK	124 These conclusions are consistent with English and American authority. Canada, it goes without saying, is not alone in facing the problem of detention in the immigration context in situations where deportation is difficult or impossible. Courts in the United Kingdom and the United States have suggested that detention in this context can be used only during the period where it is reasonably necessary for deportation purposes: R. v. Governor of Durham Prison, ex parte Singh, [1984] 1 All E.R. 983 (Q.B.); Zadvydas.
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2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	R		Anti-terrorism, Crime and Security Act 2001 (U.K.), 2001, c. 24, s. 23.	statute	UK	125 A case raising similar issues is the decision of the House of Lords in A. v. Secretary of State for the Home Department, [2005] 3 All E.R. 169, [2004] UKHL 56 ("Re A"). This was an appeal brought by nine foreign nationals who were suspected of involvement in terrorism, but were not charged with any crime. The United Kingdom government sought to deport them, but in most cases this was impossible due to a risk of torture. So most of the individuals were detained at Belmarsh Prison under s. 23 of the Anti-terrorism, Crime and Security Act 2001 (U.K.), 2001, c. 24. This provision empowered the government to detain suspected international terrorists under the provisions governing detention pending deportation, despite the fact that removal from the United Kingdom was temporarily or indefinitely prevented, in derogation from art. 5 of the European Convention on Human Rights: see Chahal.
2007	Charkaoui v. Canada (Citizenship and Immigration)	2/23/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2345/index.do	Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, 2007 SCC 9	McLachlin C.J.	unanimous	Federal Court of Appeal	Constitutional law Immigration	R		Special Immigration Appeals Commission Act 1997 (U.K.), 1997, c. 68, s. 6(1), (4).	statute	UK	81 The U.K.'s special advocate system resembles the Canadian SIRC model. Section 6(1) of the Special Immigration Appeals Commission Act 1997 (U.K.), 1997, c. 68, states that the special advocate is appointed to "represent the interests of an appellant" in any proceedings before SIAC from which the appellant and his or her legal representatives are excluded. Section 6(4), however, specifies that the special advocate "shall not be responsible to the person whose interests he is appointed to represent". Rule 35 of the Special Immigration Appeals Commission (Procedure) Rules 2003, S.I. 2003/1034, sets out the special advocate's three main functions: (1) to make submissions to the Commission at any hearings from which the appellant and the appellant's representatives are excluded; (2) to cross-examine witnesses at any such hearings; and (3) to make written submissions to the Commission. After seeing the protected information, the special advocate may not communicate with the appellant or the appellant's representative without authorization from the Commission: rule 36. If the special advocate requests such authorization, the Commission gives the Secretary of State an opportunity to object to the proposed communication before deciding whether to authorize it: rule 38.
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Bastarache J.	dissenting	Ontario	Criminal law	C	D	State v. Moore, 902 A.2d 1212 (2006)	lower-level court	US	141 Finally, I add that in order to come to the conclusion that hypnosis evidence does not meet the criteria of general acceptance, my colleague relies almost exclusively on the position of experts discussed in American cases. This is not a sufficient evidentiary foundation upon which to arrive at such a conclusion. However, this was the sole evidence the appellant advanced before this Court in support of his argument that it should adopt a general exclusionary rule towards hypnosis evidence. Ironically, I note that even in the U.S. case the appellant relies upon most, State v. Moore, 852 A.2d 1073 (2004), the New Jersey Supreme Court determined that the record was inadequate to reconsider its position on hypnotically refreshed memories and remanded the matter to the trial court for rehearing.
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Bastarache J.	dissenting	Ontario	Criminal law	C	D	Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)	SC	US	139 The point of both Mohan and J.-L.J. was to emphasize the need for courts to give special scrutiny to novel science or the new application of a recognized science, through a case-by-case evaluation, in light of the changing nature of our scientific knowledge (see J.-L.J., at para. 34). See also S. C. Hill et al., McWilliams' Canadian Criminal Evidence (4th ed. (loose-leaf)), vol. 1, at p. 12-34: Although the suggestion has been made that opinion testimony involving a novel field of expertise requires "a higher threshold of reliability" than attaches to other expert opinion testimony, this is not the prescription of Mohan. Closer scrutiny means a more searching investigation or examination than normal into the reliability and validity of the science but not raising the bar of reliability to a higher standard than the admission entry point for non-novel science. [Emphasis added.] J.-L.J. was not intended, as my colleague appears to suggest, to set down a rigid formula where the results must be proved beyond a reasonable doubt before scientific evidence can be admitted. The factors from Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), adopted in J.-L.J. were designed to be flexible and non-exclusive. As noted above, similar factors to assist courts in assessing the reliability of scientific evidence have existed at common law long before J.-L.J. was decided. Well-established scientific methods accepted by our courts do not need to be systematically reassessed under J.-L.J. While my colleague suggests that not all previously accepted scientific techniques will have to be reassessed under J.-L.J., her guidance that science which is "so well established" (at para. 31) need not be reassessed is so vague that it opens the door to most if not all previously accepted techniques being subject to challenge under J.-L.J., without establishing a serious basis for the inquiry. 140 A further concern I have about Deschamps J.'s approach to J.-L.J. is that although she states that the standard it requires is "sufficient reliability" (para. 33), her reasoning really reflects a standard of total consensus by members of the scientific community. She acknowledges that hypnosis has been the subject of significant study and peer review, as well as testing, yet, because there is not unanimity in the scientific community on the reliability of hypnotically refreshed memories, she would find this evidence inadmissible. In my view, this standard is more akin to the "general acceptance" test that this Court specifically rejected in Mohan in favour of the Daubert "reliable foundation" test, as stated in J.-L.J., at para. 33: Mohan kept the door open to novel science, rejecting the "general acceptance" test formulated in the United States in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), and moving in parallel with its replacement, the "reliable foundation" test more recently laid down by the U.S. Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Bastarache J.	dissenting	Ontario	Criminal law	C	D	Rock v. Arkansas, 483 U.S. 44 (1987)	SC	US	155 Though it may not be necessary to deal here with the constitutionality of prohibiting an accused from testifying freely at his or her own trial, which would be the result of the approach taken by Deschamps J., and constitutes a matter discussed in Rock v. Arkansas, 483 U.S. 44 (1987), by the Supreme Court of the United States, it is obvious that this issue is very serious; the decision to prohibit all testimony that has been the subject of hypnotic enhancement is a matter that cannot be resolved without consideration of the dangers posed. Without even considering the constitutional issue, I am of the view that limiting Ms. Haghnegahdar's right to testify is not a satisfactory solution in this case, because this means that she will be unable to testify at retrial about seeing the accused coming out of Ms. Hunter's apartment at a time when forensics determined Ms. Hunter would have already been dead, but before her body was discovered by authorities. This is highly probative evidence for the Crown's case as it supports the "staging" argument, contradicts the appellant's testimony that he never went back to the apartment and, at the very least, signifies that he knew she had been brutally murdered and yet took no action.

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2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Bastarache J.	dissenting	Ontario	Criminal law	C	D	State v. Jorgensen, 492 P.2d 312 (1971)	lower-level court	US	134 Deschamps J. maintains that the use of hypnosis in criminal investigation is not frozen in time and subject to judicial scrutiny when questioned. I agree. The question is how this process is to be undertaken and what is its object. One important question is the determination of the basis for the new query. As always, context is important. It is important to note, with regard to this, that very few Canadian courts have admitted hypnosis evidence without a voir dire as to its admissibility. This is contrary to some U.S. states that have adopted a per se admissibility rule (i.e., admission without a voir dire): see State v. Brown, 337 N.W.2d 138 (N.D. 1983); State v. Jorgensen, 492 P.2d 312 (Or. Ct. App. 1971); State v. Glebock, 616 S.W.2d 897 (Tenn. Crim. App. 1981); and Prime v. State, 767 P.2d 149 (Wyo. 1989). This illustrates the difficulty in applying foreign precedents without paying attention to differences in approaches. In Canada, the trend has always been to hold a voir dire examining the entire factual context surrounding the hypnosis evidence, with experts called to discuss the science of hypnosis and give their opinion as to whether the evidence in issue is sufficiently reliable to be admitted. See, for example: R. v. Zubot (1981), 47 A.R. 389 (Q.B.); Clark; R. v. Hart, [1990] O.J. No. 2678 (QL) (H.C.J.); R. v. Sanchez-Flores, [1993] O.J. No. 4161 (QL) (Gen. Div.); R. v. Gauld, [1994] O.J. No. 1477 (QL) (Gen. Div.); R. v. Taillefer (1995), 100 C.C.C. (3d) 1 (Que. C.A.), at p. 22; R. v. Savoy, [1997] B.C.J. No. 2747 (QL) (S.C.); R. v. Terceira (1998), 38 O.R. (3d) 175 (C.A.), aff'd [1999] 3 S.C.R. 866; R. v. B. (A.) (2004), 27 C.R. (6th) 283 (C.Q.); and R. v. Baltovich (2004), 73 O.R. (3d) 481 (C.A.). I fail to see how this is not "judicial assessment" of forensic hypnosis evidence. Clearly, the use of hypnosis evidence has been put to judicial scrutiny
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2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Bastarache J.	dissenting	Ontario	Criminal law	C	D	R. v. Holmes (1989), 99 A.R. 106	lower-level court	UK	154 Finally, the problem my colleague raises with regard to cross-examining a witness whose memory has been refreshed through hypnosis — the impossibility of challenging the veracity of their memory — also arises in the context of a witness whose evidence is presented through past recollections recorded (see R. v. Holmes (1989), 99 A.R. 106 (Q.B.)). However, this has not provoked courts to categorically exclude such evidence. Courts have been satisfied by the fact that witnesses can be cross-examined about how their memories were recalled, the circumstances surrounding the recall and prior inconsistent statements (P. M. Perell, "Proof of an Event of which a Witness Has No Memory" (2003), 26 Advocates' Q. 95, at pp. 100-101). I see no reason why the situation should be any different for hypnotically refreshed memories.

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2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	State v. Moore, 902 A.2d 1212 (2006)	lower-level court	US	29 It should be noted that Hurd, which formed the basis for the Clark guidelines, has come to be revisited, in part as a result of the views expressed since then by Dr. Martin Orne, whose expert testimony had played a central role in that case. Dr. Orne subsequently warned that "hypnotically induced memories should never be permitted to form the basis for testimony by witnesses or victims in a court of law": Burral v. State, 724 A.2d 65 (Md. 1999), at p. 81 (emphasis in original). He was of the view that "there is a considerable risk that the inherent unreliability of information confidently provided by a hypnotized witness may actually be detrimental to the truth-seeking process" (State v. Moore, 902 A.2d 1212 (N.J. 2006), at p. 1228). After reconsidering the inherent unreliability of post-hypnosis testimony, New Jersey joined the 26 states in the United States that limit the admissibility of post-hypnosis testimony. In New Jersey, post-hypnosis testimony is now generally inadmissible in a criminal trial (Moore, at p. 1213). 33 The concerns raised in Taillefer and Moore are thus relevant to the instant case and coincide with a more general issue recently considered by this Court. Since Clark, this Court has had the opportunity to consider the admission of novel science in courtrooms. In J.-L.J., it built on Mohan to develop the test governing the admissibility of such evidence. Under this test, a party wishing to rely on novel scientific evidence must first establish that the underlying science is sufficiently reliable to be admitted in a court of law. This is particularly important where, as here, an accused person's liberty is at stake. Even though the use of expert testimony was not in itself at issue in the present case — this appeal concerns the application of a scientific technique to the testimony of a lay witness — the threshold reliability of the technique, and its impact on the testimony, remains crucial to the fairness of the trial. 49 The second trend is based on a view that hypnosis is fundamentally unreliable for the purposes of judicial proceedings and that post-hypnosis evidence should be excluded. In People v. Shirley, 723 P.2d 1354 (1982), the California Supreme Court held that the testimony of a witness who has undergone hypnosis to restore his or her memory of events is inadmissible "as to all matters relating to those events, from the time of the hypnosis session forward" (p. 1384). This means that a witness who has been hypnotized to restore his or her memory of an incident may not testify in relation to that incident, regardless of whether he or she made pre-hypnosis statements about it that would otherwise have been admissible. At least half of American jurisdictions now limit the admissibility of post-hypnosis evidence: Moore, at pp. 1220-22.
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)	SC	US	36 In J.-L.J., Binnie J. explained that Canadian courts require a "reliable foundation" for novel science to be admissible as evidence at trial. Drawing on the American case of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), he observed that reliability can be evaluated on the basis of four factors (J.-L.J., at para. 33): (1) whether the . . . technique can be and has been tested[;] . . . (2) whether the . . . technique has been subjected to peer review and publication[;] . . . (3) the known or potential rate of error . . .; and,
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	R. v. McFelin, [1985] 2 N.Z.L.R. 750	SC	New Zealand	47 As indicated, there are differences of opinion in the scientific community on the acceptability of hypnosis for forensic purposes. This has resulted in some debate, in the courts of a number of jurisdictions, regarding the admissibility of post-hypnosis memories. In the United Kingdom, for example, post-hypnosis testimony has not been categorically excluded, although evidence of a witness who has been hypnotized can be excluded under s. 78 of the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, on the basis that it would have an adverse effect on the fairness of the proceedings. For this reason, the Crown Prosecution Service warns Crown counsel to "advise the police to restrict the use of hypnotism to people who may be able to give them a lead on an investigation but who will not be called as witnesses" ("Hypnosis: Guidance — Hypnosis Of A Witness" (online)). In New Zealand and Australia, courts have permitted the admission of post-hypnosis evidence where certain safeguards have been met, resulting in such evidence being declared inadmissible in several instances: see R. v. McFelin, [1985] 2 N.Z.L.R. 750 (C.A.); R. v. G., [1996] 1 N.Z.L.R. 615 (H.C.); and R. v. Haywood (1994), 73 A. Crim. R. 41 (S.C. Tasmania). Generally speaking, however, there has been very little discussion on the admissibility of post-hypnosis evidence in any of these three jurisdictions
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	R. v. Haywood (1994), 73 A. Crim. R. 41	lower-level court	UK	47 As indicated, there are differences of opinion in the scientific community on the acceptability of hypnosis for forensic purposes. This has resulted in some debate, in the courts of a number of jurisdictions, regarding the admissibility of post-hypnosis memories. In the United Kingdom, for example, post-hypnosis testimony has not been categorically excluded, although evidence of a witness who has been hypnotized can be excluded under s. 78 of the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, on the basis that it would have an adverse effect on the fairness of the proceedings. For this reason, the Crown Prosecution Service warns Crown counsel to "advise the police to restrict the use of hypnotism to people who may be able to give them a lead on an investigation but who will not be called as witnesses" ("Hypnosis: Guidance — Hypnosis Of A Witness" (online)). In New Zealand and Australia, courts have permitted the admission of post-hypnosis evidence where certain safeguards have been met, resulting in such evidence being declared inadmissible in several instances: see R. v. McFelin, [1985] 2 N.Z.L.R. 750 (C.A.); R. v. G., [1996] 1 N.Z.L.R. 615 (H.C.); and R. v. Haywood (1994), 73 A. Crim. R. 41 (S.C. Tasmania). Generally speaking, however, there has been very little discussion on the admissibility of post-hypnosis evidence in any of these three jurisdictions
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	Harding v. State, 246 A.2d 302 (1968)	lower-level court	US	48 By contrast, courts have discussed the admissibility of post-hypnosis memories much more frequently in the United States. Two trends have developed. According to the first, the fact that a witness has been hypnotized goes to the weight of the testimony rather than to its admissibility. In Harding v. State, 246 A.2d 302 (1968), the Court of Special Appeals of Maryland held that the fact that only some of the victim's testimony was based on post-hypnosis recollections went to its probative value. As the psychology of memory has become better understood, however, some courts have developed a number of safeguards to guide the manner in which hypnosis sessions are conducted. This more rigorous framework is typified by Hurd, a decision that, as already mentioned, was one of the main sources of the Clark guidelines. Although setting a more rigorous standard than in Harding, the Hurd guidelines are typical of the approach under which admissibility is subject to the weight to be attached to the particular witness's post-hypnosis testimony.
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	People v. Shirley, 723 P.2d 1354 (1982)	lower-level court	US	49 The second trend is based on a view that hypnosis is fundamentally unreliable for the purposes of judicial proceedings and that post-hypnosis evidence should be excluded. In People v. Shirley, 723 P.2d 1354 (1982), the California Supreme Court held that the testimony of a witness who has undergone hypnosis to restore his or her memory of events is inadmissible "as to all matters relating to those events, from the time of the hypnosis session forward" (p. 1384). This means that a witness who has been hypnotized to restore his or her memory of an incident may not testify in relation to that incident, regardless of whether he or she made pre-hypnosis statements about it that would otherwise have been admissible. At least half of American jurisdictions now limit the admissibility of post-hypnosis evidence: Moore, at pp. 1220-22.
2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	C	referred to	Rock v. Arkansas, 483 U.S. 44 (1987)	SC	US	50 The cases discussed above illustrate the range of approaches that courts have developed and also show why it is necessary to be cautious in dealing with this issue. A further development in the American jurisprudence is also worth noting. In Rock v. Arkansas, 483 U.S. 44 (1987), the United States Supreme Court considered whether an accused's "right to testify" may be restricted by a state rule that excludes his or her post-hypnosis testimony. In a 5-4 decision, the majority of the court emphasized the constitutional underpinnings of the accused's right to testify on his or her own behalf. The court observed that an absolute prohibition against the admission of a defendant's hypnotically refreshed testimony "on the ground that such testimony is always unreliable" operates "to the detriment of any defendant who undergoes hypnosis, without regard to the reasons for it, the circumstances under which it took place, or any independent verification of the information it produced" (p. 56). The court concluded that the State had not demonstrated that the exclusion "of all of a defendant's testimony that the defendant is unable to prove to be the product of prehypnosis memory" was justified, and that "[w]holesale inadmissibility of a defendant's testimony is an arbitrary restriction on the right to testify in the absence of clear evidence by the State repudiating the validity of all posthypnosis recollections" (p. 61 (emphasis in original)). The court chose not to comment on the constitutionality of prohibitions on post-hypnosis testimony by a defence witness, as opposed to the accused him or herself.

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2007	R. v. Trochym	2/1/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2341/index.do	R. v. Trochym, [2007] 1 S.C.R. 239, 2007 SCC 6	Deschamps J.	majority	Ontario	Criminal law	R		Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, s. 78.	statute	UK	47 As indicated, there are differences of opinion in the scientific community on the acceptability of hypnosis for forensic purposes. This has resulted in some debate, in the courts of a number of jurisdictions, regarding the admissibility of post-hypnosis memories. In the United Kingdom, for example, post-hypnosis testimony has not been categorically excluded, although evidence of a witness who has been hypnotized can be excluded under s. 78 of the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, on the basis that it would have an adverse effect on the fairness of the proceedings. For this reason, the Crown Prosecution Service warns Crown counsel to "advise the police to restrict the use of hypnotism to people who may be able to give them a lead on an investigation but who will not be called as witnesses" ("Hypnosis: Guidance — Hypnosis Of A Witness" (online)). In New Zealand and Australia, courts have permitted the admission of post-hypnosis evidence where certain safeguards have been met, resulting in such evidence being declared inadmissible in several instances: see R. v. McFelin, [1985] 2 N.Z.L.R. 750 (C.A.); R. v. G., [1996] 1 N.Z.L.R. 615 (H.C.); and R. v. Haywood (1994), 73 A. Crim. R. 41 (S.C. Tasmania). Generally speaking, however, there has been very little discussion on the admissibility of post-hypnosis evidence in any of these three jurisdictions
2007	Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)	1/19/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2337/index.do	Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue), [2007] 1 S.C.R. 38, 2007 SCC 2	Bastarache and LeBel JJ.	majority	British Columbia	Civil procedure	C	referred to	R. (Corner House Research) v. Secretary of State for Trade and Industry, [2005] 1 W.L.R. 2600, [2005] EWCA Civ 192	lower-level court	UK	40 Second, the advance costs award must be an exceptional measure; it must be in the interests of justice that it be awarded. Therefore, the applicant must explore all other possible funding options. These include, but are not limited to, public funding options like legal aid and other programs designed to assist various groups in taking legal action. An advance costs award is neither a substitute for, nor a supplement to, these programs. An applicant must also be able to demonstrate that an attempt, albeit unsuccessful, has been made to obtain private funding through fundraising campaigns, loan applications, contingency fee agreements and any other available options. If the applicant cannot afford all costs of the litigation, but is not impecunious, the applicant must commit to making a contribution to the litigation. Finally, different kinds of costs mechanisms, like adverse costs immunity, should also be considered. In doing so, courts must be careful not to assume that a creative costs award is merited in every case; such an award is an exceptional one, to be granted in special circumstances. Courts should remain mindful of all options when they are called upon to craft appropriate orders in such circumstances. Also, they should not assume that the litigants who qualify for these awards must benefit from them absolutely. In the United Kingdom, where costs immunity (or "protective orders") can be ordered in specified circumstances, the order may be given with the caveat that the successful applicant cannot collect anything more than modest costs from the other party at the end of the trial: see R. (Corner House Research) v. Secretary of State for Trade and Industry, [2005] 1 W.L.R. 2600, [2005] EWCA Civ 192, at para. 76. We agree with this nuanced approach
2007	Kingstreet Investments Ltd. v. New Brunswick (Finance)	1/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2336/index.do	Kingstreet Investments Ltd. v. New Brunswick (Finance), [2007] 1 S.C.R. 3, 2007 SCC 1	Bastarache J.	unanimous	New Brunswick	Action Constitutional law	C	referred to	Woolwich Equitable Building Society v. Inland Revenue Commissioners, [1993] A.C. 70	SC	UK (HL)	17 In Woolwich Equitable Building Society v. Inland Revenue Commissioners, [1993] A.C. 70, the House of Lords has also recognized a right to restitution for payments made pursuant to ultra vires taxes. Without even referring to unjust enrichment, Lord Goff held, at p. 172, that restitution was available as a matter of "common justice": . . . the retention by the state of taxes unlawfully exacted is particularly obnoxious, because it is one of the most fundamental principles of our law — enshrined in a famous constitutional document, the Bill of Rights 1688 — that taxes should not be levied without the authority of Parliament; and full effect can only be given to that principle if the return of taxes exacted under an unlawful demand can be enforced as a matter of right. 53 In my view, the doctrine of protest and compulsion is simply not applicable to cases such as the present. This flows from the constitutional basis for the right of restitution in this case: that the Crown should not be able to retain taxes that lack legal authority. It therefore matters little whether the taxpayer paid under protest and compulsion. If the law proves to be invalid, then there should be no burden on the taxpayer to prove that they were paying under protest. Such a finding would be inconsistent with the nature of the cause of action in this case. As Lord Goff said in Woolwich, at p. 172, "full effect can only be given to that principle [that taxes should not be levied without proper authority] if the return of taxes exacted under an unlawful demand can be enforced as a matter of right". The right of the party to obtain restitution for taxes paid under ultra vires legislation does not depend on the behaviour of
2007	Kingstreet Investments Ltd. v. New Brunswick (Finance)	1/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2336/index.do	Kingstreet Investments Ltd. v. New Brunswick (Finance), [2007] 1 S.C.R. 3, 2007 SCC 1	Bastarache J.	unanimous	New Brunswick	Action Constitutional law	C	referred to	United States v. Butler, 297 U.S. 1 (1936)	SC	US	26 La Forest J.'s proposed immunity rule seems to have arisen in part out of a concern that the provinces might be constitutionally barred from passing remedial legislation by the holding in Amax Potash. La Forest J. referred to the American case of United States v. Butler, 297 U.S. 1 (1936), in which the Supreme Court held unconstitutional the Agricultural Adjustment Act, making almost $1 billion in invalid taxes repayable by the government. In response, Congress passed an Act which provided that no refunds for such taxes would be allowed unless the claimant could establish the burden of the tax. La Forest J. stated that, "[i]n view of Amax, supra, a province faced with a similar situation could not enact a similar measure" (p. 1205).
2007	Kingstreet Investments Ltd. v. New Brunswick (Finance)	1/11/2007	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2336/index.do	Kingstreet Investments Ltd. v. New Brunswick (Finance), [2007] 1 S.C.R. 3, 2007 SCC 1	Bastarache J.	unanimous	New Brunswick	Action Constitutional law	C	referred to	Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968)	SC	US	48 In addition to being contrary to the basic principles of restitution law, the defence of passing on has also been criticized for being economically misconceived and for creating serious difficulties of proof. In British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38, LeBel J., writing in dissent but not on this point, commented on the inherent difficulties in a commercial marketplace of proving that the loss was not passed on to consumers. LeBel J. noted that every commercial entity could be accused of passing on all or part of any damages suffered by it, by its own rates or charges to its customer. This is because it is difficult to determine what effect a change in a company's prices will have on its total sales. Unless the elasticity of demand is very low, the plaintiff is bound to suffer a loss, either because of reduced sales or because of reduced profit per sale. Where elasticity is low, and it can be demonstrated that the tax was passed on through higher prices that did not affect profits per sale or the volume of sales, it would be impossible to demonstrate that the plaintiff could not or would not have raised its prices had the tax not been imposed, thereby increasing its profits even further. LeBel J. referred to these various figures as "virtually unascertainable" (para. 205, citing White J. in Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968), at p. 493). LeBel J. ultimately concluded that "[t]he passing on defence would, in effect, result in an argument that no damages are ever recoverable in commercial litigation because anyone who claimed to have suffered damages but was still solvent had obviously found a way to pass the loss on" (para. 206, citing Ground J. in Law Society of Upper Canada v. Ernst & Young (2002), 59 O.R. (3d) 214 (S.C.J.), at para. 40).
2006	R. v. Khelawon	12/14/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2332/index.do	R. v. Khelawon, [2006] 2 S.C.R. 787, 2006 SCC	Charron J.	unanimous	Ontario	Criminal law	C	discussed	Idaho v. Wright, 497 U.S. 805 (1990)	SC	US	51 The distinction between threshold and ultimate reliability has been made in a number of cases (see, for example, B. (K.G.) and R. v. Hawkins, [1996] 3 S.C.R. 1043), but we are mainly concerned here with the elaboration of this principle in Starr. In particular, the following excerpt from the Court's analysis has been the subject of much of the discussion and commentary (at paras. 215 and 217): In this connection, it is important when examining the reliability of a statement under the principled approach to distinguish between threshold and ultimate reliability. Only the former is relevant to admissibility: see Hawkins, supra, at p. 1084. Again, it is not appropriate in the circumstances of this appeal to provide an exhaustive catalogue of the factors that may influence threshold reliability. However, our jurisprudence does provide some guidance on this subject. Threshold reliability is concerned not with whether the statement is true or not; that is a question of ultimate reliability. Instead, it is concerned with whether or not the circumstances surrounding the statement itself provide circumstantial guarantees of trustworthiness. This could be because the declarant had no motive to lie (see Khan, supra; Smith, supra), or because there were safeguards in place such that a lie could be discovered (see Hawkins, supra; U. (F.J.), supra; B. (K.G.), supra). . . . At the stage of hearsay admissibility the trial judge should not consider the declarant's general reputation for truthfulness, nor any prior or subsequent statements, consistent or not. These factors do not concern the circumstances of the statement itself. Similarly, I would not consider the presence of corroborating or conflicting evidence. On this point, I agree with the Ontario Court of Appeal's decision in R. v. C. (B.) (1993), 12 O.R. (3d) 608; see also Idaho v. Wright, 497 U.S. 805 (1990). In summary, under the principled approach a court must not invade the province of the trier of fact and condition admissibility of hearsay on whether the evidence is ultimately reliable. However, it will need to examine whether the circumstances in which the statement was made lend sufficient credibility to allow a finding of threshold reliability. [Underlining added.] 94 I want to say a few words on one factor identified in Starr, namely "the presence of corroborating or conflicting evidence" since it is that comment that appears to have raised the most controversy. I repeat it here for convenience: Similarly, I would not consider the presence of corroborating or conflicting evidence. On this point, I agree with the Ontario Court of Appeal's decision in R. v. C. (B.) (1993), 12 O.R. (3d) 608; see also Idaho v. Wright, 497 U.S. 805 (1990). [para. 217] 97 Idaho v. Wright, 497 U.S. 805 (1990), is more on point. In that case, five of the nine justices of the United States Supreme Court were not persuaded that "evidence corroborating the truth of a hearsay statement may properly support a finding that the statement bears 'particularized guarantees of trustworthiness'" (p. 822). In the majority's

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2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	C	referred to	People v. Schwimmer, 411 N.Y.S. 2d 922 (1978)	lower-level court	US	34 In the United States, a free-standing doctrine of unilateral conspiracy has bridged what was seen in that country as a gap in the law of conspiracy. Would-be conspirators are guilty of unilateral conspiracy where there is no true conspiracy because the agreement of their interlocutors is feigned: see American Law Institute, Model Penal Code and Commentaries (Official Draft and Revised Comments) (1985), Part I, vol. 2, § 5.04(1)(b). As one American court noted, the unilateral conspiracy approach rendered attempt to conspire superfluous: People v. Schwimmer, 411 N.Y.S. 2d 922 (App. Div. 1978), at pp. 925-28.
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	C	referred to	Kabunga s/o Magingi v. R. (1955), 22 E.A.C.A. 387	lower-level court	East-Africa	39 The Attorney General of Canada has brought to our attention decisions in other common law jurisdictions that appear to recognize the crime of attempting to conspire. Even then, however, attempt to conspire has served essentially as a stand-in for counselling or incitement (see Parshu Ram v. R. (1967), 13 F.L.R. 138 (Fiji C.A.), and Kabunga s/o Magingi v. R. (1955), 22 E.A.C.A. 387 (E. Afr. C.A.)), or as a means to capture unilateral conspirators (see Harris v. R. (1927), 48 N.L.R. 330 (S.C. S. Afr., Natal Prov. Div.)). In none of these jurisdictions has attempt to conspire expanded the sphere of criminal liability in the manner urged upon us here.
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	C	referred to	Parshu Ram v. R. (1967), 13 F.L.R. 138	lower-level court	Fiji	39 The Attorney General of Canada has brought to our attention decisions in other common law jurisdictions that appear to recognize the crime of attempting to conspire. Even then, however, attempt to conspire has served essentially as a stand-in for counselling or incitement (see Parshu Ram v. R. (1967), 13 F.L.R. 138 (Fiji C.A.), and Kabunga s/o Magingi v. R. (1955), 22 E.A.C.A. 387 (E. Afr. C.A.)), or as a means to capture unilateral conspirators (see Harris v. R. (1927), 48 N.L.R. 330 (S.C. S. Afr., Natal Prov. Div.)). In none of these jurisdictions has attempt to conspire expanded the sphere of criminal liability in the manner urged upon us here.
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	C	referred to	Harris v. R. (1927), 48 N.L.R. 330	lower-level court	South Africa	39 The Attorney General of Canada has brought to our attention decisions in other common law jurisdictions that appear to recognize the crime of attempting to conspire. Even then, however, attempt to conspire has served essentially as a stand-in for counselling or incitement (see Parshu Ram v. R. (1967), 13 F.L.R. 138 (Fiji C.A.), and Kabunga s/o Magingi v. R. (1955), 22 E.A.C.A. 387 (E. Afr. C.A.)), or as a means to capture unilateral conspirators (see Harris v. R. (1927), 48 N.L.R. 330 (S.C. S. Afr., Natal Prov. Div.)). In none of these jurisdictions has attempt to conspire expanded the sphere of criminal liability in the manner urged upon us here.
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	R		Crimes Act 1958 (Vict.), s. 321F(3) [ad. by Crimes (Conspiracy and Incitement) Act 1984 (Vict.), s. 7(2)]	lower-level statute	Australia	38 This conclusion is consistent with the state of the law in other jurisdictions that share with us a common legal heritage — and little contemporary support for characterizing attempt to conspire as a crime. In England, the crime of attempt to conspire was abolished by the Criminal Law Act 1977 (U.K.), 1977, c. 45, modified by the Criminal Attempts Act 1981 (U.K.), 1981, c. 47. Most courts in the United States that have considered the existence of the alleged crime of attempt to conspire have rejected it. See N. Zimmerman, "Attempted Stalking: An Attempt-to-Almost-Attempt-to-Act" (2000), 20 N. Ill. U. L. Rev. 219, at p. 222. There does not appear to be a record of any convictions of attempt to conspire in either Australia or New Zealand, and the crime was specifically abolished in Australia and in several of its states: see Criminal Code Act 1995 (Cth.), s. 11.1(7); Criminal Code 2002 (A.C.T.), s. 44(10); and the Crimes Act 1958 (Vict.), s. 321F(3).
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	R		Criminal Code 2002 (A.C.T.), s. 44(10).	statute	Austraia	38 This conclusion is consistent with the state of the law in other jurisdictions that share with us a common legal heritage — and little contemporary support for characterizing attempt to conspire as a crime. In England, the crime of attempt to conspire was abolished by the Criminal Law Act 1977 (U.K.), 1977, c. 45, modified by the Criminal Attempts Act 1981 (U.K.), 1981, c. 47. Most courts in the United States that have considered the existence of the alleged crime of attempt to conspire have rejected it. See N. Zimmerman, "Attempted Stalking: An Attempt-to-Almost-Attempt-to-Act" (2000), 20 N. Ill. U. L. Rev. 219, at p. 222. There does not appear to be a record of any convictions of attempt to conspire in either Australia or New Zealand, and the crime was specifically abolished in Australia and in several of its states: see Criminal Code Act 1995 (Cth.), s. 11.1(7); Criminal Code 2002 (A.C.T.), s. 44(10); and the Crimes Act 1958 (Vict.), s. 321F(3).
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	R		Criminal Code Act 1995 (Cth.), s. 11.1(7).	statute	Austraia	38 This conclusion is consistent with the state of the law in other jurisdictions that share with us a common legal heritage — and little contemporary support for characterizing attempt to conspire as a crime. In England, the crime of attempt to conspire was abolished by the Criminal Law Act 1977 (U.K.), 1977, c. 45, modified by the Criminal Attempts Act 1981 (U.K.), 1981, c. 47. Most courts in the United States that have considered the existence of the alleged crime of attempt to conspire have rejected it. See N. Zimmerman, "Attempted Stalking: An Attempt-to-Almost-Attempt-to-Act" (2000), 20 N. Ill. U. L. Rev. 219, at p. 222. There does not appear to be a record of any convictions of attempt to conspire in either Australia or New Zealand, and the crime was specifically abolished in Australia and in several of its states: see Criminal Code Act 1995 (Cth.), s. 11.1(7); Criminal Code 2002 (A.C.T.), s. 44(10); and the Crimes Act 1958 (Vict.), s. 321F(3).
2006	R. v. Déry	11/23/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2328/index.do	R. v. Déry, [2006] 2 S.C.R. 669, 2006 SCC 53	Fish J.	unanimous	Quebec	Criminal law	R		Criminal Law Act 1977 (U.K.), 1977, c. 45 [am. by Criminal Attempts Act 1981 (U.K.), 1981, c. 47].	statute	UK	38 This conclusion is consistent with the state of the law in other jurisdictions that share with us a common legal heritage — and little contemporary support for characterizing attempt to conspire as a crime. In England, the crime of attempt to conspire was abolished by the Criminal Law Act 1977 (U.K.), 1977, c. 45, modified by the Criminal Attempts Act 1981 (U.K.), 1981, c. 47. Most courts in the United States that have considered the existence of the alleged crime of attempt to conspire have rejected it. See N. Zimmerman, "Attempted Stalking: An Attempt-to-Almost-Attempt-to-Act" (2000), 20 N. Ill. U. L. Rev. 219, at p. 222. There does not appear to be a record of any convictions of attempt to conspire in either Australia or New Zealand, and the crime was specifically abolished in Australia and in several of its states: see Criminal Code Act 1995 (Cth.), s. 11.1(7); Criminal Code 2002 (A.C.T.), s. 44(10); and the Crimes Act 1958 (Vict.), s. 321F(3).
2006	R. v. Krieger	10/26/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2321/index.do	R. v. Krieger, [2006] 2 S.C.R. 501, 2006 SCC 47	Fish J.	unanimous	Alberta	Constitutional law Criminal law	C	applied	R. v. Wang, [2005] 1 W.L.R. 661, [2005] UKHL 9	SC	UK (HL)	10 As I mentioned earlier, the Crown conceded that a new trial should be ordered if the jury, though it did pronounce the verdict, was in substance entirely deprived of its role. The Crown thus agreed with the outcome in R. v. Wang, [2005] 1 W.L.R. 661, [2005] UKHL 9, where the House of Lords ordered a new trial following a directed verdict of guilty. The Crown sought, however, to distinguish Wang on the ground that the jury in this case retired and deliberated for ten hours. In Wang, on the other hand, after the judge directed a guilty verdict, the jury was not so much as invited to leave the courtroom to confer. (See Wang, at para. 6.)
2006	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada	10/20/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2320/index.do	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada, [2006] 2 S.C.R. 447, 2006 SCC 46	LeBel J.	majority	Federal Court of Appeal	Taxation	C	referred to	Bentley v. Pike (1981), 53 T.C. 590	lower-level court	UK	48 In one of those cases, Bentley v. Pike (1981), 53 T.C. 590, the facts were analogous to the facts in Gaynor. The High Court of Justice (Chancery Division) took the same approach to the conversion of foreign currency amounts into sterling as the Federal Court of Appeal would take in Gaynor. Vinelott J. acknowledged that the taxpayer was being called on to pay capital gains tax on a (notional) foreign exchange gain arising out of the devaluation of sterling, but he held that this was the only justifiable approach under the capital gains tax legislation.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2006	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada	10/20/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2320/index.do	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada, [2006] 2 S.C.R. 447, 2006 SCC 46	LeBel J.	majority	Federal Court of Appeal	Taxation	C	referred to	Pattison (Inspector of Taxes) v. Marine Midland Ltd., [1984] 1 A.C. 362	SC	UK (HL)	49 In Pattison (Inspector of Taxes) v. Marine Midland Ltd., [1984] A.C. 362 (H.L.), the taxpayer was an international banking company. In 1971, the taxpayer had borrowed US$15 million by issuing loan stock and had used that money to lend U.S. dollars to its banking customers. In 1976, the loans to its banking customers had all been repaid (in U.S. dollars) and the taxpayer redeemed the loan stock. Between 1971 and 1976, the pound had depreciated such that the sterling equivalent of the amount the taxpayer had to repay in 1976 was greater than the sterling equivalent of the amount it received in that year. The inspector of taxes sought to characterize that loss as a capital loss that was not deductible in computing the taxpayer company's profits. He also sought to characterize as an income profit the correlative foreign exchange gain that the taxpayer (notionally) had realized on the loans it had made to its banking customers. At all material times, the taxpayer had sufficient U.S. dollar assets to meet its U.S. dollar liabilities, and the dollars were never converted into sterling. The House of Lords held that there was no gain or loss on either capital or income account, because no profit can arise from the simple return of the very thing borrowed. Lord Templeman explained that "a profit or loss may be earned or suffered if a borrower changes the currency he borrows but that profit or loss arises from the exchange transaction and not from the borrowing" (p. 372). Because there had been no conversion of the U.S. dollar, there could be no profit or loss in the circumstances. 50 The decision in Pattison is illustrative because, as the taxpayer had pointed out, the inspector's position was predicated on a conversion of the principal sums into sterling amounts. Without such a conversion, the amount repaid (US$15 million) would equal the amount borrowed and there would be no profit or loss to report in the company's tax return. The taxpayer argued that only profits actually realized should be converted into their sterling amounts. It seems implicit that in accepting the taxpayer's position, the House of Lords rejected the proposition that the principal sums had to be converted into sterling amounts. 51 In Capcount Trading v. Evans (1992), 65 T.C. 545 (C.A.), the taxpayer argued that Pattison and Pike were inconsistent and that Pattison ought to prevail such that the capital gain the taxpayer had realized on the disposition of certain (foreign) shares could be calculated by deducting the foreign currency cost from the foreign currency proceeds and converting the result into sterling at the rate prevailing on the date of disposition. The effect would have been to exclude foreign exchange gains from the calculation. Nolan L.J. held that the two cases were not inconsistent because Pattison concerned income while Pike concerned capital gains. 53 Pattison, the only one of those cases in which conversion of the amounts at issue into sterling was not required, is distinguishable from the other two cases in two ways. First, the underlying assets in both Pike and Capcount Trading were capital assets, while the underlying asset in Pattison was (arguably, at least) on income account because the business of the taxpayer bank was borrowing and lending money. In the latter case, no conversion was necessary because the measurement of income is not concerned with the appreciation or depreciation of particular assets. Second, in both Pike and Capcount Trading, there was a disposition of the capital asset, while Pattison involved a borrower-lender relationship. Lord Templeman observed in Pattison that where there is no disposition, but merely a return of the very thing that was borrowed, the return cannot in itself trigger a profit or loss. Any such profit or loss must be rooted in an actual currency exchange transaction. 54 Miller J. in the Tax Court below, concluded that the U.K. cases were consistent with Gaynor, but that the principles articulated in those cases did not apply to the facts before him. Specifically, he opined that currency conversion is appropriate in the capital gains context and suggested, citing Capcount Trading, that the conceptual basis for this distinction may lie in the fact that a capital gain, by its very nature, involves measuring the appreciation or depreciation of a particular asset over time, while business income does not. It is not immediately clear how this can be reconciled with
2006	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada	10/20/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2320/index.do	Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada, [2006] 2 S.C.R. 447, 2006 SCC 46	LeBel J.	majority	Federal Court of Appeal	Taxation	C	referred to	Capcount Trading v. Evans (1992), 65 T.C. 545	lower-level court	UK	51 In Capcount Trading v. Evans (1992), 65 T.C. 545 (C.A.), the taxpayer argued that Pattison and Pike were inconsistent and that Pattison ought to prevail such that the capital gain the taxpayer had realized on the disposition of certain (foreign) shares could be calculated by deducting the foreign currency cost from the foreign currency proceeds and converting the result into sterling at the rate prevailing on the date of disposition. The effect would have been to exclude foreign exchange gains from the calculation. Nolan L.J. held that the two cases were not inconsistent because Pattison concerned income while Pike concerned capital gains. 53 Pattison, the only one of those cases in which conversion of the amounts at issue into sterling was not required, is distinguishable from the other two cases in two ways. First, the underlying assets in both Pike and Capcount Trading were capital assets, while the underlying asset in Pattison was (arguably, at least) on income account because the business of the taxpayer bank was borrowing and lending money. In the latter case, no conversion was necessary because the measurement of income is not concerned with the appreciation or depreciation of particular assets. Second, in both Pike and Capcount Trading, there was a disposition of the capital asset, while Pattison involved a borrower-lender relationship. Lord Templeman observed in Pattison that where there is no disposition, but merely a return of the very thing that was borrowed, the return cannot in itself trigger a profit or loss. Any such profit or loss must be rooted in an actual currency exchange transaction. 54 Miller J. in the Tax Court below, concluded that the U.K. cases were consistent with Gaynor, but that the principles articulated in those cases did not apply to the facts before him. Specifically, he opined that currency conversion is appropriate in the capital gains context and suggested, citing Capcount Trading, that the conceptual basis for this distinction may lie in the fact that a capital gain, by its very nature, involves measuring the appreciation or depreciation of a particular asset over time, while business income does not. It is not immediately clear how this can be reconciled with the line of cases discussed above. Both Tip Top Tailors and Eli Lilly involved the repayment of debts that were held to be on income account, and in both cases the Court held that there had been a foreign exchange gain on the repayment of the foreign currency debt obligation. I believe that this can be explained by the facts that the borrower-lender relationship in those cases arose directly out of the purchaser-vendor relationship and that there was an actual currency conversion (and, as a result, an actual foreign exchange gain), such that the foreign exchange gain was an integral part of the purchase price of the goods.
2006	Walker v. Ritchie	10/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2319/index.do	Walker v. Ritchie, [2006] 2 S.C.R. 428, 2006 SCC 45	Rothstein J.	unanimous	Ontario	Civil procedure	C	considered	City of Burlington v. Dague, 505 U.S. 557 (1992)	SC	US	33 The assessment of risk premiums against unsuccessful defendants has been rejected in the United States. While there are different considerations as between the United States and Ontario cost schemes, the risk analysis by the United States Supreme Court is instructive. As pointed out by Scalia J. for the majority of the Court in City of Burlington v. Dague, 505 U.S. 557 (1992), where payment to plaintiff's counsel is dependent upon the plaintiff achieving a favourable result, counsel's risk of non-payment is directly related to the plaintiff's risk of losing his/her case. Scalia J. determined that a plaintiff's risk of loss is a product of two factors: (1) the factual or legal merits of the plaintiff's case; and (2) the difficulty in establishing those merits. He explained that assessing costs against the defendant for the first component of risk leads to undesirable consequences while the second component of risk is already subsumed in the costs award without the need for a premium.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2006	Robertson v. Thomson Corp.	10/12/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2317/index.do	Robertson v. Thomson Corp., [2006] 2 S.C.R. 363, 2006 SCC 43	Abella J.	dissenting in part on the cross-appeal	Ontario	Civil procedure Intellectual property	C	D	New York Times Co. v. Tasini, 533 U.S. 483 (2001)	SC	US	71 The aftermath of the litigation in New York Times Co. v. Tasini, 533 U.S. 483 (2001), is instructive. Freelance authors had sued the New York Times for copyright infringement arising out of the inclusion of articles written by them in online databases. They were successful. The New York Times Co.'s response was to remove all of the affected articles from its online databases: D. P. Bickham, "Extra! Can't Read All About It: Articles Disappear After High Court Rules Freelance Writers Taken Out of Context in New York Times Co. v. Tasini" (2001), 29 W. St. U. L. Rev. 85, at p. 102. Its response is not surprising, since "[t]he economic calculus runs sharply in favor of deletion", with publishers having "virtually no economic upside to retaining freelance articles in the electronically available archived editions, and substantial economic downside": C. S. Sims and M. J. Morris, "Tasini and Archival Electronic Publication Rights of Newspapers and Magazines" (2001), 18:4 Comm. Law. 9, at p. 15. 88 Whether it is presented in an e-mail as an "electronic daily edition", or consists of a bundle of files on a disk, this electronic edition contains a substantial part of the skill and judgment exercised by the publishers in creating that day's newspaper. It is a reproduction of the print edition in electronic form. That is precisely what media neutrality protects. As discussed by Stevens J. in his compelling dissent in Tasini: No one doubts that the New York Times has the right to reprint its issues in Braille, in a foreign language, or in microform, even though such revisions might look and feel quite different from the original. Such differences, however, would largely result from the different medium being employed. Similarly, the decision to convert the single collective work newspaper into a collection of individual ASCII files can be explained as little more than a decision that reflects the different nature of the electronic medium. Just as the paper version of the New York Times is divided into "sections" and "pages" in order to facilitate the reader's navigation and manipulation of large batches of newsprint, so too the decision to subdivide the electronic version of that collective work into individual article files facilitates the reader's use of the electronic information. The barebones nature of ASCII text would make trying to wade through a single ASCII file containing the entire content of a single edition of the New York Times an exercise in frustration. [Footnote omitted; pp. 512-13.] 89 Given how unwieldy it would be to view an entire newspaper as a single stream of electronic text, the individual article provides the "logical unit" by which to divide the newspaper into manageable pieces: Tasini, per Stevens J., at p. 513, fn. 9. There is, consequently, nothing colourable about the publishers' decision to use individual articles as the more practical and more easily accessible unit of organization for an electronic version. 92 The ultimate question to be asked is whether the database contains a reproduction of a substantial part of the skill and judgment exercised by the publishers in creating the newspaper. If an "electronic edition" reproduces the publishers' skill and judgment and is, on that basis, a reproduction of the publishers' newspaper, there is no reason why the nature of the database in which the electronic editions are housed should change the designation and character of those editions. This too was addressed by Stevens J. in Tasini: A microfilm of the New York Times for October 31, 2000, does not cease to be a revision of that individual collective work simply because it is stored on the same roll of film as other editions of the Times or on a library shelf containing hundreds of other microfilm periodicals. Nor does § 201(c) compel the
2006	Robertson v. Thomson Corp.	10/12/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2317/index.do	Robertson v. Thomson Corp., [2006] 2 S.C.R. 363, 2006 SCC 43	Abella J.	dissenting in part on the cross-appeal	Ontario	Civil procedure Intellectual property	C	D	Thrustcode Ltd. v. W. W. Computing Ltd., [1983] F.S.R. 502	lower-level court	UK	46 With respect, we believe this approach prematurely terminates the analysis. And the manner in which Blair J.A. framed the question — by asking whether the electronic version of the Globe in the electronic databases is a reproduction of the Globe — presupposes an answer in favour of the Publishers. It is not the electronic data that is presented to the public but the finished product, i.e., the databases. We cannot avoid comparing the original collective work with the finished collective work when determining whether there has been a reproduction. As Megarry V.-C., put it in Thrustcode Ltd. v. W. W. Computing Ltd., [1983] F.S.R. 502 (Ch. D.), cited with approval by Mahoney J.A. in Apple Computer, Inc. v. Mackintosh Computers Ltd., [1988] 1 F.C. 673 (C.A.), aff'd [1990] 2 S.C.R. 209: "For computers, as for other things, what must be compared are the thing said to have been copied and the thing said to be an infringing copy" (p. 505).
2006	Robertson v. Thomson Corp.	10/12/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2317/index.do	Robertson v. Thomson Corp., [2006] 2 S.C.R. 363, 2006 SCC 43	LeBel and Fish JJ.	majority	Ontario	Civil procedure Intellectual property	C	referred to	New York Times Co. v. Tasini, 533 U.S. 483 (2001)	SC	US	21 Weiler J.A. wrote the majority decision for the Ontario Court of Appeal: (2004), 72 O.R. (3d) 481. She found that the motions judge had relied too heavily on New York Times Co. v. Tasini, 533 U.S. 483 (2001), an American case. She also found that Cumming J. erred by attaching significance to the Publishers' creation of a different economic activity and by focussing excessively on the technological means of accessing the database using advanced search engines. 42 The Publishers argue that the connection with the original newspaper is not lost in the databases because the articles in Info Globe Online and CPI.Q contain references to the newspaper they were published in, the date they were published and the page number where the article appeared. We do not share this view. Rather, we agree with the United States Supreme Court's finding in Tasini where the same argument was canvassed and rejected. Ginsburg J., for the majority, stated: One might view the articles as parts of a new compendium — namely, the entirety of works in the Database. In that compendium, each edition of each periodical represents only a minuscule fraction of the ever-expanding Database. The Database no more constitutes a "revision" of each constituent edition than a 400-page novel quoting a sonnet in passing would represent a "revision" of that poem. . . . The massive whole of the Database is not recognizable as a new version of its every small part. Alternatively, one could view the Articles in the Databases "as part of" no larger work at all, but simply as individual articles presented individually. That each article bears marks of its origin in a particular periodical (less vivid marks in NEXIS and NYTO, more vivid marks in GPO) suggests the article was previously part of that periodical. But the markings do not mean the article is currently reproduced or distributed as part of the periodical. The Databases' reproduction and distribution of individual Articles — simply as individual Articles — would invade the core of the Authors' exclusive rights under § 106. [Underlining added; footnote omitted; p. 500-501.] 43 Weiler J.A. correctly pointed out that caution must be adhered to when referencing Tasini in the Canadian context due to differences in the applicable governing legislation. Pursuant to the U.S. Copyrights Act, 17 U.S.C. § 201(c) (2000), the publisher does not have a separate copyright in the collective work but has only the "privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series". Nonetheless, we find the reasoning in the foregoing passage, which simply
2006	Robertson v. Thomson Corp.	10/12/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2317/index.do	Robertson v. Thomson Corp., [2006] 2 S.C.R. 363, 2006 SCC 43	LeBel and Fish JJ.	majority	Ontario	Civil procedure Intellectual property	R		17 U.S.C. § 201(c) (2000).	statute	US	43 Weiler J.A. correctly pointed out that caution must be adhered to when referencing Tasini in the Canadian context due to differences in the applicable governing legislation. Pursuant to the U.S. Copyrights Act, 17 U.S.C. § 201(c) (2000), the publisher does not have a separate copyright in the collective work but has only the "privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series". Nonetheless, we find the reasoning in the foregoing passage, which simply describes the nature of the decontextualization that occurs in similar databases, compelling and applicable. 73 The most fundamental right conferred by the publisher's copyright is the right to produce and reproduce the copyrighted work. Copyright in relation to a work, as described in s. 3 , means "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever". The right contains two key features. The first is that in Canada, unlike the narrower privilege conferred under the American Copyrights Act, 17 U.S.C. § 201(c) (2000), the holder of the copyright may reproduce not only the work, but also a "substantial part thereof".
2006	Blank v. Canada (Minister of Justice)	9/8/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2313/index.do	Blank v. Canada (Minister of Justice), [2006] 2 S.C.R. 319, 2006 SCC 39	Fish J.	majority	Federal Court of Appeal	Access to information Professional law	C	referred to	In re L. (A Minor), [1997] A.C. 16	SC	UK (HL)	30 American and English authorities are to the same effect: see In re L. (A Minor), [1997] A.C. 16 (H.L.); Three Rivers District Council v. Governor and Company of the Bank of England (No. 6), [2004] Q.B. 916, [2004] EWCA Civ 218, and Hickman v. Taylor, 329 U.S. 495 (1947). In the United States communications with third parties and other materials prepared in anticipation of litigation are covered by the similar "attorney work product" doctrine. This "distinct rationale" theory is also supported by the majority of academics: Sharpe; J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at pp. 745-46; D. M. Paciocco and L. Stuesser, The Law of Evidence (3rd ed. 2002), at pp. 197-98; J.-C. Royer, La preuve civile (3rd ed. 2003), at pp. 868-71; G. D. Watson and F. Au, "Solicitor-Client Privilege and Litigation Privilege in Civil Litigation" (1998), 77 Can. Bar Rev. 315. For the opposing view, see J. D. Wilson, "Privilege in Experts' Working Papers" (1997), 76 Can. Bar Rev. 346, and "Privilege: Watson & Au (1998) 77 Can. Bar Rev. 346: REJOINDER: 'It's Elementary My Dear Watson'" (1998), 77 Can. Bar Rev. 549

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2006	Blank v. Canada (Minister of Justice)	9/8/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2313/index.do	Blank v. Canada (Minister of Justice), [2006] 2 S.C.R. 319, 2006 SCC 39	Fish J.	majority	Federal Court of Appeal	Access to information Professional law	C	referred to	Three Rivers District Council v. Governor and Company of the Bank of England (No. 6), [2004] Q.B. 916, [2004] EWCA Civ 218	lower-level court	UK	30 American and English authorities are to the same effect: see In re L. (A Minor), [1997] A.C. 16 (H.L.); Three Rivers District Council v. Governor and Company of the Bank of England (No. 6), [2004] Q.B. 916, [2004] EWCA Civ 218, and Hickman v. Taylor, 329 U.S. 495 (1947). In the United States communications with third parties and other materials prepared in anticipation of litigation are covered by the similar "attorney work product" doctrine. This "distinct rationale" theory is also supported by the majority of academics: Sharpe; J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at pp. 745-46; D. M. Paciocco and L. Stuesser, The Law of Evidence (3rd ed. 2002), at pp. 197-98; J.-C. Royer, La preuve civile (3rd ed. 2003), at pp. 868-71; G. D. Watson and F. Au, "Solicitor-Client Privilege and Litigation Privilege in Civil Litigation" (1998), 77 Can. Bar Rev. 315. For the opposing view, see J. D. Wilson, "Privilege in Experts' Working Papers" (1997), 76 Can. Bar Rev. 346, and "Privilege: Watson & Au (1998) 77 Can. Bar Rev. 346: REJOINDER: 'It's Elementary My Dear Watson'" (1998), 77 Can. Bar Rev. 549.
2006	Blank v. Canada (Minister of Justice)	9/8/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2313/index.do	Blank v. Canada (Minister of Justice), [2006] 2 S.C.R. 319, 2006 SCC 39	Fish J.	majority	Federal Court of Appeal	Access to information Professional law	C	referred to	Hickman v. Taylor, 329 U.S. 495 (1947)	SC	US	30 American and English authorities are to the same effect: see In re L. (A Minor), [1997] A.C. 16 (H.L.); Three Rivers District Council v. Governor and Company of the Bank of England (No. 6), [2004] Q.B. 916, [2004] EWCA Civ 218, and Hickman v. Taylor, 329 U.S. 495 (1947). In the United States communications with third parties and other materials prepared in anticipation of litigation are covered by the similar "attorney work product" doctrine. This "distinct rationale" theory is also supported by the majority of academics: Sharpe; J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at pp. 745-46; D. M. Paciocco and L. Stuesser, The Law of Evidence (3rd ed. 2002), at pp. 197-98; J.-C. Royer, La preuve civile (3rd ed. 2003), at pp. 868-71; G. D. Watson and F. Au, "Solicitor-Client Privilege and Litigation Privilege in Civil Litigation" (1998), 77 Can. Bar Rev. 315. For the opposing view, see J. D. Wilson, "Privilege in Experts' Working Papers" (1997), 76 Can. Bar Rev. 346, and "Privilege: Watson & Au (1998) 77 Can. Bar Rev. 346: REJOINDER: 'It's Elementary My Dear Watson'" (1998), 77 Can. Bar Rev. 549. 35 Except where such related litigation persists, there is no need and no reason to protect from discovery anything that would have been subject to compellable disclosure but for the pending or apprehended proceedings which provided its shield. Where the litigation has indeed ended, there is little room for concern lest opposing counsel or their clients argue their case "on wits borrowed from the adversary", to use the language of the U.S. Supreme Court in Hickman, at p. 516.
2006	Blank v. Canada (Minister of Justice)	9/8/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2313/index.do	Blank v. Canada (Minister of Justice), [2006] 2 S.C.R. 319, 2006 SCC 39	Fish J.	majority	Federal Court of Appeal	Access to information Professional law	C	referred to	Waugh v. British Railways Board, [1979] 2 All E.R. 1169	SC	UK (HL)	59 The question has arisen whether the litigation privilege should attach to documents created for the substantial purpose of litigation, the dominant purpose of litigation or the sole purpose of litigation. The dominant purpose test was chosen from this spectrum by the House of Lords in Waugh v. British Railways Board, [1979] 2 All E.R. 1169. It has been adopted in this country as well: Davies v. Harrington (1980), 115 D.L.R. (3d) 347 (N.S.C.A.); Voth Bros. Construction (1974) Ltd. v. North Vancouver School District No. 44 Board of School Trustees (1981), 29 B.C.L.R. 114 (C.A.); McCaig v. Trentowsky (1983), 148 D.L.R. (3d) 724 (N.B.C.A.); Nova, an Alberta Corporation v. Guelph Engineering Co. (1984), 5 D.L.R. (4th) 755 (Alta. C.A.); Ed Miller Sales & Rentals; Chrusz; Lifford; Mitsui; College of Physicians; Gower.
2006	Celanese Canada Inc. v. Murray Demolition Corp.	7/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2309/index.do	Celanese Canada Inc. v. Murray Demolition Corp., [2006] 2 S.C.R. 189, 2006 SCC 36	Binnie J.	unanimous	Ontario	Civil procedure	C	referred to	Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55	lower-level court	UK	30 With easier access to such orders, there has emerged a tendency on the part of some counsel to take too lightly the very serious responsibilities imposed by such a draconian order. It should truly be exceptional for a court to authorize the massive intrusion, without advance notice, of a privately orchestrated search on the privacy of a business competitor or other target party. As it was put by Lord Denning, M.R., in the original Anton Piller case: We are prepared, therefore, to sanction its continuance [i.e. of the order], but only in an extreme case where there is grave danger of property being smuggled away or of vital evidence being destroyed. [Emphasis added.] (Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55 (C.A.), at p. 61) Anton Piller orders, obtained ex parte, now regularly permit searches and seizures not only from places of business but from residential premises. While most Anton Piller orders are executed properly, they are capable of giving rise to serious abuse, as in Ridgewood Electric, mentioned earlier, where Corbett J. of the Ontario Superior Court of Justice protested the unacceptable conduct of those executing the order: Nigel Robbie arrived home on April 14, 2004, to find a neighbour barricading his front door. His ten-year-old son had been taken to another neighbour's house, distraught. The neighbourhood was in an uproar. A cadre in suits stood at the front of his house brandishing a thick wad of papers, demanding to be let in. . . . While everyone is taken to know the law, the Robbies and their neighbours might be excused for not knowing about Anton Piller orders. And so the Robbies and their neighbours were left to wonder what kind of country we live in, where one's former employer, acting secretly, may obtain a court order and then enter and search one's private residence. [paras. 1 and 4]

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2006	Celanese Canada Inc. v. Murray Demolition Corp.	7/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2309/index.do	Celanese Canada Inc. v. Murray Demolition Corp., [2006] 2 S.C.R. 189, 2006 SCC 36	Binnie J.	unanimous	Ontario	Civil procedure	R		Civil Procedure Act 1997 (U.K.), 1997, c. 12, s. 7.	statute	UK	40 Anton Piller orders are often conceived of, obtained and implemented in circumstances of urgency. They are generally time-limited (e.g., 10 days in Ontario under Rule 40.02 (Rules of Civil Procedure, R.R.O. 1990, Reg. 194) and 14 days in the Federal Court, under Rule 374(1) (Federal Courts Rules, SOR/98-106)). Despite the urgency, the more detailed and standardized the terms of the order the less opportunity there will be for misunderstandings or mischief. As noted by Lamer J. in Descôteaux v. Mierzwinski, [1982] 1 S.C.R. 860, at p. 889: Searches are an exception to the oldest and most fundamental principles of the common law, and as such the power to search should be strictly controlled. Unless and until model orders are developed by legislation or recommended by law societies pursuant to their responsibility for professional conduct, the following guidelines for preparation and execution of an Anton Piller order may be helpful, depending on the circumstances: (1) Basic Protection for the Rights of the Parties (i) The order should appoint a supervising solicitor who is independent of the plaintiff or its solicitors and is to be present at the search to ensure its integrity. The key role of the independent supervising solicitor was noted by the motions judge in this case "to ensure that the execution of the Anton Piller order, and everything that flowed from it, was undertaken as carefully as possible and with due consideration for the rights and interests of all involved" (para. 20). He or she is "an officer of the court charged with a very important responsibility regarding this extraordinary remedy" (para. 20). See also Grenzservice, at para. 85. (ii) Absent unusual circumstances the plaintiff should be required to provide an undertaking and/or security to pay damages in the event that the order turns out to be unwarranted or wrongfully executed. See Ontario Realty, at para. 40; Adobe Systems, at para. 43; Nintendo of America, at pp. 201-2; Grenzservice, at para. 85; Havana House Cigar & Tobacco Merchants Ltd. v. Jane Doe (2000), 199 F.T.R. 12, aff'd (2002), 288 N.R. 198, 2002 FCA 75. (iii) The scope of the order should be no wider than necessary and no material shall be removed from the site unless clearly covered by the terms
2006	Celanese Canada Inc. v. Murray Demolition Corp.	7/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2309/index.do	Celanese Canada Inc. v. Murray Demolition Corp., [2006] 2 S.C.R. 189, 2006 SCC 36	Binnie J.	unanimous	Ontario	Civil procedure	R		Federal Court Rules (Cth.), Order 25B.	lower-level statute	Australia	39 In Grenzservice, a case which dealt with an application to remove counsel who had seen privileged documents in the course of an Anton Piller execution, Huddart J. (later J.A.) observed: "This case suggests that safeguards cannot remain implicit in the supervision order. They must be specified" (para. 84). I agree. In Lavallee, Rackel & Heintz v. Canada (Attorney General), [2002] 3 S.C.R. 209, 2002 SCC 61, Arbour J. for the majority set out at para. 49 a number of relevant concerns in the criminal law context, which may have some application by analogy. Notwithstanding the general recognition of the need for standard terms, many safeguards which one would expect to have become customary (such as a provision dealing with claims of privilege) are frequently omitted. Corbett J. commented in Ridgewood Electric that the Anton Piller order "has been with us for nearly 30 years, [yet] its 'standard terms' still vary considerably across the province" (para. 3). In the United Kingdom, a set of standardized rules and a model order have been developed. In Australia, Order 25B of the Federal Court Rules and Practice Note No. 24 (May 5, 2006) set out a number of standard safeguards for Anton Piller orders. See also Thermax Ltd. v. Schott Industrial Glass Ltd., [1981] F.S.R. 289 (Ch. D.).
2006	United States of America v. Ferras; United States of America v. Latty	7/21/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2306/index.do	United States of America v. Ferras; United States of America v. Latty, [2006] 2 S.C.R. 77, 2006 SCC 33	McLachlin C.J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	Glucksman v. Henkel, 221 U.S. 508 (1911)	SC	US	19 Extradition law requires that the "basic demands of justice" be observed: Canada v. Schmidt, [1987] 1 S.C.R. 500, at p. 523. The true principle that emerges from the history of extradition and the test for committal is that a person is not to be extradited without a fair process, having regard to the history, purposes and policies that underlie extradition: see Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779, at p. 848. Fair process in this context means the requesting state must establish that there are reasonable grounds to conclude that the person sought may have committed the offence. As stated in Glucksman v. Henkel, 221 U.S. 508 (1911), at p. 512: For while of course a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. 34 What fundamental justice does require is that the person sought for extradition be accorded an independent and impartial judicial determination on the facts and evidence on the ultimate question of whether there is sufficient evidence to establish the case for extradition. This basic requirement must always be respected; a person cannot be extradited upon demand, suspicion or surmise: Glucksman. If the combined provisions of the Act reduce the judicial function to "rubber stamping" the submission of the foreign state and forwarding it to the Minister for committal, then s. 7 is violated.
2006	United States of America v. Ferras; United States of America v. Latty	7/21/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2306/index.do	United States of America v. Ferras; United States of America v. Latty, [2006] 2 S.C.R. 77, 2006 SCC 33	McLachlin C.J.	unanimous	Ontario	Constitutional law Criminal law	R		18 U.S.C. § 3585(b).	statute	US	89 Section 3585(b) of Title 18 of the United States Code states: "A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences . . .". The appellants are concerned that while Title 18 gives credit for pre-trial time, it does not require enhanced credit nor does it take into account the conditions under which any pre-surrender custody is served.
2006	R. v. Boulanger	7/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2305/index.do	R. v. Boulanger, [2006] 2 S.C.R. 49, 2006 SCC 32	McLachlin C.J.	unanimous	Quebec	Criminal law	C	referred to	R. v. Llewellyn-Jones (1966), 51 Cr. App. R. 4, aff'd (1967), 51 Cr. App. R. 204	lower-level court	UK	22 In particular, the failure to separate these two offences has created uncertainty as to when the mens rea of corruption, oppression or dishonesty must be made out. The English Court of Appeal (Criminal Division) was faced with this question in R. v. Llewellyn-Jones (1967), 51 Cr. App. R. 204. Llewellyn-Jones argued that a count charging misbehaviour in public office had to specifically allege fraud, dishonesty or corruption, as these were essential elements of the offence at common law. The court declined to answer the question, holding that dishonesty was implicit in the facts as alleged. 57 As with any offence, the mens rea is inferred from the circumstances. An attempt by the accused to conceal his or her actions may often provide evidence of an improper intent: Arnoldi. Similarly, the receipt of a significant personal benefit may provide evidence that the accused acted in his or her own interest rather than that of the public. However, the fact that a public officer obtains a benefit is not conclusive of a culpable mens rea. Many legitimate exercises of public authority or power by a public servant confer incidental advantages on the actor. As Widgery J. (as he then was) stated in R. v. Llewellyn-Jones (1966), 51 Cr. App. R. 4, at p. 7: . . . I would not be prepared to say that it would be misconduct for this purpose for a registrar to make a decision which did affect his personal interests, merely because he knew that his interests were so involved, if the decision was made honestly and in a genuine belief that it was a proper exercise of his jurisdiction so far as the beneficiaries and other persons concerned came into it. [Cited by Widgery L.C.J. in Dytham, at p. 394.] Conversely, the offence may be made out where no personal benefit is involved.

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2006	R. v. Boulanger	7/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2305/index.do	R. v. Boulanger, [2006] 2 S.C.R. 49, 2006 SCC 32	McLachlin C.J.	unanimous	Quebec	Criminal law	C	referred to	R. v. Dytham (1979), 69 Cr. App. R. 387	lower-level court	UK	23 This uncertainty soon resurfaced in R. v. Dytham (1979), 69 Cr. App. R. 387 (C.A.). Dytham, a police officer in uniform, was charged with misconduct of an officer of Justice after having watched as an individual was kicked to death outside a night club. He had done nothing to intervene, and had left the scene of the crime. No dishonesty, corruption or oppression was alleged or implied. 24 Relying on Wyat and referring specifically to Stephen's offence of "neglect of official duty" (art. 145 in the 9th ed. (1950)), Widgery L.C.J. concluded that Dytham could be convicted for neglect of duty. However, presumably concerned to maintain a mens rea appropriate to criminal sanction, he specified that the neglect had to be wilful and not merely inadvertent. He continued as follows: This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment. [p. 394] Widgery L.C.J. did not specify whether the above characterization was restricted to the "neglect of duty" line of cases upon which he relied or whether his comments also applied to the cases dealing with misfeasance in office, where corruption, dishonesty or oppression had typically been required. 26 Shortly thereafter, in light of the unsatisfactory state of the law after Dytham and the reconsideration of the concepts of "recklessness" and "wilful neglect" by the House of the Lords in R. v. G, [2004] 1 A.C. 1034, [2003] UKHL 50, a reference was directed to the English Court of Appeal (Criminal Division) asking for clarification of the elements of the offence of misconduct in a public office (Attorney General's Reference (No. 3 of 2003), [2004] 3 W.L.R. 451, 2004 EWCA Crim 868 ("Attorney General's Reference")). 27 After reviewing Bembridge, Borron, Llewellyn-Jones and Dytham, as well as Shum Kwok Sher, the Court of Appeal held that misconduct in public office required a breach of duty by the officer, consisting either in an act of commission or one of omission, but that in either case, the conduct must be wilful. Wilful misconduct was held to mean "deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not" (para. 28), and recklessness to mean "an awareness of the duty to act or a subjective recklessness as to the existence of the duty" (para. 30). The recklessness test was said to apply to the determination of whether a duty arises in the circumstances, as well as to the conduct of the defendant if it does. The subjective test would apply both to reckless indifference to the legality of the act or omission and in relation to the consequences of the act or omission: para. 30. The result was a unified offence that incorporated both the former offences of public misfeasance and neglect of official duty. However, in keeping with the development in recent cases of the requirements of a criminal state of mind, simple neglect, in itself, would no longer suffice. At a minimum, reckless indifference was required. 51 It is also important to keep in mind that breach of trust is not the only criminal offence to which public officials are subject. For example, s. 121(1)(c) makes it a crime for an official or employee of the
2006	R. v. Boulanger	7/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2305/index.do	R. v. Boulanger, [2006] 2 S.C.R. 49, 2006 SCC 32	McLachlin C.J.	unanimous	Quebec	Criminal law	C	referred to	Shum Kwok Sher v. HKSAR, [2002] 5 HKCFAR 381	SC	Hong Kong	25 The confusion extended beyond England to other parts of the Commonwealth. In Shum Kwok Sher v. HKSAR, [2002] 5 HKCFAR 381, the Court of Final Appeal of Hong Kong was called upon to establish the elements of the common law offence of misconduct in public office in order to determine whether it was consistent with the rights guaranteed by the Basic Law. Sir Anthony Mason, formerly Chief Justice of Australia, reviewed the history of the offence of misconduct in office and determined that it comprised different types of conduct, each of which required a different mental element: paras. 81-82. He then went on to impose, in all instances, an overriding requirement of seriousness: The second qualification which I attach to the elements of the offence stated in the previous paragraph is that the misconduct complained of must be serious misconduct. Whether it is serious misconduct in this context is to be determined having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities. [para. 86] 27 After reviewing Bembridge, Borron, Llewellyn-Jones and Dytham, as well as Shum Kwok Sher, the Court of Appeal held that misconduct in public office required a breach of duty by the officer, consisting either in an act of commission or one of omission, but that in either case, the conduct must be wilful. Wilful misconduct was held to mean "deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not" (para. 28), and recklessness to mean "an awareness of the duty to act or a subjective recklessness as to the existence of the duty" (para. 30). The recklessness test was said to apply to the determination of whether a duty arises in the circumstances, as well as to the conduct of the defendant if it does. The subjective test would apply both to reckless indifference to the legality of the act or omission and in relation to the consequences of the act or omission: para. 30. The result was a unified offence that incorporated both the former offences of public misfeasance and neglect of official duty. However, in keeping with the development in recent cases of the requirements of a criminal state of mind, simple neglect, in itself, would no longer suffice. At a minimum, reckless indifference was required. 28 Over and above these basic requirements, the Court of Appeal endorsed the condition imposed in Shum Kwok Sher that the misconduct at issue be serious misconduct: [T]here must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder. A mistake, even a serious one, will not suffice. [para. 56] 29 In this way, the Court of Appeal sought to ensure that the offence would apply only to truly criminal conduct. 52 The purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that
2006	R. v. Boulanger	7/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2305/index.do	R. v. Boulanger, [2006] 2 S.C.R. 49, 2006 SCC 32	McLachlin C.J.	unanimous	Quebec	Criminal law	C	referred to	R. v. G, [2004] 1 A.C. 1034, [2003] UKHL 50	SC	UK (HL)	26 Shortly thereafter, in light of the unsatisfactory state of the law after Dytham and the reconsideration of the concepts of "recklessness" and "wilful neglect" by the House of the Lords in R. v. G, [2004] 1 A.C. 1034, [2003] UKHL 50, a reference was directed to the English Court of Appeal (Criminal Division) asking for clarification of the elements of the offence of misconduct in a public office (Attorney General's Reference (No. 3 of 2003), [2004] 3 W.L.R. 451, 2004 EWCA Crim 868 ("Attorney General's Reference")).
2006	R. v. Boulanger	7/13/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2305/index.do	R. v. Boulanger, [2006] 2 S.C.R. 49, 2006 SCC 32	McLachlin C.J.	unanimous	Quebec	Criminal law	C	referred to	Attorney General's Reference (No. 3 of 2003), [2004] 3 W.L.R. 451, [2004] EWCA Crim 868	lower-level court	UK	26 Shortly thereafter, in light of the unsatisfactory state of the law after Dytham and the reconsideration of the concepts of "recklessness" and "wilful neglect" by the House of the Lords in R. v. G, [2004] 1 A.C. 1034, [2003] UKHL 50, a reference was directed to the English Court of Appeal (Criminal Division) asking for clarification of the elements of the offence of misconduct in a public office (Attorney General's Reference (No. 3 of 2003), [2004] 3 W.L.R. 451, 2004 EWCA Crim 868 ("Attorney General's Reference")). 52 The purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be. This said, perfection has never been the standard for criminal culpability in this domain; "mistakes" and "errors in judgment" have always been excluded. To establish the criminal offence of breach of trust by a public officer, more is required. The conduct at issue, in addition to being carried out with the requisite mens rea, must be sufficiently serious to move it from the realm of administrative fault to that of criminal behaviour. This concern is clearly reflected in the seriousness requirement of Shum Kwok Sher and the Attorney General's Reference. What is required is "conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder" (Attorney General's Reference, at para. 56). As stated in R. v. Creighton, [1993] 3 S.C.R. 3, "[t]he law does not lightly brand a person as a criminal" (p. 59)

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2006	Fidler v. Sun Life Assurance Co. of Canada	6/29/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2303/index.do	Fidler v. Sun Life Assurance Co. of Canada, [2006] 2 S.C.R. 3, 2006 SCC 30	McLachlin C.J. and Abella J.	unanimous	British Columbia	Contract Insurance Torts	C	referred to	Eastwood v. Magnox Electric plc, [2004] 3 All E.R. 991, [2004] UKHL 35	SC	UK (HL)	32 This tradition of refusing to award damages for mental distress was launched in Hobbs v. London and South Western Rail. Co. (1875), L.R. 10 Q.B. 111, and Hamlin v. Great Northern Railway Co. (1856), 1 H. & N. 408, 156 E.R. 1261 (Ex.). In 1909, in the case of Addis v. Gramophone Co., [1909] A.C. 488, the House of Lords "cast a long shadow over the common law" when it rejected a claim for mental distress because the conduct said to cause the distress was not actionable: Eastwood v. Magnox Electric plc, [2004] 3 All E.R. 991, [2004] UKHL 35, at para. 1.
2006	Fidler v. Sun Life Assurance Co. of Canada	6/29/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2303/index.do	Fidler v. Sun Life Assurance Co. of Canada, [2006] 2 S.C.R. 3, 2006 SCC 30	McLachlin C.J. and Abella J.	unanimous	British Columbia	Contract Insurance Torts	C	referred to	Malik v. Bank of Credit and Commerce International S.A., [1998] A.C. 20	SC	UK (HL)	33 To this day, Addis is cited for the proposition that mental distress damages are not generally recoverable for breach of contract: see Malik v. Bank of Credit and Commerce International S.A., [1998] A.C. 20 (H.L.), per Lord Nicholls, at p. 38; Wallace v. United Grain Growers Ltd., [1995] 9 W.W.R. 153 (Man. C.A.), at para. 81, var'd [1997] 3 S.C.R. 701; Morberg v. Klassen (1991), 49 C.L.R. 124 (B.C.S.C.); Taylor v. Gill, [1991] 3 W.W.R. 727 (Alta. Q.B.); Chitty on Contracts (29th ed. 2004), vol. II, at p. 1468; and see S. M. Waddams, The Law of Damages (4th ed. 2004), at p. 222.
2006	Fidler v. Sun Life Assurance Co. of Canada	6/29/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2303/index.do	Fidler v. Sun Life Assurance Co. of Canada, [2006] 2 S.C.R. 3, 2006 SCC 30	McLachlin C.J. and Abella J.	unanimous	British Columbia	Contract Insurance Torts	C	referred to	Johnson v. Gore Wood & Co., [2001] 2 W.L.R. 72	SC	UK (HL)	36 Others have suggested that a "stiff upper lip" expectation in commercial life is the source of the prohibition. In McGregor on Damages (17th ed. 2003), the author explains: The reason for the general rule is that contracts normally concern commercial matters and that mental suffering on breach is not in the contemplation of the parties as part of the business risk of the transaction. [p. 63] This resonated in Johnson v. Gore Wood & Co., [2001] 2 W.L.R. 72 (H.L.), at p. 108, where Lord Cooke observed: "Contract-breaking is treated as an incident of commercial life which players in the game are expected to meet with mental fortitude."
2006	Fidler v. Sun Life Assurance Co. of Canada	6/29/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2303/index.do	Fidler v. Sun Life Assurance Co. of Canada, [2006] 2 S.C.R. 3, 2006 SCC 30	McLachlin C.J. and Abella J.	unanimous	British Columbia	Contract Insurance Torts	C	referred to	Jarvis v. Swans Tours Ltd., [1973] 1 All E.R. 71	lower-level court	uk	38 Without resiling from the general rule that damages for mental suffering could not be awarded at contract, the courts in the 1970s acknowledged that the reasons of principle and policy for the rule did not always apply, and began to award such damages where the contract was one for pleasure, relaxation or peace of mind. The charge was led, as so many were, by Lord Denning. In Jarvis v. Swans Tours Ltd., [1973] 1 All E.R. 71 (C.A.), the plaintiff had contracted with the defendant to arrange a holiday. The defendant breached the contract by providing a terrible vacation. Acknowledging but declining to follow what he referred to as the "out of date" decisions in Hamlin and Hobbs, which had sired Addis, Lord Denning held that mental distress damages could be recovered for certain kinds of contracts: In a proper case damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort. One such case is a contract for a holiday, or any other contract to provide entertainment and enjoyment. If the contracting party breaks his contract, damages can be given for the disappointment, the distress, the upset and frustration caused by the breach. [p. 74] 39 This holding in Jarvis emerged from the common law chrysalis as the "peace of mind exception" to the general rule against recovery for mental distress in contract breaches. This exception was confined to contracts which had as their object the peace of mind of a contracting party. Bingham L.J. in Watts v. Morrow stated: "Where the very object of [the] contract is to provide pleasure, relaxation, peace of mind or freedom from
2006	Fidler v. Sun Life Assurance Co. of Canada	6/29/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2303/index.do	Fidler v. Sun Life Assurance Co. of Canada, [2006] 2 S.C.R. 3, 2006 SCC 30	McLachlin C.J. and Abella J.	unanimous	British Columbia	Contract Insurance Torts	C	referred to	Farley v. Skinner, [2001] 4 All E.R. 801, [2001] UKHL 49	SC	UK (HL)	40 More recently, the House of Lords in Farley v. Skinner, [2001] 4 All E.R. 801, [2001] UKHL 49, loosened the peace of mind exception so as to permit recovery of mental distress not only when pleasure, relaxation, or peace of mind is the "very object of the contract", but also when it is a "major or important object of the contract" (para. 24). 48 While the mental distress as a consequence of breach must reasonably be contemplated by the parties to attract damages, we see no basis for requiring it to be the dominant aspect or the "very essence" of the bargain. As the House of Lords noted in Farley, the law of contract protects all significant parts of the bargain, not merely those that are "dominant" or "essential". Lord Steyn rejected this kind of distinction as "a matter of form and not substance" (para. 24). Lord Hutton added: I can see no reason in principle why, if a plaintiff who has suffered no financial loss can recover damages in some cases if there has been a breach of the principal obligation of the contract, he should be denied damages for breach of an obligation which, whilst not the principal obligation of the contract, is nevertheless one which he has made clear to the other party is of importance to him. [para. 51] Principle suggests that as long as the promise in relation to state of mind is a part of the bargain in the reasonable contemplation of the contracting parties, mental distress damages arising from its breach are recoverable. This is to state neither more nor less than the rule in Hadley v. Baxendale
2006	Buschau v. Rogers Communications Inc.	6/22/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2300/index.do	Buschau v. Rogers Communications Inc., [2006] 1 S.C.R. 973, 2006 SCC 28	Bastarache J.	concurring	British Columbia	Pensions	C	referred to	Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd., [1991] 2 All E.R. 597	lower-level court	UK	102 It is quite obvious that the whole discussion concerning good faith had to do with fair conduct as administrator of the Plan. RCI insists that there is nothing uncommon about closed pension plans or the decision to rationalize funding and the provision of benefits after mergers. In its view, the proposed creation of an integrated pension scheme was a rational business decision that should not raise any issue regarding good faith when done within the parameters of the Plan's terms. RCI says there is no stratagem, only the exercise of a power to amend in the context — and this is fundamental — of a defined benefit plan. RCI says that "the analysis of good faith in respect of the exercise of a discretionary power in a contractual context begins with careful consideration of the parties' reasonable contractual expectations" (factum, at para. 75). It is a prohibition against acting in a manner "calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee" unless the employer has "reasonable and proper cause" (para. 80, quoting Imperial Group Pension Trust Ltd. v. Imperial Tobacco Ltd., [1991] 2 All E.R. 597 (Ch. D.), at p. 606). The respondents reject the contractual perspective and say that nothing done by the employer should affect or dilute their entitlements under the Plan; equitable principles should apply. I do not consider it necessary to arbitrate this debate. Section 8(10) of the PBSA provides sufficient guidance. The special context of pension plans requires employers who administer pension plans on behalf of their employees to always act in accordance with the spirit, purpose and terms of the pension plan; employers must always act in such a way as to ensure the protection of employees' pension benefits, not in a way that would reduce, threaten or eliminate them (see Imperial Group)

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2006	Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of)	6/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2296/index.do	Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of), [2006] 1 S.C.R. 865, 2006 SCC 24	Binnie J.	unanimous	Ontario	Statutes Transportation	C	referred to	Channel Airways Ltd. v. Manchester Corp., [1974] 1 Lloyd's Rep. 456	lower-level court	UK	71 It is difficult to endorse the indignation of the legal titleholders with respect to detention of their aircraft until payment is made for debts due to the service providers. They are sophisticated corporate players well versed in the industry in which they have chosen to invest. The detention remedies do not affect their ultimate title. Investors who have done their due diligence will recognize that detention remedies have deep roots in the transport business. In The Emilie Millon, [1905] 2 K.B. 817 ("Mersey Docks"), for example, the English Court of Appeal examined a statute that stipulated that the Mersey Docks and Harbour Board could cause a ship to be detained until all harbour and tonnage payments had been made despite the fact that the ownership of the ship did not correspond to the debtor who had incurred the charges. The ruling in that case reflects the traditional scope of this type of remedy (at p. 821): The Mersey Docks and Harbour Board have a right by statute to detain the vessel until the dock tonnage rates and harbour rates are paid. That is an express statutory right, and the board have nothing to do with any sale of the vessel to a purchaser. That is a matter which only concerns those who are interested in the vessel. It does not concern the board. The board are entitled to detain the vessel, whoever is the owner, until the rates are paid. The order appealed against deprives them of that right, and without their consent purports to give them an option to try and make some claim to a lien upon or right against the fund in priority to other claimants. The board have no such lien or right. If this vessel had been allowed to leave the dock, the board would have been left to make a futile claim against the fund in court. [Emphasis added.] This type of provision is not uncommon in the airline business, see, e.g., decisions under a differently worded U.K. Act such as Channel Airways Ltd. v. Manchester Corp., [1974] 1 Lloyd's Rep. 456 (Q.B.), at p. 461, in which it was held that the Manchester Corporation Act "mean[t] what it sa[id]", and that the city could detain aircraft in respect of which charges had been incurred until those charges had been paid. The legal titleholders face this problem on
2006	Mattel, Inc. v. 3894207 Canada Inc.	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2294/index.do	Mattel, Inc. v. 3894207 Canada Inc., [2006] 1 S.C.R. 772, 2006 SCC 22	Binnie J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	referred to	Mead Data Central, Inc. v. Toyota Motor Sales, U.S.A., Inc., 875 F.2d 1026 (1989)	lower-level court	US	69 In my view, Linden J.A. was disputing what he took to be the argument of the filmmaker and car maker that fame "trumps" all other factors. (It is perhaps of interest that at an earlier date, Toyota had successfully argued in the United States that its Lexus mark could co-exist with the Lexis legal database without confusion: see Mead Data Central, Inc. v. Toyota Motor Sales, U.S.A., Inc., 875 F.2d 1026 (2d Cir. 1989).) Pink Panther was thus understood by the applications judge in the present case: It cannot be automatically presumed that there will be confusion just because the applicant's mark is famous. Under the circumstances, if we keep in mind that the test to satisfy was the likelihood of confusion (and not the possibility of confusion), the fame of the mark could not act as a marketing trump card such that the other factors are thereby obliterated. [para. 40]
2006	Mattel, Inc. v. 3894207 Canada Inc.	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2294/index.do	Mattel, Inc. v. 3894207 Canada Inc., [2006] 1 S.C.R. 772, 2006 SCC 22	Binnie J.	majority	Federal Court of Appeal	Administrative law Intellectual property	C	referred to	Freed & Freed Ltd. v. Registrar of Trade Marks, [1950] Ex. C.R. 431	lower-level court	UK	89 No doubt, as an abstract proposition, the appellant's mark is "famous" whereas the respondent's applied-for mark is not. The question, however, is whether there will likely be (or has been) confusion in the marketplace where both may operate. In that respect, evidence of actual confusion, though not necessary, would have been helpful (ConAgra, Inc. v. McCain Foods Ltd. (2001), 14 C.P.R. (4th) 288, 2001 FCT 963; Panavision, Inc. v. Matsushita Electric Industrial Co. (1992), 40 C.P.R. (3d) 486 (F.C.T.D.), but it was not forthcoming. Décary J.A. commented in Christian Dior, at para. 19: While the relevant issue is "likelihood of confusion" and not "actual confusion", the lack of "actual confusion" is a factor which the courts have found of significance when determining the "likelihood of confusion". An adverse inference may be drawn when concurrent use on the evidence is extensive, yet no evidence of confusion has been given by the opponent. I agree. The lack of any evidence of actual confusion (i.e. that prospective consumers are drawing the mistaken inference) is another of the "surrounding circumstances" to be thrown into the hopper: Pepsi-Cola Co. of Canada, Ltd. v. Coca-Cola Co. of Canada, Ltd., [1940] S.C.R. 17, at p. 30; General Motors Corp. v. Bellows, [1947] Ex. C.R. 568, at p. 577, aff'd [1949] S.C.R. 678; Freed & Freed Ltd. v. Registrar of Trade Marks, [1950] Ex. C.R. 431; Monsport Inc. v. Vêtements de Sport Bonnie (1978) Ltée (1988), 22 C.P.R. (3d) 356 (F.C.T.D.), at p. 360; Multiplicant Inc. v. Petit Bateau Valton S.A. (1994), 55 C.P.R. (3d) 372 (F.C.T.D.), at p. 379.
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Moseley v. V Secret Catalogue, Inc., 537 U.S. 418 (2003)	SC	US	43 In 2003, the U.S. Supreme Court denied the anti-dilution remedy to Victoria's Secret, the women's lingerie chain, which had sued VICTOR'S LITTLE SECRET, an adult novelty store selling "tawdry merchandise": Moseley v. V Secret Catalogue, Inc., 537 U.S. 418 (2003). Under the federal Act, as it then stood, proof of actual harm rather than just likelihood (as under our Act) was required. The court commented however that at least where the marks at issue are not identical, the mere fact that consumers mentally associate the junior user's mark with a famous mark is not sufficient to establish actionable dilution. . . . "Blurring" is not a necessary consequence of mental association. (Nor for that matter, is "tarnishing.") [pp. 433-34] Equally, in my opinion, a mental association of the two marks does not, under s. 22, necessarily give rise to a likelihood of depreciation. (A bill in the U.S. to reduce the threshold to likelihood has been enacted by Congress and awaits the President's signature. See Trademark Dilution Revision Act of 2006,
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623	lower-level court	UK	44 A similar anti-dilution remedy is also contemplated by arts. 4 and 5 of the First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993. Called an "anti-detriment" remedy in the United Kingdom, it is found in ss. 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994, c. 26. The courts in the United Kingdom have been sparing in their award of this remedy, as is illustrated by Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623 (Ch.) (confirming the dismissal of Mastercard's opposition to the trademark Credit Master for a credit card); Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265 (refusing to grant a preliminary injunction against whisky makers using the trademark "Pebble Beach" when the owners of the famous American golf course claimed these marks were detrimental to their own); DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37 (where the court rejected the claim of Mercedes-Benz against the defendant's MERC trade marks, used in association with a clothing and shoe business), and Baywatch Production Co. v. Home Video Channel, [1997] F.S.R. 22 (Ch.) (where the court found that the broadcasting of "Babewatch", which contained sexually explicit material, was not detrimental to the "Baywatch" trade mark)
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265	lower-level court	UK	44 A similar anti-dilution remedy is also contemplated by arts. 4 and 5 of the First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993. Called an "anti-detriment" remedy in the United Kingdom, it is found in ss. 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994, c. 26. The courts in the United Kingdom have been sparing in their award of this remedy, as is illustrated by Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623 (Ch.) (confirming the dismissal of Mastercard's opposition to the trademark Credit Master for a credit card); Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265 (refusing to grant a preliminary injunction against whisky makers using the trademark "Pebble Beach" when the owners of the famous American golf course claimed these marks were detrimental to their own); DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37 (where the court rejected the claim of Mercedes-Benz against the defendant's MERC trade marks, used in association with a clothing and shoe business), and Baywatch Production Co. v. Home Video Channel, [1997] F.S.R. 22 (Ch.) (where the court found that the broadcasting of "Babewatch", which contained sexually explicit material, was not detrimental to the "Baywatch" trade mark)

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2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37	SC	UK (HL)	44 A similar anti-dilution remedy is also contemplated by arts. 4 and 5 of the First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993. Called an "anti-detriment" remedy in the United Kingdom, it is found in ss. 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994, c. 26. The courts in the United Kingdom have been sparing in their award of this remedy, as is illustrated by Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623 (Ch.) (confirming the dismissal of Mastercard's opposition to the trademark Credit Master for a credit card); Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265 (refusing to grant a preliminary injunction against whisky makers using the trademark "Pebble Beach" when the owners of the famous American golf course claimed these marks were detrimental to their own); DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37 (where the court rejected the claim of Mercedes-Benz against the defendant's MERC trade marks, used in association with a clothing and shoe business), and Baywatch Production Co. v. Home Video Channel, [1997] F.S.R. 22 (Ch.) (where the court found that the broadcasting of "Babewatch", which contained sexually explicit material, was not detrimental to the "Baywatch" trade mark)
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Clairol International Corp. v. Thomas Supply & Equipment Co., [1968] 2 Ex. C.R. 552	lower-level court	UK	52 In Clairol International Corp. v. Thomas Supply & Equipment Co., [1968] 2 Ex. C.R. 552, Thurlow J. adopted the following definition of goodwill attaching to a trade-mark at p. 573: [T]he goodwill attaching to a trade mark is I think that portion of the goodwill of the business of its owner which consists of the whole advantage, whatever it may be, of the reputation and connection, which may have been built up by years of honest work or gained by lavish expenditure of money and which is identified with the goods distributed by the owner in association with the trade mark. 66 Disparagement or tarnishing of the trade-mark can arise where a defendant creates negative association for the mark (as Thurlow J. considered was the case in Clairol International). The pornographic film business in the United States has generated numerous examples of tarnishment, including Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979), at p. 203 (negative portrayal of Dallas Cowboys Cheerleaders), and Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (C.D. Cal. 1976) (negative portrayal of Tarzan). Similarly, see Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (S.D.N.Y. 1998) (defendant's website called "Barbie's Playhouse" displayed a woman who offered to engage in a sexually explicit video conference); Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (where "Adults R Us" offered a line of sexual products), and Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D. Cal. 1996) (defendant offered "Buttwiser" t-shirts)
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Playboy Enterprises, Inc. v. Welles, 279 F.3d 796 (2002)	lower-level court	US	64 The U.S. law speaks of the reduction of the capacity of a "famous" mark to identify the goods of its owner, not loss of goodwill. Nevertheless, while U.S. cases must be read with its different wording in mind, they provide some useful elucidation of relevant concepts. For example, the notions of the "blurring" of the brand image evoked by the trade-mark, or of its positive associations, or a "whittling away" of its power to distinguish the products of the claimant and attract consumers, were noted by the U.S. 9th Circuit in 2002: Dilution works its harm not by causing confusion in consumers' minds regarding the source of a good or service, but by creating an association in consumers' minds between a mark and a different good or service. [Emphasis added.] (Playboy Enterprises, Inc. v. Welles, 279 F.3d 796, at para. 16)
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Tiffany & Co. v. Boston Club, Inc., 231 F.Supp. 836 (1964)	lower-level court	US	65 A Massachusetts court, dealing with the case of a local restaurant that called itself TIFFANY, noted the risk of erosion of the public's identification of the mark uniquely with the plaintiff's jewellery and luxury business, thus diminishing its distinctiveness, uniqueness, effectiveness and prestigious connotations: Tiffany & Co. v. Boston Club, Inc., 231 F. Supp. 836 (D. Mass. 1964), at p. 844. See also Polaroid Corp. v. Polaraid, Inc., 319 F.2d 830 (7th Cir. 1963), and Exxon Corp. v. Exxene Corp., 696 F.2d 544 (7th Cir. 1982), at p. 550.
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Polaroid Corp. v. Polaraid, Inc., 319 F.2d 830 (1963)	lower-level court	US	65 A Massachusetts court, dealing with the case of a local restaurant that called itself TIFFANY, noted the risk of erosion of the public's identification of the mark uniquely with the plaintiff's jewellery and luxury business, thus diminishing its distinctiveness, uniqueness, effectiveness and prestigious connotations: Tiffany & Co. v. Boston Club, Inc., 231 F. Supp. 836 (D. Mass. 1964), at p. 844. See also Polaroid Corp. v. Polaraid, Inc., 319 F.2d 830 (7th Cir. 1963), and Exxon Corp. v. Exxene Corp., 696 F.2d 544 (7th Cir. 1982), at p. 550.
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Exxon Corp. v. Exxene Corp., 696 F.2d 544 (1982)	lower-level court	US	65 A Massachusetts court, dealing with the case of a local restaurant that called itself TIFFANY, noted the risk of erosion of the public's identification of the mark uniquely with the plaintiff's jewellery and luxury business, thus diminishing its distinctiveness, uniqueness, effectiveness and prestigious connotations: Tiffany & Co. v. Boston Club, Inc., 231 F. Supp. 836 (D. Mass. 1964), at p. 844. See also Polaroid Corp. v. Polaraid, Inc., 319 F.2d 830 (7th Cir. 1963), and Exxon Corp. v. Exxene Corp., 696 F.2d 544 (7th Cir. 1982), at p. 550.
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (1979)	lower-level court	US	66 Disparagement or tarnishing of the trade-mark can arise where a defendant creates negative association for the mark (as Thurlow J. considered was the case in Clairol International). The pornographic film business in the United States has generated numerous examples of tarnishment, including Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979), at p. 203 (negative portrayal of Dallas Cowboys Cheerleaders), and Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (C.D. Cal. 1976) (negative portrayal of Tarzan). Similarly, see Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (S.D.N.Y. 1998) (defendant's website called "Barbie's Playhouse" displayed a woman who offered to engage in a sexually explicit video conference); Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (where "Adults R Us" offered a line of sexual products), and Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D. Cal. 1996) (defendant offered "Buttwiser" t-shirts).
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (1976)	lower-level court	US	66 Disparagement or tarnishing of the trade-mark can arise where a defendant creates negative association for the mark (as Thurlow J. considered was the case in Clairol International). The pornographic film business in the United States has generated numerous examples of tarnishment, including Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979), at p. 203 (negative portrayal of Dallas Cowboys Cheerleaders), and Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (C.D. Cal. 1976) (negative portrayal of Tarzan). Similarly, see Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (S.D.N.Y. 1998) (defendant's website called "Barbie's Playhouse" displayed a woman who offered to engage in a sexually explicit video conference); Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (where "Adults R Us" offered a line of sexual products), and Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D. Cal. 1996) (defendant offered "Buttwiser" t-shirts).

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2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (1998)	lower-level court	US	18 As discussed in the companion case of Mattel, Inc. v. 3894207 Canada Inc., [2006] 1 S.C.R. 772, 2006 SCC 22, released concurrently, the purpose of trade-marks is to function as a symbol of the source and quality of wares and services, to distinguish those of the merchant from those of another, and thereby to prevent "confusion" in the marketplace. Confusion is to be understood, however, in a special sense. Parliament states in s. 6(1) that confusion occurs if the use of the [appellant's] trade-mark or trade-name would cause confusion with the [respondents'] trade-mark or trade-name in the manner and circumstances described in this section. 21 In every case, the factors to be considered when making a determination as to whether or not a trade-mark is confusing to the somewhat-hurried consumer "in all the surrounding circumstances" include, but are not limited to, those enumerated in s. 6(5) of the Act. These are: "(a) the inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known; (b) the length of time the trade-marks or trade-names have been in use; (c) the nature of the wares, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them". The list of circumstances is not exhaustive and different circumstances will be given different weight in a context-specific assessment, as discussed in Mattel. 27 The appellant contends that the trial judge misdirected herself in law because of her reliance on the decisions of the Federal Court of Appeal in Pink Panther and Lexus. For the reasons set out in Mattel, I agree with the appellant and the intervener, International Trademark Association ("INTA"), that Pink Panther and Lexus put too much emphasis on the similarities and dissimilarities in the "nature of the wares, services or business" (s. 6(5)(c)), and to that extent strayed from the statutory "all the surrounding circumstances" test. However, on a fair reading of her reasons, the trial judge here did apply the "all the surrounding circumstances" test. She concluded: Although I have found that the mark "Clicquot" is well known and unique, and deserves extensive protection, that is not conclusive. The fact of being well known does not by itself provide absolute protection for a trade-mark. It is one factor which must be assessed together with all the others. [Emphasis added; para. 75.] The s. 6(5) list is clearly not exhaustive. Some enumerated factors may not be particularly relevant in a specific case, and in any event their weight will vary with "all the surrounding circumstances". The fame of the mark is not, as such, an enumerated circumstance (although it is implicit in three of the enumerated factors, namely inherent distinctiveness, the extent to which a mark has become known, and the length of time that it has been used). Undoubtedly fame (or strength) is a circumstance of great importance because of the hold of famous marks on the public mind. With that introduction, I turn to discuss the statutory list. 38 The conclusion that use of the trade-marks "in the same area" would not lead to confusion is not an end to the case. Here, unlike in Mattel, there is an additional ground of complaint. Section 22(1) provides:
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (1996)	lower-level court	US	66 Disparagement or tarnishing of the trade-mark can arise where a defendant creates negative association for the mark (as Thurlow J. considered was the case in Clairol International). The pornographic film business in the United States has generated numerous examples of tarnishment, including Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979), at p. 203 (negative portrayal of Dallas Cowboys Cheerleaders), and Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (C.D. Cal. 1976) (negative portrayal of Tarzan). Similarly, see Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (S.D.N.Y. 1998) (defendant's website called "Barbie's Playhouse" displayed a woman who offered to engage in a sexually explicit video conference); Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (where "Adults R Us" offered a line of sexual products), and Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D. Cal. 1996) (defendant offered "Buttwiser" t-shirts).
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (1996).	lower-level court	US	66 Disparagement or tarnishing of the trade-mark can arise where a defendant creates negative association for the mark (as Thurlow J. considered was the case in Clairol International). The pornographic film business in the United States has generated numerous examples of tarnishment, including Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd., 604 F.2d 200 (2d Cir. 1979), at p. 203 (negative portrayal of Dallas Cowboys Cheerleaders), and Edgar Rice Burroughs, Inc. v. Manns Theatres, 195 U.S.P.Q. 159 (C.D. Cal. 1976) (negative portrayal of Tarzan). Similarly, see Mattel Inc. v. Jcom Inc., 48 U.S.P.Q.2d 1467 (S.D.N.Y. 1998) (defendant's website called "Barbie's Playhouse" displayed a woman who offered to engage in a sexually explicit video conference); Toys "R" Us Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996) (where "Adults R Us" offered a line of sexual products), and Anheuser-Busch Inc. v. Andy's Sportswear Inc., 40 U.S.P.Q.2d 1542 (N.D. Cal. 1996) (defendant offered "Buttwiser" t-shirts).
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	R		Federal Trademark Dilution Act of 1995, H.R. Rep. No. 104-374 (1995), reprinted in 1995 U.S.C.C.A.N. 1029.	statute	US	41 In the United States, the House of Representatives reported in 1995 on a similar remedy (labelled "anti-dilution") added by way of amendment to the U.S. Trademark Act of 1946 (the Lanham Trade-Mark Act, 15 U.S.C.A. §§ 1051 et seq.): The provision is intended to protect famous marks where the subsequent, unauthorized commercial use of such marks by others dilutes the distinctiveness of the mark. . . . Dilution does not rely upon . . . likelihood of confusion. . . . Rather, it applies when the unauthorized use of a famous mark reduces the public's perception that the mark signifies something unique, singular, or particular. (Federal Trademark Dilution Act of 1995, H.R. Rep. No. 104-374 (1995), reprinted in 1995 U.S.C.C.A.N. 1029, at p. 1029)

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2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	R		Lanham Trade-Mark Act, 15 U.S.C.A. §§ 1051 et seq.	statute	US	41 In the United States, the House of Representatives reported in 1995 on a similar remedy (labelled "anti-dilution") added by way of amendment to the U.S. Trademark Act of 1946 (the Lanham Trade-Mark Act, 15 U.S.C.A. §§ 1051 et seq.): The provision is intended to protect famous marks where the subsequent, unauthorized commercial use of such marks by others dilutes the distinctiveness of the mark. . . . Dilution does not rely upon . . . likelihood of confusion. . . . Rather, it applies when the unauthorized use of a famous mark reduces the public's perception that the mark signifies something unique, singular, or particular. (Federal Trademark Dilution Act of 1995, H.R. Rep. No. 104-374 (1995), reprinted in 1995 U.S.C.C.A.N. 1029, at p. 1030) 42 While the text of the U.S. Lanham Trade-Mark Act is different from s. 22, the following comment in the American Restatement also provides sensible guidance: [I]n apparent recognition that broad interpretation of the statutes would undermine the balance between private and public rights reflected in the traditional limits of trademark protection, the courts have continued to confine the cause of action for dilution to cases in which the protectable interest is clear and the threat of interference is substantial.
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	R		First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993	international	EU	44 A similar anti-dilution remedy is also contemplated by arts. 4 and 5 of the First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993. Called an "anti-detriment" remedy in the United Kingdom, it is found in ss. 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994, c. 26. The courts in the United Kingdom have been sparing in their award of this remedy, as is illustrated by Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623 (Ch.) (confirming the dismissal of Mastercard's opposition to the trademark Credit Master for a credit card); Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265 (refusing to grant a preliminary injunction against whisky makers using the trademark "Pebble Beach" when the owners of the famous American golf course claimed these marks were detrimental to their own); DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37 (where the court rejected the claim of Mercedes-Benz against the defendant's MERC trade marks, used in association with a clothing and shoe business), and Baywatch Production Co. v. Home Video Channel, [1997] F.S.R. 22 (Ch.) (where the court found that the broadcasting of "Babewatch", which contained sexually explicit material, was not detrimental to the "Baywatch" trade mark).
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	R		Trade Marks Act 1994 (U.K.), 1994, c. 26, arts. 5, 10.	statute	UK	44 A similar anti-dilution remedy is also contemplated by arts. 4 and 5 of the First Council Directive of the European Communities (89/104/EEC) dated December 21, 1988 and implemented for the European Union through Council Regulation (EC) No. 40/94 dated December 20, 1993. Called an "anti-detriment" remedy in the United Kingdom, it is found in ss. 5 and 10 of the Trade Marks Act 1994 (U.K.), 1994, c. 26. The courts in the United Kingdom have been sparing in their award of this remedy, as is illustrated by Mastercard International Inc. v. Hitachi Credit (UK) Plc, [2004] EWHC 1623 (Ch.) (confirming the dismissal of Mastercard's opposition to the trademark Credit Master for a credit card); Pebble Beach Co. v. Lombard Brands Ltd., [2002] S.L.T. 1312, [2002] ScotCS 265 (refusing to grant a preliminary injunction against whisky makers using the trademark "Pebble Beach" when the owners of the famous American golf course claimed these marks were detrimental to their own); DaimlerChrysler AG v. Alavi, [2001] R.P.C. 42, [2000] EWHC Ch 37 (where the court rejected the claim of Mercedes-Benz against the defendant's MERC trade marks, used in association with a clothing and shoe business), and Baywatch Production Co. v. Home Video Channel, [1997] F.S.R. 22 (Ch.) (where the court found that the broadcasting of "Babewatch", which contained sexually explicit material, was not detrimental to the "Baywatch" trade mark).
2006	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée	6/2/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2295/index.do	Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée, [2006] 1 S.C.R. 824, 2006 SCC 23	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	R		Trademark Dilution Revision Act of 2006, H.R. 683, 109th Cong. (2006).	bill	US	43 In 2003, the U.S. Supreme Court denied the anti-dilution remedy to Victoria's Secret, the women's lingerie chain, which had sued VICTOR'S LITTLE SECRET, an adult novelty store selling "tawdry merchandise": Moseley v. V Secret Catalogue, Inc., 537 U.S. 418 (2003). Under the federal Act, as it then stood, proof of actual harm rather than just likelihood (as under our Act) was required. The court commented however that at least where the marks at issue are not identical, the mere fact that consumers mentally associate the junior user's mark with a famous mark is not sufficient to establish actionable dilution. . . . "Blurring" is not a necessary consequence of mental association. (Nor for that matter, is "tarnishing.") [pp. 433-34] Equally, in my opinion, a mental association of the two marks does not, under s. 22, necessarily give rise to a likelihood of depreciation. (A bill in the U.S. to reduce the threshold to likelihood has been enacted by Congress and awaits the President's signature. See Trademark Dilution Revision Act of 2006, H.R. 683, 109th Cong. (2006).)

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2006	Childs v. Desormeaux	5/5/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3/index.do	Childs v. Desormeaux, [2006] 1 S.C.R. 643, 2006 SCC 18	McLachlin C.J.	unanimous	Ontario	Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	11 In Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), Lord Wilberforce proposed a two-part test for determining whether a duty of care arises. The first stage focuses on the relationship between the plaintiff and the defendant, and asks whether it is close or "proximate" enough to give rise to a duty of care (p. 742). The second stage asks whether there are countervailing policy considerations that negative the duty of care. The two-stage approach of Anns was adopted by this Court in Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2, at pp. 10-11, and recast as follows: (1) is there "a sufficiently close relationship between the parties" or "proximity" to justify imposition of a duty and, if so, (2) are there policy considerations which ought to negative or limit the scope of the duty, the class of persons to whom it is owed or the damages to which breach may give rise? 12 In Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69, the Court affirmed the Anns test and spoke, per Iacobucci J., of three requirements: reasonable foreseeability; sufficient proximity; and the absence of overriding policy considerations which negate a prima facie duty established by foreseeability and proximity: para. 52. Some cases speak of foreseeability being an element of proximity where "proximity" is used in the sense of establishing a relationship sufficient to give rise to a duty of care: see, e.g., Kamloops. Odhavji, by contrast, sees foreseeability and proximity as separate elements at the first stage; "proximity" is here used in the narrower sense of features of the relationship other than foreseeability. There is no suggestion that Odhavji was intended to change the Anns test; rather, it merely clarified that proximity will not always be satisfied by reasonable foreseeability. What is clear is that at stage one, foreseeability and factors going to the relationship between the parties must be considered with a view to determining whether a prima facie duty of care arises. At stage two, the issue is whether this duty is negated by other, broader policy considerations. 14 The courts in this case applied these general principles and concluded, for different reasons, that they did not give rise to a duty of care on social hosts of parties where alcohol is served, to members of the public who may be injured by an intoxicated guest's conduct. The trial judge found that the first stage of the test had been met, but that policy considerations at stage two negated a duty of care. The Court of Appeal, by contrast, found that the first stage of establishing a prima facie duty of care had not been met, making it unnecessary to go on to the second stage of the Anns test. 3.2 Is the Proposed Duty Novel?
2006	Childs v. Desormeaux	5/5/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3/index.do	Childs v. Desormeaux, [2006] 1 S.C.R. 643, 2006 SCC 18	McLachlin C.J.	unanimous	Ontario	Torts	R		N.J. Stat. Ann. §§ 2A:15-5.5 to 2A:15-5.8 (West 2000).	lower-level statute	US	44 Holding a private party at which alcohol is served — the bare facts of this case — is insufficient to implicate the host in the creation of a risk sufficient to give rise to a duty of care to third parties who may be subsequently injured by the conduct of a guest. The host creates a place where people can meet, visit and imbibe alcohol, whether served on the premises or supplied by the guest. All this falls within accepted parameters of non-dangerous conduct. More is required to establish a danger or risk that requires positive action. It might be argued that a host who continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving home has become implicated in the creation or enhancement of a risk sufficient to give rise to a prima facie duty of care to third parties, which would be subject to contrary policy considerations at the second stage of the Anns test. This position has been taken in some states in the U.S.A.: N.J. Stat. Ann. §§ 2A:15-5.5 to 2A:15-5.8 (West 2000). We need not decide that question here. Suffice it to say that hosting a party where alcohol is served, without more, does not suggest the creation or exacerbation of risk of the level required to impose a duty of care on the host to members of the public who may be affected by a guest's conduct.
2006	R. v. Rodgers	4/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6/index.do	R. v. Rodgers, [2006] 1 S.C.R. 554, 2006 SCC 15	Charron J.	majority	Ontario	Constitutional law Criminal law	C	referred to	United States v. Kincade, 379 F.3d 813 (2004)	lower-level court	US	50 The Crown argues that this is a case where Parliament, in requiring prior judicial authorization under s. 487.055, has chosen to exceed minimal constitutional norms. The Crown therefore submits that the ex parte nature of the application cannot be constitutionally infirm because Parliament could have passed constitutionally valid legislation requiring the mandatory taking of bodily samples for DNA data bank purposes from s. 487.055 offenders in the complete absence of any prior judicial authorization. The Crown notes that, significantly, American appellate courts have consistently and uniformly upheld the constitutional validity of a variety of state and federal legislative initiatives requiring the compulsory DNA profiling of certain convicted offenders, without prior judicial authorization and without requiring any degree of individualized suspicion of a crime by the target. The courts have held that such legislation does not offend the Fourth Amendment right against "unreasonable searches and seizures". In its leading decision on this point, the 9th Circuit of the U.S. Court of Appeals in United States v. Kincade, 379 F.3d 813 (2004), concluded as follows, at para. 3: In light of conditional releasees' substantially diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances. Therefore, we today realign ourselves with every other state and federal appellate court to have considered these issues-squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment. [Footnote omitted.] The vast majority of state statutes also have a mandatory retrospective aspect in respect of offenders who were serving sentences for enumerated offences at the time the legislation was proclaimed in force, often as a condition of parole. By way of example, see the following statutes: Cal. Penal Code § 296.1 (West Supp. 2005); Mich. Comp. Laws Serv. §§ 28.171 to 28.176 (LexisNexis 2001 & Supp. 2003); Va. Code Ann. § 19.2-310.2 (Supp. 2005); N.Y. Exec. Law § 995 (Consol. 1995 & Supp. 2004); Fla. Stat. Ann. § 943.325 (West Supp. 2005); N.J. Stat. Ann. §§ 53:1-20.17 to 53:1-20.30 (West 2001 & Supp. 2004); Ohio Rev. Code Ann. § 2901.07 (LexisNexis Supp. 2005); Ga. Code Ann. §§ 24-4-60 to 24-4-65 (Supp. 2005); Mass. Ann. Laws ch. 22E, §§ 1-15 (LexisNexis 2003 & Supp. 2005).
2006	R. v. Rodgers	4/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6/index.do	R. v. Rodgers, [2006] 1 S.C.R. 554, 2006 SCC 15	Charron J.	majority	Ontario	Constitutional law Criminal law	R		Cal. Penal Code § 296.1 (West Supp. 2005).	lower-level statute	US	50 The Crown argues that this is a case where Parliament, in requiring prior judicial authorization under s. 487.055, has chosen to exceed minimal constitutional norms. The Crown therefore submits that the ex parte nature of the application cannot be constitutionally infirm because Parliament could have passed constitutionally valid legislation requiring the mandatory taking of bodily samples for DNA data bank purposes from s. 487.055 offenders in the complete absence of any prior judicial authorization. The Crown notes that, significantly, American appellate courts have consistently and uniformly upheld the constitutional validity of a variety of state and federal legislative initiatives requiring the compulsory DNA profiling of certain convicted offenders, without prior judicial authorization and without requiring any degree of individualized suspicion of a crime by the target. The courts have held that such legislation does not offend the Fourth Amendment right against "unreasonable searches and seizures". In its leading decision on this point, the 9th Circuit of the U.S. Court of Appeals in United States v. Kincade, 379 F.3d 813 (2004), concluded as follows, at para. 3: In light of conditional releasees' substantially diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances. Therefore, we today realign ourselves with every other state and federal appellate court to have considered these issues-squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment. [Footnote omitted.] The vast majority of state statutes also have a mandatory retrospective aspect in respect of offenders who were serving sentences for enumerated offences at the time the legislation was proclaimed in force, often as a condition of parole. By way of example, see the following statutes: Cal. Penal Code § 296.1 (West Supp. 2005); Mich. Comp. Laws Serv. §§ 28.171 to 28.176 (LexisNexis 2001 & Supp. 2003); Va. Code Ann. § 19.2-310.2 (Supp. 2005); N.Y. Exec. Law § 995 (Consol. 1995 & Supp. 2004); Fla. Stat. Ann. § 943.325 (West Supp. 2005); N.J. Stat. Ann. §§ 53:1-20.17 to 53:1-20.30 (West 2001 & Supp. 2004); Ohio Rev. Code Ann. § 2901.07 (LexisNexis Supp. 2005); Ga. Code Ann. §§ 24-4-60 to 24-4-65 (Supp. 2005); Mass. Ann. Laws ch. 22E, §§ 1-15 (LexisNexis 2003 & Supp. 2005).

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2006	R. v. Rodgers	4/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6/index.do	R. v. Rodgers, [2006] 1 S.C.R. 554, 2006 SCC 15	Charron J.	majority	Ontario	Constitutional law Criminal law	R		Fla. Stat. Ann. § 943.325 (West Supp. 2005).	lower-level statute	US	50 The Crown argues that this is a case where Parliament, in requiring prior judicial authorization under s. 487.055, has chosen to exceed minimal constitutional norms. The Crown therefore submits that the ex parte nature of the application cannot be constitutionally infirm because Parliament could have passed constitutionally valid legislation requiring the mandatory taking of bodily samples for DNA data bank purposes from s. 487.055 offenders in the complete absence of any prior judicial authorization. The Crown notes that, significantly, American appellate courts have consistently and uniformly upheld the constitutional validity of a variety of state and federal legislative initiatives requiring the compulsory DNA profiling of certain convicted offenders, without prior judicial authorization and without requiring any degree of individualized suspicion of a crime by the target. The courts have held that such legislation does not offend the Fourth Amendment right against "unreasonable searches and seizures". In its leading decision on this point, the 9th Circuit of the U.S. Court of Appeals in United States v. Kincade, 379 F.3d 813 (2004), concluded as follows, at para. 3: In light of conditional releasees' substantially diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances. Therefore, we today realign ourselves with every other state and federal appellate court to have considered these issues-squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment. [Footnote omitted.] The vast majority of state statutes also have a mandatory retrospective aspect in respect of offenders who were serving sentences for enumerated offences at the time the legislation was proclaimed in force, often as a condition of parole. By way of example, see the following statutes: Cal. Penal Code § 296.1 (West Supp. 2005); Mich. Comp. Laws Serv. §§ 28.171 to 28.176 (LexisNexis 2001 & Supp. 2003); Va. Code Ann. § 19.2-310.2 (Supp. 2005); N.Y. Exec. Law § 995 (Consol. 1995 & Supp. 2004); Fla. Stat. Ann. § 943.325 (West Supp. 2005); N.J. Stat. Ann. §§ 53:1-20.17 to 53:1-20.30 (West 2001 & Supp. 2004); Ohio Rev. Code Ann. § 2901.07 (LexisNexis Supp. 2005); Ga. Code Ann. §§ 24-4-60 to 24-4-65 (Supp. 2005); Mass. Ann. Laws ch. 22E, §§ 1-15 (LexisNexis 2003 & Supp. 2005).
2006	R. v. Rodgers	4/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6/index.do	R. v. Rodgers, [2006] 1 S.C.R. 554, 2006 SCC 15	Charron J.	majority	Ontario	Constitutional law Criminal law	R		Ga. Code Ann. §§ 24-4-60 to 24-4-65 (Supp. 2005).	lower-level statute	US	50 The Crown argues that this is a case where Parliament, in requiring prior judicial authorization under s. 487.055, has chosen to exceed minimal constitutional norms. The Crown therefore submits that the ex parte nature of the application cannot be constitutionally infirm because Parliament could have passed constitutionally valid legislation requiring the mandatory taking of bodily samples for DNA data bank purposes from s. 487.055 offenders in the complete absence of any prior judicial authorization. The Crown notes that, significantly, American appellate courts have consistently and uniformly upheld the constitutional validity of a variety of state and federal legislative initiatives requiring the compulsory DNA profiling of certain convicted offenders, without prior judicial authorization and without requiring any degree of individualized suspicion of a crime by the target. The courts have held that such legislation does not offend the Fourth Amendment right against "unreasonable searches and seizures". In its leading decision on this point, the 9th Circuit of the U.S. Court of Appeals in United States v. Kincade, 379 F.3d 813 (2004), concluded as follows, at para. 3: In light of conditional releasees' substantially diminished expectations of privacy, the minimal intrusion occasioned by blood sampling, and the overwhelming societal interests so clearly furthered by the collection of DNA information from convicted offenders, we must conclude that compulsory DNA profiling of qualified federal offenders is reasonable under the totality of the circumstances. Therefore, we today realign ourselves with every other state and federal appellate court to have considered these issues-squarely holding that the DNA Act satisfies the requirements of the Fourth Amendment. [Footnote omitted.] The vast majority of state statutes also have a mandatory retrospective aspect in respect of offenders who were serving sentences for enumerated offences at the time the legislation was proclaimed in force, often as a condition of parole. By way of example, see the following statutes: Cal. Penal Code § 296.1 (West Supp. 2005); Mich. Comp. Laws Serv. §§ 28.171 to 28.176 (LexisNexis 2001 & Supp. 2003); Va. Code Ann. § 19.2-310.2 (Supp. 2005); N.Y. Exec. Law § 995 (Consol. 1995 & Supp. 2004); Fla. Stat. Ann. § 943.325 (West Supp. 2005); N.J. Stat. Ann. §§ 53:1-20.17 to 53:1-20.30 (West 2001 & Supp. 2004); Ohio Rev. Code Ann. § 2901.07 (LexisNexis Supp. 2005); Ga. Code Ann. §§ 24-4-60 to 24-4-65 (Supp. 2005); Mass. Ann. Laws ch. 22E, §§ 1-15 (LexisNexis 2003 & Supp. 2005).
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2006	H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)	4/21/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8/index.do?q=swedish	H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General), [2006] 1 S.C.R. 441, 2006 SCC 13	Bastarache J.	dissenting	Federal Court of Appeal	Access to information	G		Swedish law in general		Sweden	83 The approach followed by the Commissioners in investigating complaints and making recommendations, where warranted, is understood to be less formal than the judicial process. The Commissioners' purpose is to resolve disputes in an informal manner, and their offices were specifically created to address the limitations of the legal proceedings in this respect: see Lavigne, at para. 38. At para. 39, the Court went on to explain that: An ombudsman is not counsel for the complainant. His or her duty is to examine both sides of the dispute, assess the harm that has been done and recommend ways of remedying it. The ombudsman's preferred methods are discussion and settlement by mutual agreement. As Dickson J. wrote in British Columbia Development Corp. v. Friedmann, [1984] 2 S.C.R. 447, the office of ombudsman and the grievance resolution procedure, which are neither legal nor political in a strict sense, are of Swedish origin, circa 1809. He described their genesis (at pp. 458-59): As originally conceived, the Swedish Ombudsman was to be the Parliament's overseer of the administration, but over time the character of the institution gradually changed. Eventually, the Ombudsman's main function came to be the investigation of complaints of maladministration on behalf of aggrieved citizens and the recommendation of corrective action to the governmental official or department involved.
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re Boston Gas Co., 49 P.U.R. 4th 1 (1982)	administrative decision	US	116 Some U.S. regulators also consider it good regulatory policy to allocate part or all of the profit to offset costs in the rate base. In Re Boston Gas Co., 49 P.U.R. 4th 1 (Mass. D.P.U. 1982), the regulator allocated a gain on the sale of land to ratepayers, stating: The company and its shareholders have received a return on the use of these parcels while they have been included in rate base, and are not entitled to any additional return as a result of their sale. To hold otherwise would be to find that a regulated utility company may speculate in nondepreciable utility property and, despite earning a reasonable rate of return from its customers on that property, may also accumulate a windfall through its sale. We find this to be an uncharacteristic risk/reward situation for a regulated utility to be in with respect to its plant in service. [Emphasis added; p. 26.] 119 The wide variety of regulatory treatment of such gains was noted by Kerans J.A. in TransAlta (1986), at pp. 175-76, including Re Boston Gas Co. mentioned earlier. In TransAlta (1986), the Board characterized TransAlta's gain on the disposal of land and buildings included in its Edmonton "franchise" as "revenue" within the meaning of the Hydro and Electric Energy Act, R.S.A. 1980, c. H-13. (The case therefore did not deal with the power to impose conditions "the Board considers necessary in the public interest".) Kerans J.A. said (at p. 176): I do not agree with the Board's decision for reasons later expressed, but it would be fatuous to deny that its interpretation [of the word "revenue"] is one which the word can reasonably bear. Kerans J.A. went on to find that in that case "[t]he compensation was, for all practical purposes, compensation for loss of franchise" (p. 180) and on that basis the gain in these "unique circumstances" (p. 179) could not, as a matter of law, be characterized as revenue, i.e. applying a correctness standard. The range of regulatory practice on the "gains on sale" issue was similarly noted by Goldie J.A. in Yukon Energy Corp. v. Utilities Board (1996), 74 B.C.A.C. 58 (Y.C.A.), at para. 85. 141 Regulatory practice shows that many (not all) regulators also do not accept the distinction (for this purpose) between depreciable and non-depreciable assets. In Re Boston Gas Co. for example (cited in TransAlta (1986), at p. 176), the regulator held: . . . the company's ratepayers have been paying a return on this land as well as all other costs associated with its use. The fact that land is a nondepreciable asset because its useful value is not ordinarily diminished through use is, we find, irrelevant to the question of who is entitled to the proceeds on the sales of this land. [p. 26] 146 In Re Alberta Government Telephones, Alta. P.U.B., Decision No. E84081, June 29, 1984, the Board reviewed a number of regulatory approaches (including Re Boston Gas Co., previously mentioned) with respect to gains on sale and concluded with respect to its own practice, at p. 12:
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re Arizona Public Service Co., 91 P.U.R. 4th 337 (1988)	administrative decision	US	120 A survey of recent regulatory experience in the United States reveals the wide variety of treatment in that country of gains on the sale of undepreciated land. The range includes proponents of ATCO's preferred allocation as well as proponents of the solution adopted by the Board in this case: Some jurisdictions have concluded that as a matter of equity, shareholders alone should benefit from any gain realized on appreciated real estate, because ratepayers generally pay only for taxes on the land and do not contribute to the cost of acquiring the property and pay no depreciation expenses. Under this analysis, ratepayers assume no risk for losses and acquire no legal or equitable interest in the property, but rather pay only for the use of the land in utility service. Other jurisdictions claim that ratepayers should retain some of the benefits associated with the sale of property dedicated to utility service. Those jurisdictions that have adopted an equitable sharing approach agree that a review of regulatory and judicial decisions on the issue does not reveal any general principle that requires the allocation of benefits solely to shareholders; rather, the cases show only a general prohibition against sharing benefits on the sale property that has never been reflected in utility rates. (P. S. Cross, "Rate Treatment of Gain on Sale of Land: Ratepayer Indifference, A New Standard?" (1990), 126 Pub. Util. Fort. 44, at p. 44) Regulatory opinion in the United States favourable to the solution adopted here by the Board is illustrated by Re Arizona Public Service Co., 91 P.U.R. 4th 337 (Ariz. C.C. 1988), at p. 361: To the extent any general principles can be gleaned from the decisions in other jurisdictions they are: (1) the utility's stockholders are not automatically entitled to the gains from all sales of utility property; and (2) ratepayers are not entitled to all or any part of a gain from the sale of property which has never been reflected in the utility's rates. [Emphasis in original.] 130 ATCO's argument is frequently asserted in the United States under the flag of constitutional protection for "property". Constitutional protection has not however prevented allocation of all or part of such gains to the U.S. ratepayers. One of the leading U.S. authorities is Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir. 1973). In that case, the assets at issue were parcels of real estate which had been employed in mass transit

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2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re Southern California Water Co., 43 C.P.U.C. 2d 596 (1992)	administrative decision	US	121 Assets purchased with capital reflected in the rate base come and go, but the utility itself endures. What was done by the Board in this case is quite consistent with the "enduring enterprise" theory espoused, for example, in Re Southern California Water Co., 43 C.P.U.C. 2d 596 (1992). In that case, Southern California Water had asked for approval to sell an old headquarters building and the issue was how to allocate its profits on the sale. The Commission held: Working from the principle of the "enduring enterprise", the gain-on-sale from this transaction should remain within the utility's operations rather than being distributed in the short run directly to either ratepayers or shareholders. The "enduring enterprise" principle, is neither novel nor radical. It was clearly articulated by the Commission in its seminal 1989 policy decision on the issue of gain-on-sale, D.89-07-016, 32 Cal. P.U.C.2d 233 (Redding). Simply stated, to the extent that a utility realizes a gain-on-sale from the liquidation of an asset and replaces it with another asset or obligation while at the same time its responsibility to serve its customers is neither relieved nor reduced, [p. 604]
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re Southern California Gas Co., 118 P.U.R. 4th 81 (1990)	administrative decision	US	129 In its factum, ATCO says that "[t]he property belonged to the owner of the utility and the Board's proposed distribution cannot be characterized otherwise than as being confiscatory" (respondent's factum, at para. 6). ATCO's argument overlooks the obvious difference between investment in an unregulated business and investment in a regulated utility where the regulator sets the return on investment, not the marketplace. In Re Southern California Gas Co., 118 P.U.R. 4th 81 (C.P.U.C. 1990) ("SoCalGas"), the regulator pointed out: In the non-utility private sector, investors are not guaranteed to earn a fair return on such sunk investment. Although shareholders and bondholders provide the initial capital investment, the ratepayers pay the taxes, maintenance, and other costs of carrying utility property in rate base over the years, and thus insulate utility investors from the risk of having to pay those costs. Ratepayers also pay the utility a fair return on property (including land) while it is in rate base, compensate the utility for the diminishment of the value of its depreciable property over time through depreciation accounting, and bear the risk that they must pay depreciation and a return on prematurely retired rate base property. [p. 103] (It is understood, of course, that the Board does not appropriate the actual proceeds of sale. What happens is that an amount equivalent to two-thirds of the profit is included in the calculation of ATCO's current cost base for rate-making purposes. In that way, there is a notional distribution of the benefit of the gain amongst the competing stakeholders.)
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (1973	lower-level court	US	130 ATCO's argument is frequently asserted in the United States under the flag of constitutional protection for "property". Constitutional protection has not however prevented allocation of all or part of such gains to the U.S. ratepayers. One of the leading U.S. authorities is Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir. 1973). In that case, the assets at issue were parcels of real estate which had been employed in mass transit operations but which were no longer needed when the transit system converted to buses. The regulator awarded the profit on the appreciated land values to the shareholders but the Court of Appeals reversed the decision, using language directly applicable to ATCO's "confiscation" argument: We perceive no impediment, constitutional or otherwise, to recognition of a ratemaking principle enabling ratepayers to benefit from appreciations in value of utility properties accruing while in service. We believe the doctrinal consideration upon which pronouncements to the contrary have primarily rested has lost all present-day vitality. Underlying these pronouncements is a basic legal and economic thesis _ sometimes articulated, sometimes implicit _ that utility assets, though dedicated to the public service, remain exclusively the property of the utility's investors, and that growth in value is an inseparable and inviolate incident of that property interest. The precept of private ownership historically pervading our jurisprudence led naturally to such a thesis, and early decisions in the ratemaking field lent some support to it; if still viable, it strengthens the investor's claim. We think, however, after careful exploration, that the foundations for that approach, and the conclusion it seemed to indicate, have long since eroded away. [p. 800] The court's reference to "pronouncements" which have "lost all present-day vitality" likely includes Board of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23 (1976), a decision relied upon in this case by ATCO. In that case, the Supreme Court of the United States said: Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company. Property paid for out of moneys received for service belongs to the company just as does that purchased out of proceeds of its bonds and stock. [p. 32] In that case, the regulator belatedly concluded that the level of depreciation allowed the New York Telephone Company had been excessive in past years and sought to remedy the situation in the current year by retroactively adjusting the cost base. The court held that the regulator had no power to re-open past rates. The financial fruits of the regulator's errors in past years now belonged to the company. That is not this case. No one contends that the

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2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Board of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23 (1976)	SC	US	130 ATCO's argument is frequently asserted in the United States under the flag of constitutional protection for "property". Constitutional protection has not however prevented allocation of all or part of such gains to the U.S. ratepayers. One of the leading U.S. authorities is Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir. 1973). In that case, the assets at issue were parcels of real estate which had been employed in mass transit operations but which were no longer needed when the transit system converted to buses. The regulator awarded the profit on the appreciated land values to the shareholders but the Court of Appeals reversed the decision, using language directly applicable to ATCO's "confiscation" argument: We perceive no impediment, constitutional or otherwise, to recognition of a ratemaking principle enabling ratepayers to benefit from appreciations in value of utility properties accruing while in service. We believe the doctrinal consideration upon which pronouncements to the contrary have primarily rested has lost all present-day vitality. Underlying these pronouncements is a basic legal and economic thesis _ sometimes articulated, sometimes implicit _ that utility assets, though dedicated to the public service, remain exclusively the property of the utility's investors, and that growth in value is an inseparable and inviolate incident of that property interest. The precept of private ownership historically pervading our jurisprudence led naturally to such a thesis, and early decisions in the ratemaking field lent some support to it; if still viable, it strengthens the investor's claim. We think, however, after careful exploration, that the foundations for that approach, and the conclusion it seemed to indicate, have long since eroded away. [p. 800] The court's reference to "pronouncements" which have "lost all present-day vitality" likely includes Board of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23 (1976), a decision relied upon in this case by ATCO. In that case, the Supreme Court of the United States said: Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company. Property paid for out of moneys received for service belongs to the company just as does that purchased out of proceeds of its bonds and stock. [p. 32] In that case, the regulator belatedly concluded that the level of depreciation allowed the New York Telephone Company had been excessive in past years and sought to remedy the situation in the current year by retroactively adjusting the cost base. The court held that the regulator had no power to re-open past rates. The financial fruits of the regulator's errors in past years now belonged to the company. That is not this case. No one contends that the
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	New York Water Service Corp. v. Public Service Commission, 208 N.Y.S.2d 857 (1960)	lower-level court	US	137 As stated earlier, the Board in this case was addressing a prospective receipt and allocated two thirds of it to a prospective (not retroactive) rate-making exercise. This is consistent with regulatory practice, as is illustrated by New York Water Service Corp. v. Public Service Commission, 208 N.Y.S.2d 857 (1960). In that case, a utility commission ruled that gains on the sale of real estate should be taken into account to reduce rates annually over the following period of 17 years : If land is sold at a profit, it is required that the profit be added to, i.e., "credited to", the depreciation reserve, so that there is a corresponding reduction of the rate base and resulting return. [p. 864] The regulator's order was upheld by the New York State Supreme Court (Appellate Division)
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re Compliance with the Energy Policy Act of 1992, 62 C.P.U.C. 2d 517 (1995)	administrative decision	US	138 More recently, in Re Compliance with the Energy Policy Act of 1992, 62 C.P.U.C. 2d 517 (1995), the regulator commented: . . . we found it appropriate to allocate the principal amount of the gain to offset future costs of headquarters facilities, because ratepayers had borne the burden of risks and expenses while the property was in ratebase. At the same time, we found that it was equitable to allocate a portion of the benefits from the gain-on-sale to shareholders in order to provide a reasonable incentive to the utility to maximize the proceeds from selling such property and compensate shareholders for any risks borne in connection with holding the former property. [p. 529]
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Binnie J.	dissenting	Alberta	Administrative law	C	D	Re California Water Service Co., 66 C.P.U.C. 2d 100 (1996)	administrative decision	US	143 In Re California Water Service Co., 66 C.P.U.C. 2d 100 (1996), the regulator commented that: Our decisions generally find no reason to treat gain on the sale of nondepreciable property, such as bare land, different[ly] than gains on the sale of depreciable rate base assets and land in PHFU [plant held for future use]. [p. 105]

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2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Bastarache J.	majority	Alberta	Administrative law	C	referred to	Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989)	SC	US	69 In this regard, I agree with ATCO when it asserts in its factum, at para. 38: The property in question is as fully the private property of the owner of the utility as any other asset it owns. Deployment of the asset in utility service does not create or transfer any legal or equitable rights in that property for ratepayers. Absent any such interest, any taking such as ordered by the Board is confiscatory . . . . Wittmann J.A., at the Court of Appeal, said it best when he stated: Consumers of utilities pay for a service, but by such payment, do not receive a proprietary right in the assets of the utility company. Where the calculated rates represent the fee for the service provided in the relevant period of time, ratepayers do not gain equitable or legal rights to non-depreciable assets when they have paid only for the use of those assets. [Emphasis added; para. 64.] I fully adopt this conclusion. The Board misdirected itself by confusing the interests of the customers in obtaining safe and efficient utility service with an interest in the underlying assets owned only by the utility. While the utility has been compensated for the services provided, the customers have provided no compensation for receiving the benefits of the subject property. The argument that assets purchased are reflected in the rate base should not cloud the issue of determining who is the appropriate owner and risk bearer. Assets are indeed considered in rate setting, as a factor, and utilities cannot sell an asset used in the service to create a profit and thereby restrict the quality or increase the price of service. Despite the consideration of utility assets in the rate-setting process, shareholders are the ones solely affected when the actual profits or losses of such a sale are realized; the utility absorbs losses and gains, increases and decreases in the value of assets, based on economic conditions and occasional unexpected technical difficulties, but continues to provide certainty in service both with regard to price and quality. There can be a default risk affecting ratepayers, but this does not make ratepayers residual claimants. While I do not wish to unduly rely on American jurisprudence, I would note that the leading U.S. case on this point is Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), which relies on the same principle as was adopted in Market St. Ry. Co. v. Railroad Commission of
2006	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)	2/9/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17/index.do	ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140, 2006 SCC 4	Bastarache J.	majority	Alberta	Administrative law	C	referred to	Market St. Ry. Co. v. Railroad Commission of State of California, 324 U.S. 548 (1945)	SC	US	69 In this regard, I agree with ATCO when it asserts in its factum, at para. 38: The property in question is as fully the private property of the owner of the utility as any other asset it owns. Deployment of the asset in utility service does not create or transfer any legal or equitable rights in that property for ratepayers. Absent any such interest, any taking such as ordered by the Board is confiscatory . . . . Wittmann J.A., at the Court of Appeal, said it best when he stated: Consumers of utilities pay for a service, but by such payment, do not receive a proprietary right in the assets of the utility company. Where the calculated rates represent the fee for the service provided in the relevant period of time, ratepayers do not gain equitable or legal rights to non-depreciable assets when they have paid only for the use of those assets. [Emphasis added; para. 64.] I fully adopt this conclusion. The Board misdirected itself by confusing the interests of the customers in obtaining safe and efficient utility service with an interest in the underlying assets owned only by the utility. While the utility has been compensated for the services provided, the customers have provided no compensation for receiving the benefits of the subject property. The argument that assets purchased are reflected in the rate base should not cloud the issue of determining who is the appropriate owner and risk bearer. Assets are indeed considered in rate setting, as a factor, and utilities cannot sell an asset used in the service to create a profit and thereby restrict the quality or increase the price of service. Despite the consideration of utility assets in the rate-setting process, shareholders are the ones solely affected when the actual profits or losses of such a sale are realized; the utility absorbs losses and gains, increases and decreases in the value of assets, based on economic conditions and occasional unexpected technical difficulties, but continues to provide certainty in service both with regard to price and quality. There can be a default risk affecting ratepayers, but this does not make ratepayers residual claimants. While I do not wish to unduly rely on American jurisprudence, I would note that the leading U.S. case on this point is Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), which relies on the same principle as was adopted in Market St. Ry. Co. v. Railroad Commission of
2006	Young v. Bella	1/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18/index.do	Young v. Bella, [2006] 1 S.C.R. 108, 2006 SCC 3	McLachlin C.J. and Binnie J.	unanimous	Newfoundland and Labrador	Torts	c	referred to	Spring v. Guardian Assurance plc, [1994] 3 All E.R. 129	SC	UK (HL)	56 We cannot accept the respondents' argument. The possibility of suing in defamation does not negate the availability of a cause of action in negligence where the necessary elements are made out. Freedom of expression and the policies underlying qualified privilege can be taken into account in determining the appropriate standard of care in negligence. Counsel for the University referred to a number of cases in support of the assertion that this action lies only in defamation: see, e.g., Fulton v. Globe and Mail (1996), 194 A.R. 254 (Q.B. (Master)), aff'd (1997), 53 Alta. L.R. (3d) 212 (Q.B.), and Elliott v. Canadian Broadcasting Corp. (1993), 16 O.R. (3d) 677 (Gen. Div.), aff'd (1995), 25 O.R. (3d) 302 (C.A.). In fact, these were cases where the defendants' actions alleged to have caused the plaintiffs' loss of reputation fell entirely within the law of defamation and the basic elements of a negligence action, such as a duty of care owed to the plaintiffs, had not been established. There is no reason in principle why negligence actions should not be allowed to proceed where (a) proximity and foreseeability have been established, and (b) the damages cover more than just harm to the plaintiff's reputation (i.e. where there are further damages arising from the defendant's negligence): see Spring v. Guardian Assurance plc, [1994] 3 All E.R. 129 (H.L.). In fact, all of the cases cited by the respondents as standing for the proposition that defamation had "cornered the market" on reputation damages were cases in which (unlike here) there was no pre-existing relationship between the parties that gave rise to a duty of care.
2006	Young v. Bella	1/27/2006	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18/index.do	Young v. Bella, [2006] 1 S.C.R. 108, 2006 SCC 3	McLachlin C.J. and Binnie J.	unanimous	Newfoundland and Labrador	Torts	c	referred to	Nance v. British Columbia Electric Railway Co., [1951] A.C. 601	SC	UK (HL)	64 This is not the test for appellate interference with a jury award. As mentioned earlier, the appellant called expert evidence (which was uncontradicted), laying out a number of scenarios based on different potential findings of fact for the jury's consideration. Damage assessments are questions of fact for the jury. Jury awards of damages may only be set aside for palpable and overriding error. It is a long-held principle that "when on a proper direction the quantum is ascertained by a jury, the disparity between the figure at which they have arrived and any figure at which they could properly have arrived must, to justify correction by a court of appeal, be even wider than when the figure has been assessed by a judge sitting alone": Nance v. British Columbia Electric Railway Co., [1951] A.C. 601 (P.C.), at p. 614. On this test, we cannot conclude that the award for non-pecuniary damages should be set aside. In light of the evidence, the jury's award cannot be said to be wholly disproportionate or shockingly unreasonable.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2005	May v. Ferndale Institution	12/22/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2265/index.do	May v. Ferndale Institution, [2005] 3 S.C.R. 809, 2005 SCC 82	LeBel and Fish JJ.	majority	British Columbia	Administrative law Courts Criminal law Evidence	C	referred to	Jones v. Cunningham, 371 U.S. 236 (1962)	SC	US	21 According to Black J. of the United States Supreme Court, habeas corpus is "not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty": Jones v. Cunningham, 371 U.S. 236 (1962), at p. 243. In his book, Sharpe, at p. 23, describes the traditional form of review available on habeas corpus as follows: The writ is directed to the gaoler or person having custody or control of the applicant. It requires that person to return to the court, on the day specified, the body of the applicant and the cause of his detention. The process focuses upon the cause returned. If the return discloses a lawful cause, the prisoner is remanded; if the cause returned is insufficient or unlawful, the prisoner is released. The matter directly at issue is simply the excuse or reason given by the party who is exercising restraint over the applicant. [Emphasis added.]
2005	R. v. Spence	12/2/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2253/index.do	R. v. Spence, [2005] 3 S.C.R. 458, 2005 SCC 71	Binnie J.	unanimous	Ontario	Criminal law	C	referred to	Clinton v. Jones, 520 U.S. 681 (1997)	SC	US	51 Thayer's approach to judicial notice has its role but I do not think it helps us to solve the issue posed by the African Canadian Legal Clinic. There are at least three difficulties standing in its way. Firstly what "everybody knows" may be wrong. Until Parks, "everybody" knew the solemnity of a criminal trial and careful jury instructions from the judge meant there was little possibility that potential jurors in Toronto would be influenced by racial prejudice (Doherty J.A., at p. 360 of Parks, cites a number of trial decisions where race-based challenges for cause were rejected for that reason). Common law judges in early Tudor England would presumably have taken judicial notice of the "fact" that the sun revolves around the earth. Secondly, there is the problem of trial fairness. Where do these facts come from and how are the parties going to address them? How can parties who are prejudiced by the taking of judicial notice rebut what "everybody" knows unless a plausible source is put to them for their comment and potential disagreement? (See R. v. Parnell (1995), 98 C.C.C. (3d) 83 (Ont. C.A.), at p. 94.) A third problem is that judges occasionally contradict each other about some "fact" that "everybody" knows, even on the same court in the same case. Thus, in Campbell v. Royal Bank of Canada, [1964] S.C.R. 85, Martland and Ritchie JJ., dissenting, pointed out, at p. 91, that the majority and dissenting judges in the court below had taken judicial notice of flatly contradictory facts, namely whether it was usual or unusual to find water in substantial quantities on the floor of a Manitoba bank in wintertime. More dramatically, in Clinton v. Jones, 520 U.S. 681 (1997), where the issue before the Supreme Court of the United States was whether a sitting President is entitled to automatic immunity during his term of office with respect to private conduct prior to his election to the presidency, the court stated with confidence with respect to the Paula Jones affair that "it appears to us highly unlikely to occupy any substantial amount of petitioner's time" (p. 702).
2005	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771	11/24/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70	Binnie J.	majority	Saskatchewan	Labour law	R		Employment Rights Act 1996 (U.K.), 1996, c. 18, s. 43C(1)(a) [am. 1998, c. 23, s. 1].	statute	UK	26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the Employment Rights Act 1996 (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.
2005	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771	11/24/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70	Binnie J.	majority	Saskatchewan	Labour law	R		Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, s. 7.	statute	New Zealand	26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the Employment Rights Act 1996 (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.
2005	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771	11/24/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70	Binnie J.	majority	Saskatchewan	Labour law	R		European Communities. Commission Decision 99/352 of 28 April 1999 establishing the European Anti-fraud Office (OLAF), [1999] O.J. L. 136/20, art. 2.	international	EU	26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the Employment Rights Act 1996 (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.
2005	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771	11/24/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70	Binnie J.	majority	Saskatchewan	Labour law	R		European Communities. Council Decision 99/394 of 25 May 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests, [1999] O.J. L. 149/36.	international	EU	26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the Employment Rights Act 1996 (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.

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2005	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771	11/24/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2252/index.do	Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70	Binnie J.	majority	Saskatchewan	Labour law	R		European Communities. Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1, arts. 22a and 22b [added by Council Regulation 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, [2004] O.J. L. 124/1].	international	EU	26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the Employment Rights Act 1996 (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the Protected Disclosures Act 2000 (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L. 56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001)	SC	US	48 In the United States, Congress recently incorporated the doctrine of functionality into the law of trade-marks. It is now a part of the Lanham Trade-Mark Act: see 15 U.S.C.A. § 1052(e)(5). The Supreme Court of the United States has also held that purely functional features may not become the basis of trade-marks (see, for example, TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001), at p. 34; Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000), at p. 211).
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000)	SC	US	48 In the United States, Congress recently incorporated the doctrine of functionality into the law of trade-marks. It is now a part of the Lanham Trade-Mark Act: see 15 U.S.C.A. § 1052(e)(5). The Supreme Court of the United States has also held that purely functional features may not become the basis of trade-marks (see, for example, TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001), at p. 34; Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000), at p. 211).
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	Koninklijke Philips Electronics NV v. Remington Consumer Products Ltd., C-299/99, [2002] E.C.R. I-5475	international	EU	50 The European Court of Justice reached the same conclusion as had been reached in Canada. On the basis of the EEC directive and of the functionality principle, it found that the triangular shape of the Philips razor could not be registered as a trade-mark. It commented that the directive precluded the registration of shapes whose essential characteristics perform a technical function, with the result that the exclusivity inherent in the trade mark right would limit the possibility of competitors supplying a product incorporating such a function or at least limit their freedom of choice in regard to the technical solution they wish to adopt . . . . (Koninklijke Philips Electronics NV v. Remington Consumer Products Ltd., C-299/99, [2002] E.C.R. I-5475, at para. 79)
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	Paris, October 18, 2000, D. 2001.Jur.850	SC	France	55 The French Cour de Cassation quashed an earlier judgment of lower courts which found for Kirkbi, on the basis of a delict of "concurrence déloyale ou parasitaire" (unfair competition or passing off), although it acknowledged that the LEGO indicia could be registered as a trade-mark. The matter was referred by the Cour de Cassation to the Cour d'appel de Paris, sitting as a "cour de renvoi" in accordance with the French law of civil procedure. It dismissed all the Kirkbi claims holding that Ritvik was entitled to use the processes which had been formerly patented by its competitor: [TRANSLATION] But whereas the simple fact of copying the product of the efforts of another does not as such constitute wrongful competition, the principle being that a product of the efforts of another to which no rights of intellectual property apply or to which such rights have ceased to apply may be freely reproduced; whereas the person who so reuses the product of the efforts of another necessarily makes savings that cannot in themselves be considered wrongful without draining of all substance the principle referred to above (which is itself closely linked to the fundamental principle of freedom of competition) . . . . (Paris, October 18, 2000, D. 2001.Jur.850 (note J. Passa), at p. 851)
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd., [1979] A.C. 731	SC	UK (HL)	65 In recent times, the House of Lords applied two different, but related, classifications in order to determine the conditions of liability under the passing-off doctrine. In Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd., [1979] A.C. 731, at p. 742, Lord Diplock identified five elements which were necessary to create a valid cause of action: (1) a misrepresentation, (2) made by a trader in the course of trade, (3) to his customers or to ultimate consumers of his product (4) which may, in a reasonably foreseeable way, injure the business or goodwill of a competitor and (5) which causes actual damage. A few years later, Lord Oliver reduced the classification to three components: goodwill, deception and damage (Reckitt & Colman Products Ltd. v. Borden Inc., [1990] 1 All E.R. 873, at p. 880; see also Bently and Sherman, at pp. 707-9).
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	C	referred to	Reckitt & Colman Products Ltd. v. Borden Inc., [1990] 1 All E.R. 873	SC	UK (HL)	65 In recent times, the House of Lords applied two different, but related, classifications in order to determine the conditions of liability under the passing-off doctrine. In Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd., [1979] A.C. 731, at p. 742, Lord Diplock identified five elements which were necessary to create a valid cause of action: (1) a misrepresentation, (2) made by a trader in the course of trade, (3) to his customers or to ultimate consumers of his product (4) which may, in a reasonably foreseeable way, injure the business or goodwill of a competitor and (5) which causes actual damage. A few years later, Lord Oliver reduced the classification to three components: goodwill, deception and damage (Reckitt & Colman Products Ltd. v. Borden Inc., [1990] 1 All E.R. 873, at p. 880; see also Bently and Sherman, at pp. 707-9).
2005	Kirkbi AG v. Ritvik Holdings Inc.	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2246/index.do	Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302, 2005 SCC 65	LeBel J.	unanimous	Federal Court of Appeal	Constitutional law Intellectual property Torts	R		Lanham Trade-Mark Act, 15 U.S.C.A. § 1052(e)(5).	statute	US	48 In the United States, Congress recently incorporated the doctrine of functionality into the law of trade-marks. It is now a part of the Lanham Trade-Mark Act: see 15 U.S.C.A. § 1052(e)(5). The Supreme Court of the United States has also held that purely functional features may not become the basis of trade-marks (see, for example, TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001), at p. 34; Wal-Mart Stores, Inc. v. Samara Bros., Inc., 529 U.S. 205 (2000), at p. 211).

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2005	R. v. Pires; R. v. Lising	11/17/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2248/index.do	R. v. Pires; R. v. Lising, [2005] 3 S.C.R. 343, 2005 SCC 66	Charron J.	unanimous	British Columbia	Constitutional law Criminal law	C	referred to	Franks v. Delaware, 438 U.S. 154 (1978)	SC	US	9 It is within this overarching review of the "procedural quagmire" that the cross-examination issue was considered in Garofoli. In Garofoli, as in this case, the defence argued that an accused on a review hearing was entitled, as of right, to cross-examine the affiant who filed in support of a judicial authorization. The Crown, on the other hand, relying on the leading authority of Franks v. Delaware, 438 U.S. 154 (1978), at pp. 155-56, contended that an accused must first make "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit". This Court resolved the issue by adopting a middle ground between the two competing positions advanced by the parties.
2005	Contino v. Leonelli-Contino	11/10/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2244/index.do	Contino v. Leonelli-Contino, [2005] 3 S.C.R. 217, 2005 SCC 63	Bastarache J.	majority	Ontario	Family law	C	referred to	Middleton v. MacPherson (1997), 204 A.R. 37	lower-level court	UK	43 The three main applications of the set-off formula adopted by the courts are: 1. Simple (or straight) set-off: The support payment is calculated by determining the Table amount for each of the parents as though each was seeking child support from the other. The amount payable is the difference between the two amounts (see, e.g., Middleton v. MacPherson (1997), 204 A.R. 37 (Q.B.); Luedke v. Luedke).
2005	E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia	10/28/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2241/index.do	E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia, [2005] 3 S.C.R. 45, 2005 SCC 60	Binnie J.	majority	British Columbia	Torts	C	referred to	Lister v. Hesley Hall Ltd., [2002] 1 A.C. 215, [2001] UKHL 22	SC	UK (HL)	26 Bazley also shows why vicarious liability can be imposed on an employer for an intentional tort carried out by an employee in defiance of an employer's specific prohibition (as in Lockhart itself). Bypassing the debate about "modes", Bazley goes directly to the strength of the connection between the tortfeasor's employment and the tort. Improper or not, the "abuse of his position and the abnegation of his duty does not sever the connection with his employment": Lister v. Hesley Hall Ltd., [2002] 1 A.C. 215, [2001] UKHL 22, at para. 50, per Lord Clyde, after reviewing Bazley and Jacobi. This again, "requires trial judges to investigate the employee's specific duties and determine whether they gave rise to special opportunities for wrongdoing" (Bazley, at para. 46 (emphasis added)). 32 Reference may also usefully be made to the decision of the House of Lords in Lister v. Hesley Hall Ltd., where a residential school in England was held vicariously liable for the sexual predation of the warden it had placed in charge of the boarders. Lord Clyde commented, at para. 50: It appears that the care and safekeeping of the boys had been entrusted to the respondents and they in turn had entrusted their care and safekeeping, so far as the running of the boarding house was concerned, to the warden. That gave him access to the premises, but the opportunity to be at the premises would not in itself constitute a sufficient connection between his wrongful actings and his employment. In addition to the opportunity which access gave him, his position as warden and the close contact with the boys which that work involved created a sufficient connection between the acts of abuse which he committed and the work which he had been employed to do. It appears that the respondents gave the warden a quite general authority in the supervision and running of the house as well as some particular responsibilities. His general duty was to look after and to care for, among others, the appellants. That function was one which the respondents had delegated to him. That he performed that function in a way which was an abuse of his position and an abnegation of his duty does not sever the connection with his employment. [Emphasis added.]
2005	Canada Trustco Mortgage Co. v. Canada	10/19/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2288/index.do	Canada Trustco Mortgage Co. v. Canada, [2005] 2 S.C.R. 601, 2005 SCC 54	McLachlin C.J. and Major J.	unanimous	Federal Court of Appeal	Taxation	C	referred to	Craven v. White, [1989] A.C. 398	SC	UK (HL)	25 The meaning of the expression "series of transactions" under s. 245(2) and (3) is not clear on its face. We agree with the majority of the Federal Court of Appeal in OSFC and endorse the test for a series of transactions as adopted by the House of Lords that a series of transactions involves a number of transactions that are "pre-ordained in order to produce a given result" with "no practical likelihood that the pre-planned events would not take place in the order ordained": Craven v. White, [1989] A.C. 398, at p. 514, per Lord Oliver; see also W. T. Ramsay Ltd. v. Inland Revenue Commissioners, [1981] 1 All E.R. 865.
2005	Canada Trustco Mortgage Co. v. Canada	10/19/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2288/index.do	Canada Trustco Mortgage Co. v. Canada, [2005] 2 S.C.R. 601, 2005 SCC 54	McLachlin C.J. and Major J.	unanimous	Federal Court of Appeal	Taxation	C	referred to	W. T. Ramsay Ltd. v. Inland Revenue Commissioners, [1981] 1 All E.R. 865	SC	UK (HL)	25 The meaning of the expression "series of transactions" under s. 245(2) and (3) is not clear on its face. We agree with the majority of the Federal Court of Appeal in OSFC and endorse the test for a series of transactions as adopted by the House of Lords that a series of transactions involves a number of transactions that are "pre-ordained in order to produce a given result" with "no practical likelihood that the pre-planned events would not take place in the order ordained": Craven v. White, [1989] A.C. 398, at p. 514, per Lord Oliver; see also W. T. Ramsay Ltd. v. Inland Revenue Commissioners, [1981] 1 All E.R. 865.
2005	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)	10/6/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2286/index.do	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General), [2005] 2 S.C.R. 564, 2005 SCC 52	Deschamps J.	unanonimous	Quebec	Bankruptcy and insolvency Constitutional law	C	referred to	Civ., March 2, 1829, D.1829.I.163 (Assurances v. Lanquetin)	SC	France	23 The wording of para. (3) of art. 1656 C.C.Q. is derived from art. 1156 of the Civil Code of Lower Canada, which was itself based on art. 1251 of the Code Napoléon. The Code Napoléon restated a principle of old French law to the effect that marine underwriters were subrogated to the rights of the insured: J. Mestre, La subrogation personnelle (1979), at p. 277, No. 240. It was only after a century of equivocation that French courts finally conceded that subrogation could operate in cases in which the person making the payment was bound to make payment owing to a distinct source of obligation. It was in the context of the law of damage insurance that the French case law evolved. At first, in an 1829 decision, the Cour de cassation refused to recognize an insurer's right to legal subrogation: Civ., March 2, 1829, D.1829.I.163 (Assurances v. Lanquetin).
2005	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)	10/6/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2286/index.do	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General), [2005] 2 S.C.R. 564, 2005 SCC 52	Deschamps J.	unanonimous	Quebec	Bankruptcy and insolvency Constitutional law	C	referred to	Civ., January 10, 1923, S.1924.I.257 (Chem. de fer du Midi v. Comp. d'assur. marit. l'Alborada)	SC	France	24 Despite ruling out legal subrogation, the French courts did, however, allow insurers of damage to sue persons who caused damage, on the basis that they had committed a delictual fault causing damage to the insurer. The Cour de cassation came full circle nearly a hundred years later, noting that subrogation in favour of insurers was accepted in maritime law: Civ., January 10, 1923, S.1924.I.257 (Chem. de fer du Midi v. Comp. d'assur. marit. l'Alborada). This evolution caused one French commentator to remark that the French courts had in so doing [TRANSLATION] "embarked on a creative tack, not hesitating to gradually break away from an overly ossified analysis of the Civil Code": Mestre, at p. 280, No. 245.
2005	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)	10/6/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2286/index.do	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General), [2005] 2 S.C.R. 564, 2005 SCC 52	Deschamps J.	unanonimous	Quebec	Bankruptcy and insolvency Constitutional law	C	referred to	Trib. corr. Auxerre, February 24, 1953, Rev. gén. ass. terr. 1953.190 (Mayet et Destoumieux v. Faillot)	SC	France	62 Section 316 AIAOD is consistent with the conditions placed on the application of compensation in Husky Oil. Only an employer who has paid may exercise the right to retain. This is not a case like Husky Oil involving a deemed payment or an employer acting as a mere agent. Nor does this case involve, as the trustee argues, a right to retain under a suspensive condition. The right resulting from the subrogatory payment comes into existence only when the payment is made. Mestre says that this rule is [TRANSLATION] "obvious, and results from the very spirit of the institution, created for the benefit of those who pay the debts of others" (p. 374, No. 321). Subject to the right under the BIA to make a contingent claim (s. 135 BIA), a warrantor cannot file a proof of claim before payment: Trib. corr. Auxerre, February 24, 1953, Rev. gén. ass. terr. 1953.190 (Mayet et Destoumieux v. Faillot). The employer/warrantor may not exercise any right against the contractor/debtor before he or she has paid the CSST, the original creditor. In civil law terms, subrogatory rights cannot be conferred under a suspensive condition: Mestre, at p. 375, No. 322. The claim accrues to the employer at the time of payment, and not by reason of the fact that the employer might be liable to pay should the contractor fail to do so. Moreover, no right is granted to the CSST, as a third party, to the detriment of the body of creditors. The CSST is not affected by the employer's right to collect. From the perspective of Husky Oil, the mechanism of s. 316 AIAOD is compatible with the BIA
2005	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General)	10/6/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2286/index.do	D.I.M.S. Construction inc. (Trustee of) v. Quebec (Attorney General), [2005] 2 S.C.R. 564, 2005 SCC 52	Deschamps J.	unanonimous	Quebec	Bankruptcy and insolvency Constitutional law	R		Code Napoléon, art. 1251.	statute	France	23 The wording of para. (3) of art. 1656 C.C.Q. is derived from art. 1156 of the Civil Code of Lower Canada, which was itself based on art. 1251 of the Code Napoléon. The Code Napoléon restated a principle of old French law to the effect that marine underwriters were subrogated to the rights of the insured: J. Mestre, La subrogation personnelle (1979), at p. 277, No. 240. It was only after a century of equivocation that French courts finally conceded that subrogation could operate in cases in which the person making the payment was bound to make payment owing to a distinct source of obligation. It was in the context of the law of damage insurance that the French case law evolved. At first, in an 1829 decision, the Cour de cassation refused to recognize an insurer's right to legal subrogation: Civ., March 2, 1829, D.1829.I.163 (Assurances v. Lanquetin).
2005	British Columbia v. Imperial Tobacco Canada Ltd.	9/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2282/index.do	British Columbia v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473, 2005 SCC 49	Major J.	unanimous	British Columbia	Constitutional law	C	referred to	Landgraf v. USI Film Products, 511 U.S. 244 (1994)	SC	US	71 The absence of a general requirement of legislative prospectivity exists despite the fact that retrospective and retroactive legislation can overturn settled expectations and is sometimes perceived as unjust: see E. Edinger, "Retrospectivity in Law" (1995), 29 U.B.C. L. Rev. 5, at p. 13. Those who perceive it as such can perhaps take comfort in the rules of statutory interpretation that require the legislature to indicate clearly any desired retroactive or retrospective effects. Such rules ensure that the legislature has turned its mind to such effects and "determined that the benefits of retroactivity [or retrospectivity] outweigh the potential for disruption or unfairness": Landgraf v. USI Film Products, 511 U.S. 244 (1994), at p. 268.

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2005	British Columbia v. Imperial Tobacco Canada Ltd.	9/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2282/index.do	British Columbia v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473, 2005 SCC 49	Major J.	unanimous	British Columbia	Constitutional law	C	referred to	In re Spectrum Plus Ltd., [2005] 3 W.L.R. 58, [2005] UKHL 41	SC	UK (HL)	72 It might also be observed that developments in the common law have always had retroactive and retrospective effect. Lord Nicholls recently explained this point in In re Spectrum Plus Ltd., [2005] 3 W.L.R. 58, [2005] UKHL 41, at para. 7: A court ruling which changes the law from what it was previously thought to be operates retrospectively as well as prospectively. The ruling will have a retrospective effect so far as the parties to the particular dispute are concerned, as occurred with the manufacturer of the ginger beer in Donoghue v Stevenson [1932] AC 562. When Mr Stevenson manufactured and bottled and sold his ginger beer the law on manufacturers' liability as generally understood may have been as stated by the majority of the Second Division of the Court of Session and the minority of their Lordships in that case. But in the claim Mrs Donoghue brought against Mr Stevenson his legal obligations fell to be decided in accordance with Lord Atkin's famous statements. Further, because of the doctrine of precedent the same would be true of everyone else whose case thereafter came before a court. Their rights and obligations would be decided according to the law as enunciated by the majority of the House of Lords in that case even though the relevant events occurred before that decision was given. This observation adds further weight, if needed, to the view that retrospectivity and retroactivity do not generally engage constitutional concerns.
2005	R. v. G.R.	7/22/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2278/index.do	R v. G.R., [2005] 2 S.C.R. 371, 2005 SCC 45	Binnie J.	majority	Quebec	Criminal law	C	referred to	R. v. Woods, [1969] 1 Q.B. 447	lower-level court	UK	35 In my view, it cannot be said that the respondent in this case was fairly notified that in meeting the charge of incest he was also required to defend against sexual assault or sexual interference as "included" offences. I would apply to this case what was said by Phillimore L.J. in R. v. Woods, [1969] 1 Q.B. 447 (C.A.), at p. 451: It is of the first importance that a man charged with an offence should know with certainty what it is he may be convicted of. No court should be encouraged to cast around to see whether somehow or other the words of the indictment can be found to contain by some arguable implication the seeds of some other offence
2005	R. v. Marshall; R. v. Bernard	7/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do	R. v. Marshall; R. v. Bernard, [2005] 2 S.C.R. 220, 2005 SCC 43	McLachlin C.J.	majority	Nova Scotia	Aboriginal law	C	referred to	Powell v. McFarlane (1977), 38 P. & C.R. 452	lower-level court	UK	54 One of these rights is aboriginal title to land. It is established by aboriginal practices that indicate possession similar to that associated with title at common law. In matching common law property rules to aboriginal practice we must be sensitive to the context-specific nature of common law title, as well as the aboriginal perspective. The common law recognizes that possession sufficient to ground title is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which the land is commonly enjoyed: Powell v. McFarlane (1977), 38 P. & C.R. 452 (Ch. D.), at p. 471. For example, where marshy land is virtually useless except for shooting, shooting over it may amount to adverse possession: Red House Farms (Thorndon) Ltd. v. Catchpole, [1977] E.G.D. 798 (Eng. C.A.). The common law also recognizes that a person with adequate possession for title may choose to use it intermittently or sporadically: Keefer v. Arillotta (1976), 13 O.R. (2d) 680 (C.A.), per Wilson J.A. Finally, the common law recognizes that exclusivity does not preclude consensual arrangements that recognize shared title to the same parcel of land: Delgamuukw, at para. 158.
2005	R. v. Marshall; R. v. Bernard	7/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do	R. v. Marshall; R. v. Bernard, [2005] 2 S.C.R. 220, 2005 SCC 43	McLachlin C.J.	majority	Nova Scotia	Aboriginal law	C	referred to	Red House Farms (Thorndon) Ltd. v. Catchpole, [1977] E.G.D. 798	lower-level court	UK	54 One of these rights is aboriginal title to land. It is established by aboriginal practices that indicate possession similar to that associated with title at common law. In matching common law property rules to aboriginal practice we must be sensitive to the context-specific nature of common law title, as well as the aboriginal perspective. The common law recognizes that possession sufficient to ground title is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which the land is commonly enjoyed: Powell v. McFarlane (1977), 38 P. & C.R. 452 (Ch. D.), at p. 471. For example, where marshy land is virtually useless except for shooting, shooting over it may amount to adverse possession: Red House Farms (Thorndon) Ltd. v. Catchpole, [1977] E.G.D. 798 (Eng. C.A.). The common law also recognizes that a person with adequate possession for title may choose to use it intermittently or sporadically: Keefer v. Arillotta (1976), 13 O.R. (2d) 680 (C.A.), per Wilson J.A. Finally, the common law recognizes that exclusivity does not preclude consensual arrangements that recognize shared title to the same parcel of land: Delgamuukw, at para. 158.
2005	R. v. Marshall; R. v. Bernard	7/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do	R. v. Marshall; R. v. Bernard, [2005] 2 S.C.R. 220, 2005 SCC 43	McLachlin C.J.	majority	Nova Scotia	Aboriginal law	C	referred to	R. v. Secretary of State for Foreign and Commonwealth Affairs, [1982] 1 Q.B. 892	lower-level court	UK	86 The Royal Proclamation must be interpreted liberally, and any matters of doubt resolved in favour of aboriginal peoples: Nowegijick v. The Queen, [1983] 1 S.C.R. 29, at p. 36. Further, the Royal Proclamation must be interpreted in light of its status as the "Magna Carta" of Indian rights in North America and Indian "Bill of Rights": R. v. Secretary of State for Foreign and Commonwealth Affairs, [1982] 1 Q.B. 892 (C.A.), at p. 912. I approach the question on this basis.
2005	R. v. Orbanski; R. v. Elias	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2269/index.do	R. v. Orbanski; R. v. Elias, [2005] 2 S.C.R. 3, 2005 SCC 37	LeBel J.	dissenting	Manitoba	Constitutional law Professional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	81 The adoption of a rule limiting Charter rights on the basis of what amounts to a utilitarian argument in favour of meeting the needs of police investigations through the development of common law police powers would tend to give a potentially uncontrollable scope to the doctrine developed in the Waterfield-Dedman line of cases, which — and we sometimes forget such details — the court that created it took care not to apply on the facts before it (R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.)). The doctrine would now be encapsulated in the principle that what the police need, the police get, by judicial fiat if all else fails or if the legislature finds the adoption of legislation to be unnecessary or unwarranted. The courts would limit Charter rights to the full extent necessary to achieve the purpose of meeting the needs of the police. The creation of and justification for the limit would arise out of an initiative of the courts. In the context of cases such as those we are considering here, this kind of judicial intervention would pre-empt any serious Charter review of the limits, as the limits would arise out of initiatives of the courts themselves.
2005	Ryan v. Moore	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2270/index.do	Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38	Bastarache J.	unanimous	Newfoundland and Labrador SubjectsAction	Action Evidence	C	referred to	Good v. Parry, [1963] 2 All E.R. 59	lower-level court	UK	44 The term "acknowledges" as used in s. 16(1)(a) of the Limitations Act has been described by Lord Denning in Good v. Parry, [1963] 2 All E.R. 59 (C.A.), at p. 61, as requiring an "admission". While care must be shown when applying English case law, as the English Limitation Act, 1939, 2 & 3 Geo. 6, c. 21, does not provide for the acknowledgment of the "cause of action" but the acknowledgment of the "claim", it is still persuasive authority for the present interpretation.
2005	Ryan v. Moore	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2270/index.do	Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38	Bastarache J.	unanimous	Newfoundland and Labrador SubjectsAction	Action Evidence	C	referred to	Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce Intenational Bank Ltd., [1982] 1 Q.B. 84	lower-level court	UK	51 The state of the law of estoppel was articulated by Lord Denning in Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd., [1982] 1 Q.B. 84 (C.A.), at p. 122, as follows: The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.
2005	Ryan v. Moore	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2270/index.do	Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38	Bastarache J.	unanimous	Newfoundland and Labrador SubjectsAction	Action Evidence	C	referred to	National Westminster Finance NZ Ltd. v. National Bank of NZ Ltd., [1996] 1 N.Z.L.R. 548	lower-level court	New Zealand	57 The appellants submit that there are six requirements for the estoppel by convention. They cite as support the New Zealand Court of Appeal decision in National Westminster Finance NZ Ltd. v. National Bank of NZ Ltd., [1996] 1 N.Z.L.R. 548, at p. 550. In fact, they simply advocate a more detailed description of the requirements also found in other foreign cases.

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2005	Ryan v. Moore	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2270/index.do	Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38	Bastarache J.	unanimous	Newfoundland and Labrador SubjectsAction	Action Evidence	C	referred to	The "Indian Grace", [1998] 1 Lloyd's L.R. 1	lower-level court	UK	58 The jurisprudence in the United Kingdom is indeed abundant in contrast to that in Canada (see, e.g., The "Indian Grace", [1998] 1 Lloyd's L.R. 1 (H.L.), at p. 10; The "August Leonhardt", [1985] 2 Lloyd's L.R. 28 (C.A.), at pp. 34-35; The "Vistafjord", [1988] 2 Lloyd's L.R. 343 (C.A.), at pp. 349-53). 62 While it may not be necessary that the assumption by the party raising estoppel be created or encouraged by the estopped party, it must be shared in the sense that each is aware of the assumption of the other (John v. George, [1995] E.W.J. No. 4375 (QL) (C.A.), at para. 37). Mutual assent is what distinguishes the estoppel by convention from other types of estoppel (Bower, at p. 184). The courts have described communications complying with this requirement as "crossing the line". In The "August Leonhardt", at pp. 34-35, Kerr L.J. held that [a]ll estoppels must involve some statement or conduct by the party alleged to be estopped on which the alleged representee was entitled to rely and did rely. In this sense all estoppels may be regarded as requiring some manifest representation which crosses the line between representor and representee, either by statement or conduct. It may be an express statement or it may be implied from conduct, e.g. a failure by the alleged representor to react to something said or done by the alleged representee so as to imply a manifestation of assent which leads to an estoppel by silence or acquiescence. Similarly, in cases of so-called estoppels by convention, there must be some mutually manifest conduct by the parties which is based on a common but mistaken assumption. . . . There cannot be any estoppel unless the alleged representor has said or done something, or failed to do something, with the result that — across the line between the parties — his action or inaction has produced some belief or expectation in the mind of the alleged representee, so that, depending on the circumstances, it would thereafter no longer be right to allow the alleged representor to resile by challenging the belief or expectation which he has engendered. To that extent at least, therefore, the alleged representor must be open to criticism. [Emphasis added.] See also The "Vistafjord", at p. 350. Thus, it is not enough that each of the two parties acts on an assumption not communicated to the other (The "Indian Grace", at p. 10). Further, the estopped party must have, at the very least, communicated to the other that he or she is indeed sharing the other party's (ex hypothesi) mistaken assumption (John, at para. 81; Bower, at p. 184). 74 This final requirement of estoppel has been described as proving that it would be "unjust", "unconscionable" or "unfair" to permit a party to resile from the mutual assumption (see, e.g., Bower, at p. 181; John; The "Indian Grace"; The "Vistafjord"). However, it may be preferable to refrain from using "unconscionable", in order to avoid confusion with this last concept which has developed a special meaning in relation to inequality of bargaining power in the law of contracts (where we speak of
2005	Ryan v. Moore	6/16/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2270/index.do	Ryan v. Moore, [2005] 2 S.C.R. 53, 2005 SCC 38	Bastarache J.	unanimous	Newfoundland and Labrador SubjectsAction	Action Evidence	C	referred to	The "August Leonhardt", [1985] 2 Lloyd's L.R. 28	lower-level court	UK	58 The jurisprudence in the United Kingdom is indeed abundant in contrast to that in Canada (see, e.g., The "Indian Grace", [1998] 1 Lloyd's L.R. 1 (H.L.), at p. 10; The "August Leonhardt", [1985] 2 Lloyd's L.R. 28 (C.A.), at pp. 34-35; The "Vistafjord", [1988] 2 Lloyd's L.R. 343 (C.A.), at pp. 349-53). 62 While it may not be necessary that the assumption by the party raising estoppel be created or encouraged by the estopped party, it must be shared in the sense that each is aware of the assumption of the other (John v. George, [1995] E.W.J. No. 4375 (QL) (C.A.), at para. 37). Mutual assent is what distinguishes the estoppel by convention from other types of estoppel (Bower, at p. 184). The courts have described communications complying with this requirement as "crossing the line". In The "August Leonhardt", at pp. 34-35, Kerr L.J. held that [a]ll estoppels must involve some statement or conduct by the party alleged to be estopped on which the alleged representee was entitled to rely and did rely. In this sense all estoppels may be regarded as requiring some manifest representation which crosses the line between representor and representee, either by statement or conduct. It may be an express statement or it may be implied from conduct, e.g. a failure by the alleged representor to react to something said or done by the alleged representee so as to imply a manifestation of assent which leads to an estoppel by silence or acquiescence. Similarly, in cases of so-called estoppels by convention, there must be some mutually manifest conduct by the parties which is based on a common but mistaken assumption. . . . There cannot be any estoppel unless the alleged representor has said or done something, or failed to do something, with the result that — across the line between the parties — his action or inaction has produced some belief or expectation in the mind of the alleged representee, so that, depending on the circumstances, it would thereafter no longer be right to allow the alleged representor to resile by challenging the belief or expectation which he has engendered. To that extent at least, therefore, the alleged representor must be open to criticism. [Emphasis added.] See also The "Vistafjord", at p. 350. Thus, it is not enough that each of the two parties acts on an assumption not communicated to the other (The "Indian Grace", at p. 10). Further, the estopped party must have, at the very least, communicated to the other that he or she is indeed sharing the other party's (ex hypothesi) mistaken assumption (John, at para. 81; Bower, at p. 184). 68 The jurisprudence and academic comments support the requirement of detrimental reliance as lying at the heart of true estoppel (see Bower, at pp. 6 and 184; John, at para. 86; Hillingdon London Borough; The "August Leonhardt", at p. 35; Litwin Construction (1973) Ltd. v. Pan (1988), 52 D.L.R. (4th) 459 (B.C.C.A.), at pp. 469-70; Canacemal, at paras. 33-35; Vancouver City Savings Credit Union v. Norenger Development (Canada) Inc., [2002] B.C.J. No. 1417 (QL), 2002 BCSC 934, at para. 74; 32262 B.C. Ltd. v.

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2005	Chaoulli v. Quebec (Attorney General)	6/9/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2237/index.do	Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791, 2005 SCC 35	Deschamps J.	majority	Quebec	Constitutional law	R		Swedish law in general		Sweden	81 Sweden does not prohibit private insurance, and the state does not refund the cost of health care paid for in the private sector. Private insurance accounts for only two percent of total health care expenditures and there are only nine private hospitals (The Health of Canadians — The Federal Role, at pp. 31-33).
2005	Chaoulli v. Quebec (Attorney General)	6/9/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2237/index.do	Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791, 2005 SCC 35	Deschamps J.	majority	Quebec	Constitutional law	R		German law in general		Germany	78 In a number of European countries, there is no insurance paid for directly out of public funds. In Austria, services are funded through decentralized agencies that collect the necessary funds from salaries. People who want to obtain health care in the private sector in addition to the services covered by the mandatory social insurance are free to do so, but private insurance may cover no more than 80 percent of the cost billed by professionals practising in the public sector. The same type of plan exists in Germany and the Netherlands, but people who opt for private insurance are not required to pay for the public plan. Only nine percent of Germans opt for private insurance.
2005	Chaoulli v. Quebec (Attorney General)	6/9/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2237/index.do	Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791, 2005 SCC 35	Deschamps J.	majority	Quebec	Constitutional law	R		Austrian law in general		Austria	78 In a number of European countries, there is no insurance paid for directly out of public funds. In Austria, services are funded through decentralized agencies that collect the necessary funds from salaries. People who want to obtain health care in the private sector in addition to the services covered by the mandatory social insurance are free to do so, but private insurance may cover no more than 80 percent of the cost billed by professionals practising in the public sector. The same type of plan exists in Germany and the Netherlands, but people who opt for private insurance are not required to pay for the public plan. Only nine percent of Germans opt for private insurance.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	R. v. Richards; Ex parte Fitzpatrick and Browne (1955), 92 C.L.R. 157	SC	Australia	9. Proof of necessity is required only to establish the existence and scope of a category of privilege. Once the category (or sphere of activity) is established, it is for Parliament, not the courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the courts: "Each specific instance of the exercise of a privilege need not be shown to be necessary" (New Brunswick Broadcasting, at p. 343 (emphasis added)). See also Ontario (Speaker of the Legislative Assembly) v. Ontario (Human Rights Commission) (2001), 54 O.R. (3d) 595 (C.A.); Samson Indian Nation and Band, at para. 13; Martin v. Ontario, [2004] O.J. No. 2247 (QL) (S.C.J.), at para. 13; R. v. Richards; Ex parte Fitzpatrick and Browne (1955), 92 C.L.R. 157 (Austl. H.C.), at p. 162; Egan v. Willis (1998), 158 A.L.R. 527 (H.C.); and Huata v. Prebble, [2004] 3 NZLR 359, [2004] NZCA 147.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Egan v. Willis (1998), 158 A.L.R. 527	SC	Australia	9. Proof of necessity is required only to establish the existence and scope of a category of privilege. Once the category (or sphere of activity) is established, it is for Parliament, not the courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the courts: "Each specific instance of the exercise of a privilege need not be shown to be necessary" (New Brunswick Broadcasting, at p. 343 (emphasis added)). See also Ontario (Speaker of the Legislative Assembly) v. Ontario (Human Rights Commission) (2001), 54 O.R. (3d) 595 (C.A.); Samson Indian Nation and Band, at para. 13; Martin v. Ontario, [2004] O.J. No. 2247 (QL) (S.C.J.), at para. 13; R. v. Richards; Ex parte Fitzpatrick and Browne (1955), 92 C.L.R. 157 (Austl. H.C.), at p. 162; Egan v. Willis (1998), 158 A.L.R. 527 (H.C.); and Huata v. Prebble, [2004] 3 NZLR 359, [2004] NZCA 147.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Huata v. Prebble, [2004] 3 NZLR 359, [2004] NZCA 147	lower-level court	New Zealand	9. Proof of necessity is required only to establish the existence and scope of a category of privilege. Once the category (or sphere of activity) is established, it is for Parliament, not the courts, to determine whether in a particular case the exercise of the privilege is necessary or appropriate. In other words, within categories of privilege, Parliament is the judge of the occasion and manner of its exercise and such exercise is not reviewable by the courts: "Each specific instance of the exercise of a privilege need not be shown to be necessary" (New Brunswick Broadcasting, at p. 343 (emphasis added)). See also Ontario (Speaker of the Legislative Assembly) v. Ontario (Human Rights Commission) (2001), 54 O.R. (3d) 595 (C.A.); Samson Indian Nation and Band, at para. 13; Martin v. Ontario, [2004] O.J. No. 2247 (QL) (S.C.J.), at para. 13; R. v. Richards; Ex parte Fitzpatrick and Browne (1955), 92 C.L.R. 157 (Austl. H.C.), at p. 162; Egan v. Willis (1998), 158 A.L.R. 527 (H.C.); and Huata v. Prebble, [2004] 3 NZLR 359, [2004] NZCA 147.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Prebble v. Television New Zealand Ltd., [1995] 1 A.C. 321	SC	UK (PC)	10. "Categories" include freedom of speech (Stopforth v. Goyer (1979), 23 O.R. (2d) 696 (C.A.), at p. 700; Re Clark and Attorney-General of Canada (1977), 17 O.R. (2d) 593 (H.C.); U.K. Bill of Rights of 1689, art. 9; Prebble v. Television New Zealand Ltd., [1995] 1 A.C. 321 (P.C.); Hamilton v. Al Fayed, [2000] 2 All E.R. 224 (H.L.)); control by the Houses of Parliament over "debates or proceedings in Parliament" (as guaranteed by the Bill of Rights of 1689) including day-to-day procedure in the House, for example the practice of the Ontario legislature to start the day's sitting with the Lord's Prayer (Ontario (Speaker of the Legislative Assembly), at para. 23); the power to exclude strangers from proceedings (New Brunswick Broadcasting; Zündel v. Boudria (1999), 46 O.R. (3d) 410 (C.A.), at para. 16; R. v. Behrens, [2004] O.J. No. 5135 (QL), 2004 ONCJ 327); disciplinary authority over members (Harvey; see also Tafler v. British Columbia (Commissioner of Conflict of Interest) (1998), 161 D.L.R. (4th) 511 (B.C.C.A.), at paras. 15-18; Morin v. Crawford (1999), 29 C.P.C. (4th) 362 (N.W.T.S.C.)); and non-members who interfere with the discharge of parliamentary duties (Payson v. Hubert (1904), 34 S.C.R. 400, at p. 413; Behrens), including immunity of members from subpoenas during a parliamentary session (Telezone; Ainsworth Lumber Co. v. Canada (Attorney General) (2003), 226 D.L.R. (4th) 93, 2003 BCCA 239; Samson Indian Nation and Band). Such general categories have historically been considered to be justified by the exigencies of parliamentary work.

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2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Hamilton v. Al Fayed, [2000] 2 All E.R. 224	SC	UK (HL)	10. "Categories" include freedom of speech (Stopforth v. Goyer (1979), 23 O.R. (2d) 696 (C.A.), at p. 700; Re Clark and Attorney-General of Canada (1977), 17 O.R. (2d) 593 (H.C.); U.K. Bill of Rights of 1689, art. 9; Prebble v. Television New Zealand Ltd., [1995] 1 A.C. 321 (P.C.); Hamilton v. Al Fayed, [2000] 2 All E.R. 224 (H.L.)); control by the Houses of Parliament over "debates or proceedings in Parliament" (as guaranteed by the Bill of Rights of 1689) including day-to-day procedure in the House, for example the practice of the Ontario legislature to start the day's sitting with the Lord's Prayer (Ontario (Speaker of the Legislative Assembly), at para. 23); the power to exclude strangers from proceedings (New Brunswick Broadcasting; Zündel v. Boudria (1999), 46 O.R. (3d) 410 (C.A.), at para. 16; R. v. Behrens, [2004] O.J. No. 5135 (QL), 2004 ONCJ 327); disciplinary authority over members (Harvey; see also Tafler v. British Columbia (Commissioner of Conflict of Interest) (1998), 161 D.L.R. (4th) 511 (B.C.C.A.), at paras. 15-18; Morin v. Crawford (1999), 29 C.P.C. (4th) 362 (N.W.T.S.C.)); and non-members who interfere with the discharge of parliamentary duties (Payson v. Hubert (1904), 34 S.C.R. 400, at p. 413; Behrens), including immunity of members from subpoenas during a parliamentary session (Telezone; Ainsworth Lumber Co. v. Canada (Attorney General) (2003), 226 D.L.R. (4th) 93, 2003 BCCA 239; Samson Indian Nation and Band). Such general categories have historically been considered to be justified by the exigencies of parliamentary work.
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2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Pickin v. British Railways Board, [1974] A.C. 765	SC	UK (HL)	45 Parliament's sovereignty when engaged in the performance of its legislative duties is undoubted (Penikett v. Canada (1987), 45 D.L.R. (4th) 108 (Y.T.C.A.); Sibbeston v. Northwest Territories (Attorney General), [1988] 2 W.W.R. 501 (N.W.T.C.A.); Pickin v. British Railways Board, [1974] A.C. 765 (H.L.), at pp. 788-90). While the British Joint Committee Report may not yet have been formally adopted by the U.K. Parliament, its reasoning in these passages reflects a considered parliamentary view of the appropriate limits to claims of privilege, which seems to me also to reflect the underlying principles of the common law.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Walker v. Jones, 733 F.2d 923 (1984)	lower-level court	US	74 Nor is it the view in the United States, whose Constitution guards the separation of powers at least as strictly as does our own. In Walker v. Jones, 733 F.2d 923 (1984), the U.S. Court of Appeals for the District of Columbia Circuit considered the application of the Speech or Debate Clause of the United States Constitution in the context of an employment-related discrimination complaint. Ms. Walker managed the House of Representatives' restaurants and claimed that she was terminated on the basis of sex discrimination. Ginsburg J., now of the U.S. Supreme Court, writing for the majority of the Federal Court of Appeals, stated that the purpose of the Speech or Debate Clause is "to secure against executive or judicial interference the processes of the nation's elected representatives leading up to the formulation of legislative policy and the enactment of laws" (p. 928). In finding that Ms. Walker's claim could proceed, the majority found that personnel actions relating to the management of congressional food services were "too remote from the business of legislating to rank 'within the legislative sphere'" (p. 928). Ginsburg J. pointed out that the work of this category of employees may advance a member's general welfare, but did not relate to his or her legislative functions. One must make due allowance, of course, for the fact that the United States has a congressional rather than a parliamentary system, but the conclusion that the claim exceeded what was necessary to a legislative body is consistent with the view taken in parliamentary jurisdictions.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	R		House of Commons (Offices) Act, 1812 (U.K.), 52 Geo. 3, c. 11.	statute	UK	57 Counsel referred the Court to several historical documents which, it was alleged, established the existence of such a privilege in Britain prior to 1867, as well as the existence of that privilege here in Canada. In particular, the House of Commons (Offices) Act, 1812 (U.K.), 52 Geo. 3, c. 11, allows for complaints as to the "Misconduct or Unfitness of any Clerk, Officer, Messenger or other Person attendant on the House of Commons" to be made to the Speaker, and provides the Speaker with the power to suspend or remove those individuals found to be guilty of such misconduct. This statute is said to codify the practice of the time. In the Canadian context, we were referred to An Act respecting the internal Economy of the House of Commons, and for other purposes, S.C. 1868, c. 27, which incorporates much of the same language as the British Act just mentioned.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	R		Standing Orders of the House of Commons, Standing Order 151 [adopted in 1867 as Standing Order 83].	lower-level regulation	US	58 Standing Order 151 of the House of Commons, which has remained unchanged since its adoption in 1867, provides: The Clerk of the House is responsible for the safe-keeping of all papers and records of the House, and has the direction and control over all the officers and clerks employed in the offices, subject to such orders as the Clerk may, from time to time, receive from the Speaker or the House. [Emphasis added.] While the appellants cite this in support of their claim, the intervenors Senators Joyal and Jaffer point out that Standing Orders are not acts "of the Parliament of Canada" within s. 18 of the Constitution Act, 1867 and, in any event, Standing Order 151 refers to powers, not immunities.
2005	Canada (House of Commons) v. Vaid	5/20/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2231/index.do	Canada (House of Commons) v. Vaid, [2005] 1 S.C.R. 667, 2005 SCC 30	Binnie J.	unanimous	Federal Court of Appeal	Administrative law Constitutional law	R		United States Constitution, art. 1, § 6, cl. 1.	constitution	US	21 Parliamentary privilege, therefore, is one of the ways in which the fundamental constitutional separation of powers is respected. In Canada, the principle has its roots in the preamble to our Constitution Act, 1867 which calls for "a Constitution similar in Principle to that of the United Kingdom". Each of the branches of the State is vouchsafed a measure of autonomy from the others. Parliamentary privilege was partially codified in art. 9 of the U.K. Bill of Rights of 1689, 1 Will. & Mar. sess. 2, c. 2, but the freedom of speech to which it refers was asserted at least as early as 1523 (Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (23rd ed. 2004), at p. 80). Parliamentary privilege is a principle common to all countries based on the Westminster system, and has a loose counterpart in the Speech or Debate Clause of the United States Constitution, art. 1, § 6, cl. 1. 74 Nor is it the view in the United States, whose Constitution guards the separation of powers at least as strictly as does our own. In Walker v. Jones, 733 F.2d 923 (1984), the U.S. Court of Appeals for the District of Columbia Circuit considered the application of the Speech or Debate Clause of the United States Constitution in the context of an employment-related discrimination complaint. Ms. Walker managed the House of Representatives' restaurants and claimed that she was terminated on the basis of sex discrimination. Ginsburg J., now of the U.S. Supreme Court, writing for the majority of the Federal Court of Appeals, stated that the purpose of the Speech or Debate Clause is "to secure against executive or judicial interference the processes of the nation's elected representatives leading up to the formulation of legislative policy and the enactment of laws" (p. 928). In finding that Ms. Walker's claim could proceed, the majority found that personnel actions relating to the management of congressional food services were "too remote from the business of legislating to rank 'within the legislative sphere'" (p. 928). Ginsburg J. pointed out that the work of this category of employees may advance a member's general welfare, but did not relate to his or her legislative functions. One must make due allowance, of course, for the fact that the United States has a congressional rather than a parliamentary system, but the conclusion that the claim exceeded what was necessary to a legislative body is consistent with the view taken in parliamentary jurisdictions.
2005	R. v. Gunning	5/19/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2228/index.do	R. v. Gunning, [2005] 1 S.C.R. 627, 2005 SCC 27	Charron J.	unanimous	British Columbia	Criminal law	C	referred to	Chandler v. Director of Public Prosecutions, [1964] A.C. 763	SC	UK (HL)	28 Subject to one exception, it is also the exclusive domain of the jury to determine the verdict. An exception lies where the judge is satisfied that there is no evidence upon which a properly instructed jury could reasonably convict, in which case, it is the judge's duty to direct the jury to acquit the accused. This exception is made in order to safeguard against wrongful convictions. However, there is no corresponding duty or entitlement to direct a jury to return a verdict of guilty. As Lord Devlin so aptly put it in Chandler v. Director of Public Prosecutions, [1964] A.C. 763 (H.L.), in answer to the argument that it should be open to the judge to direct a verdict of guilty in certain circumstances: With great respect I think that to be an unconstitutional doctrine. It is the conscience of the jury and not the power of the judge that provides the constitutional safeguard against perverse acquittal. [pp. 803-4] See R. v. Wang, [2005] 1 All E.R. 782, [2005] UKHL 9, for an instructive analysis on why a judge under English law is not entitled to direct a jury to return a verdict of guilty. The principles discussed in Wang are all the more applicable in Canadian law where the accused exercises his constitutional right to the benefit of a trial by jury: s. 11 (f) of the Canadian Charter of Rights and Freedoms.

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2005	R. v. Gunning	5/19/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2228/index.do	R. v. Gunning, [2005] 1 S.C.R. 627, 2005 SCC 27	Charron J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Wang, [2005] 1 All E.R. 782, [2005] UKHL 9	SC	UK (HL)	28 Subject to one exception, it is also the exclusive domain of the jury to determine the verdict. An exception lies where the judge is satisfied that there is no evidence upon which a properly instructed jury could reasonably convict, in which case, it is the judge's duty to direct the jury to acquit the accused. This exception is made in order to safeguard against wrongful convictions. However, there is no corresponding duty or entitlement to direct a jury to return a verdict of guilty. As Lord Devlin so aptly put it in Chandler v. Director of Public Prosecutions, [1964] A.C. 763 (H.L.), in answer to the argument that it should be open to the judge to direct a verdict of guilty in certain circumstances: With great respect I think that to be an unconstitutional doctrine. It is the conscience of the jury and not the power of the judge that provides the constitutional safeguard against perverse acquittal. [pp. 803-4] See R. v. Wang, [2005] 1 All E.R. 782, [2005] UKHL 9, for an instructive analysis on why a judge under English law is not entitled to direct a jury to return a verdict of guilty. The principles discussed in Wang are all the more applicable in Canadian law where the accused exercises his constitutional right to the benefit of a trial by jury: s. 11 (f) of the Canadian Charter of Rights and Freedoms.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	Assicurazioni Generali SpA v. Arab Insurance Group, [2003] 1 W.L.R. 577	lower-level court	UK	231 For instance, in Assicurazioni Generali SpA v. Arab Insurance Group, [2003] 1 W.L.R. 577 (C.A.), Ward L.J., in a separate opinion, stated that prior to the reform of civil appeals in 2000, "interlocutory appeals in the Court of Appeal were treated as reviews of the lower court's decision", even though they were "nominally by way of rehearing" (para. 194). Therefore, despite the change in language from "rehearing" to "review", Ward L.J. concluded that an appellate court's task is essentially no different from what it was before the new rules came into effect; that is, "[t]he Court of Appeal can only interfere if the decision of the lower court was wrong and in deciding whether or not findings of fact were wrong, we take a retrospective look at the case and do not decide it afresh untrammelled by the judge's conclusion" (para. 195). Similarly, in his reasons for judgment on behalf of the court in Assicurazioni, Clarke L.J. acknowledged that there is plainly force in the submission that the nature of appellate review changed with the change in language, but he nonetheless concluded that although the previous rule expressly referred to a rehearing, "the exercise upon which the court was engaged was essentially one of review" (para. 13). 237 However, even if one subscribes to the view professed by the Lord Justices in Assicurazioni that appellate review in England was and still is by way of review, unlike my colleague Fish J., I contend that the English understanding of appeal by way of "review" is different from the Canadian understanding of this concept, which was recently articulated by this Court in Housen. Moreover, the English understanding of appeal by way of review is actually more closely in line with the nature of appellate review in Saskatchewan, which, as I understand it, is by way of rehearing. 239 Similarly, in Assicurazioni, although Clarke and Ward L.JJ. both stated that, despite the change in language from "rehearing" to "review", the Court of Appeal's task has always been and still is to review the lower court's judgment for error, it is clear from their judgments that they accept that, in the course of such a review, the greater the advantage the trial judge has over the appellate court (e.g., with respect to credibility assessments), the more reluctant the appellate court should be to interfere. However, when the relative advantage of the trial judge is not engaged, such as when the issue is with respect to the drawing of inferences, then the appellate court may more readily interfere. This proposition was specifically recognized by Ward L.J. as follows: Where the primary facts are not challenged and the judgment is made from the inferences drawn by the judge from the evidence before him, then the Court of Appeal, which has the power to draw any inference of fact it considers to be justified, may more readily interfere with an evaluation of those facts. [para. 197] 240 From my perspective, it appears that the type of "review" to which Zuckerman and the Lord Justices in Assicurazioni are referring is not the same as the general "review for error" concept subscribed to in Canada. In Housen, all nine justices agreed in principle that, in the course of a review for error, the standard of review should be identical for both findings of fact and inferences of fact, although, as will be explained below, the majority and minority disagreed on the articulation of the standard of review for the latter. In his reasons in this case, Fish J. confirms that the same standard of review should apply to findings of fact as well as to inferences of fact: see, e.g., at paras. 52-55. In contrast, as explained above, in England there is authority for the proposition that, in the course of an appeal by way of review in that country, there is a distinction to be made between findings of fact that engage the special advantage of the trial judge (e.g., those that involve assessments of credibility) and inferences of fact that do not. The appellate court will more readily interfere in the latter case, and, in my view, this implies that, contrary to the Canadian position, the same standard of review cannot be applied to both circumstances.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	Audergon v. La Baguette Ltd., [2002] E.W.J. No. 78 (QL), [2002] EWCA Civ 10	lower-level court	UK	208 After examining the object of the specific legislative provisions that form the statutory framework for appeals in Saskatchewan, in my view it is clear that the legislature intended to provide parties to proceedings in the Court of Queen's Bench with the most comprehensive and effective means to address error in any component of a trial decision, including the view of the evidence taken by the trial judge. As will become clearer after an examination of the historical foundations of the Act, this particular type of appellate review is consistent with an appeal by way of rehearing — not merely by way of review for error. For instance, in the context of a case involving a trial judge's exercise of discretion, Jonathan Parker L.J. noted that "a decision by the appeal court to proceed by way of rehearing frees it from such constraints [involved in an appeal by way of review] and allows it to exercise the discretion afresh in circumstances where it would have been unable to do so had the appeal proceeded in the normal way, by way of review": Audergon v. La Baguette Ltd., [2002] E.W.J. No. 78 (QL), [2002] EWCA Civ 10, at para. 85. Nevertheless, the powers granted must be exercised in a manner consistent with applicable and proper judicial policy. This is addressed later.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	Benmax v. Austin Motor Co., [1955] A.C. 370	SC	UK (HL)	218 Despite the clear language of Order 58 that an appeal of a decision of a judge alone shall be by way of rehearing, some appellate judges continued to espouse the view that, for the purposes of appeal, such a decision was to be treated as the equivalent of a jury verdict. This prompted the House of Lords to revisit this issue in both Mersey Docks and Harbour Board v. Procter, [1923] A.C. 253, and Benmax v. Austin Motor Co., [1955] A.C. 370. 220 Likewise, in Benmax v. Austin Motor Co., the House of Lords upheld the decision of the Court of Appeal on the ground that, while the ability of the Court of Appeal to overrule a trial judge's decision that is based on assessments of credibility may be limited, its ability to address the trial judge's inference from the evidence as a whole is not. Specifically, Lord Morton, who delivered the judgment of the House, stated that in the present case it would appear that the learned judge did not doubt the credibility of any witness, and formed his views by inference from the evidence as a whole. The Court of Appeal formed the opposite view by the same method and I agree with that court. [p. 374] 221 Viscount Simonds, who delivered concurring but more extensive reasons in Benmax v. Austin Motor Co., addressed what he perceived to be a source of confusion: the distinction between "the finding of a specific fact and a finding of fact which is really an inference from facts specifically found, or, as it has sometimes been said, between the perception and evaluation of facts" (p. 373). As for inferences from facts, Viscount Simonds stated that "an appellate court should form an independent opinion, though it will naturally attach importance to the judgment of the trial judge" (p. 374).
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	Tanfern Ltd. v. Cameron-MacDonald, [2000] 1 W.L.R. 1311	lower-level court	UK	229 In contrast, a major English legislative initiative in 2000 appears to have had a much more marked effect on the nature of appellate review in that country. On May 2, 2000, a new system of civil appeals took effect in England, and the new rules appear mostly in Part 52 of the Civil Procedure Rules 1998, S.I. 1998 No. 3132: see Great Britain, Civil Procedure (2002), vol. 1, at pp. 1182ff. These new rules seek to restrict resort to the appeal process to cases that really justify its use and to ensure that appeals, when they are warranted, are conducted in an efficient and effective manner: Zuckerman, at p. 719. In Tanfern Ltd. v. Cameron-MacDonald, [2000] 1 W.L.R. 1311 (C.A.), at para. 50, Brooke L.J. described the changes imposed by this new appeal regime as "the most significant changes in the arrangements for appeals in civil proceedings in this country for over 125 years". These changes were welcomed by N. H. Andrews in "A New System of Civil Appeals and a New Set of Problems", [2000] Cambridge L.J. 464, at p. 465, since they would "reduce the delay, expense, and uncertainty of civil proceedings" and "increase the incentive for litigants to 'get it right first time round'". Nevertheless, Andrews also noted that "the same changes will reduce the chances of rectifying defective decisions", and that "[t]his is the price paid for achieving the impressive benefits of the new system of appeals."

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2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	Whitehouse v. Jordan, [1981] 1 All E.R. 267	SC	UK (HL)	238 For example, Zuckerman notes that one of the general principles underlying an appeal by way of review in England is that an appeal court should not interfere with findings of fact made by the lower court because the judge who saw and heard the witnesses is better placed to assess their reliability and draw inferences from their testimony. Zuckerman states that this principle led to a distinction in the English case law "between conclusions concerning primary facts which followed entirely from the assessment of the reliability of witnesses, and conclusions based on a combination of testimonial assessment and analysis of documents and surrounding circumstances, with which the appeal court would more readily interfere" (p. 766). Zuckerman explains that the reason for this distinction is that "an appeal court is just as well placed as the trial judge to determine the proper inferences to be drawn from circumstantial or documentary evidence": see also Whitehouse v. Jordan, [1981] 1 All E.R. 267 (H.L.), per Lord Fraser.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	C	D	State Rail Authority of New South Wales v. Wiegold (1991), 25 N.S.W.L.R. 500	lower-level court	Australia	344 Moreover, I agree with the Court of Appeal that to award a plaintiff damages for loss of earning capacity while incarcerated would undermine the principles of our criminal justice system (paras. 240-41). As noted by the Court of Appeal, the risk was well described by Samuels J.A. in State Rail Authority of New South Wales v. Wiegold (1991), 25 N.S.W.L.R. 500 (C.A.), at p. 514, as follows: If the plaintiff has been convicted and sentenced for a crime, it means that the criminal law has taken him to be responsible for his actions, and has imposed an appropriate penalty. He or she should therefore bear the consequences of the punishment, both direct and indirect. If the law of negligence were to say, in effect, that the offender was not responsible for his actions and should be compensated by the tortfeasor, it would set the determination of the criminal court at nought. It would generate the sort of clash between civil and criminal law that is apt to bring the law into disrepute.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Bastarache J.	dissenting in part	Saskatchewan	Appeal	R		Civil Procedure Rules 1998 (U.K.), S.I. 1998 No. 3132, Part 52 [ad. S.I. 2000 No. 221], r. 52.11(1).	act	UK	229 In contrast, a major English legislative initiative in 2000 appears to have had a much more marked effect on the nature of appellate review in that country. On May 2, 2000, a new system of civil appeals took effect in England, and the new rules appear mostly in Part 52 of the Civil Procedure Rules 1998, S.I. 1998 No. 3132: see Great Britain, Civil Procedure (2002), vol. 1, at pp. 1182ff. These new rules seek to restrict resort to the appeal process to cases that really justify its use and to ensure that appeals, when they are warranted, are conducted in an efficient and effective manner: Zuckerman, at p. 719. In Tanfern Ltd. v. Cameron-MacDonald, [2000] 1 W.L.R. 1311 (C.A.), at para. 50, Brooke L.J. described the changes imposed by this new appeal regime as "the most significant changes in the arrangements for appeals in civil proceedings in this country for over 125 years". These changes were welcomed by N. H. Andrews in "A New System of Civil Appeals and a New Set of Problems", [2000] Cambridge L.J. 464, at p. 465, since they would "reduce the delay, expense, and uncertainty of civil proceedings" and "increase the incentive for litigants to 'get it right first time round'". Nevertheless, Andrews also noted that "the same changes will reduce the chances of rectifying defective decisions", and that "[t]his is the price paid for achieving the impressive benefits of the new system of appeals."
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Fish J.	majority	Saskatchewan	Appeal	C		Assicurazioni Generali SpA v. Arab Insurance Group, [2003] 1 W.L.R. 577	lower-level court	UK	58 Moreover, procedural changes governing civil appeals in England that took effect in May of 2000 do not appear from subsequent decisions of the Court of Appeal to have altered substantially the previous approach to appellate review: When the Court of Appeal heard appeals on questions of fact [under the old procedure] the court was essentially conducting a review of the findings made by the judge below . . . . Our task [under the new regime] is essentially no different from what it was — we consider the judgment testing it against the evidence available to the judge and we ask, as we used to ask, whether it was wrong. (Assicurazioni Generali SpA v. Arab Insurance Group, [2003] 1 W.L.R. 577 (C.A.), per Ward L.J., at para. 195) In determining whether or not the judgment appealed from was so "wrong", whether under the new or the old regime, the appeal court conducting a review of the trial judge's decision will not conclude that the decision was wrong simply because it is not the decision the appeal judge would have made had he or she been called upon to make it in the court below. Something more is required than personal unease and something less than perversity has to be established. The best formulation for the ground in between where a range of adverbs may be used — "clearly", "plainly", "blatantly", "palpably" wrong, is . . . whether that finding by the trial judge exceeded the generous ambit within which reasonable disagreement about the conclusion to be drawn from the evidence is possible.
2005	H.L. v. Canada (Attorney General)	4/29/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2226/index.do	H.L. v. Canada (Attorney General), [2005] 1 S.C.R. 401, 2005 SCC 25	Fish J.	majority	Saskatchewan	Appeal	R		Rules of the Supreme Court, 1883 (U.K.), Order 39, Order 58, rr. 1, 4.	lower-level regulation	UK	61 Second, on any view of the matter, English precedent provides no support for reading into Saskatchewan legislation, past or present, an appellate jurisdiction to "rehear" — in any sense of that term — determinations of fact made at trial. The English Rules of the Supreme Court, 1883 expressly provided that "[a]ll appeals to the Court of Appeal shall be by way of rehearing." The governing statutes in Saskatchewan have never included equivalent or similar language.
2005	R. v. Paice	4/22/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2222/index.do	R. v. Paice, [2005] 1 S.C.R. 339, 2005 SCC 22	Fish J.	concurring	Saskatchewan	Criminal law	C	referred to	Attorney General's Reference (No. 6 of 1980), [1981] 2 All E.R. 1057	lower-level court	UK	29 In mentioning these concerns, I do not wish to be taken to favour the adoption in Canada of the rule laid down by the English Court of Appeal in Attorney General's Reference (No. 6 of 1980), [1981] 2 All E.R. 1057, which is set out by Charron J. at para. 11 of her reasons. The importation of that common law rule, even as modified in the passage I have cited for Jobidon, raises difficult issues that we are not required, nor even invited, to consider afresh in this case. I refer in this regard to the reasons of Sopinka J. in Jobidon, concurring in the result but on different grounds.
2005	R. v. Paice	4/22/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2222/index.do	R. v. Paice, [2005] 1 S.C.R. 339, 2005 SCC 22	Charron J.	majority	Saskatchewan	Criminal law	C	referred to	Attorney General's Reference (No. 6 of 1980), [1981] 2 All E.R. 1057	lower-level court	UK	11 In dealing with the issue of consent, the trial judge reviewed Jobidon and relied expressly on the following excerpt from the decision of the English Court of Appeal in Attorney General's Reference (No. 6 of 1980), [1981] 2 All E.R. 1057, at p. 1059: . . . it is not in the public interest that people should try to cause or should cause each other actual bodily harm for no good reason. Minor struggles are another matter. So, in our judgment, it is immaterial whether the act occurs in private or in public; it is an assault if actual bodily harm is intended and/or caused. This means that most fights will be unlawful regardless of consent. [Emphasis added.] However, the trial judge did not refer to the fact that this Court in Jobidon held that it was not open in Canada to adopt the English position without modification. The Court referred to the above-noted passage in the Attorney General's Reference case and stated, at p. 760: Attorney General's Reference makes it clear that a conviction of assault will not be barred if "bodily harm is intended and/or caused". Since this test is framed in the alternative, consent could be nullified even in situations where the assailant did not intend to cause the injured person bodily harm but did so inadvertently. In Canada, however, this very broad formulation cannot strictly apply, since the definition of assault in s. 265 is explicitly restricted to intentional application of force. Any test in our law which incorporated the English perspective would of necessity have to confine itself to bodily harm

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2005	Tsiaprailis v. Canada	2/25/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2208/index.do	Tsiaprailis v. Canada, [2005] 1 S.C.R. 113, 2005 SCC 8	Abella J.	dissenting	Federal Court of Appeal	Taxation	C	D	London and Thames Haven Oil Wharves, Ltd. v. Attwooll, [1967] 2 All E.R. 124	lower-level court	UK	48 Even if one applied the surrogatum principle, as the respondent urges, an application I question both on the facts of this case and the statutory provisions under consideration, I would not find the arrears to be taxable. Damage and settlement payments are inherently neutral for tax purposes and must therefore be classified to determine whether they are taxable. This is the surrogatum principle, as defined by Lord Diplock in London and Thames Haven Oil Wharves, Ltd. v. Attwooll, [1967] 2 All E.R. 124 (C.A.) as follows: Where, pursuant to a legal right, a trader receives from another person compensation for the trader_s failure to receive a sum of money which, if it had been received, would have been credited to the amount of profits . . ., the compensation is to be treated for income tax purposes in the same way as that sum of money would have been treated if it had been received instead of the compensation. [p. 134]
2005	Tsiaprailis v. Canada	2/25/2005	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2208/index.do	Tsiaprailis v. Canada, [2005] 1 S.C.R. 113, 2005 SCC 8	Charron J.	majority	Federal Court of Appeal	Taxation	C	referred to	London and Thames Haven Oil Wharves, Ltd. v. Attwooll, [1967] 2 All E.R. 124	lower-level court	UK	7 In my view, this conclusion runs counter to the principle that awards of damages and settlement payments are inherently neutral for tax purposes. My colleague takes no issue with this principle. As she explains, in assessing whether the monies will be taxable, we must look to the nature and purpose of the payment to determine what it is intended to replace. The inquiry is a factual one. The tax consequences of the damage or settlement payment is then determined according to this characterization. In other words, the tax treatment of the item will depend on what the amount is intended to replace. This approach is known as the surrogatum principle. As noted by Abella J., it was defined in London and Thames Haven Oil Wharves, Ltd. v. Attwooll, [1967] 2 All E.R. 124 (C.A.), and subsequently adopted in a number of Canadian cases: see P. W. Hogg, J. E. Magee and J. Li, Principles of Canadian Income Tax Law (4th ed. 2002), at pp. 91-93; and V. Krishna, The Fundamentals of Canadian Income Tax (8th ed. 2004), at pp. 413-15.
2004	R. v. Tessling	10/29/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2183/index.do	R. v. Tessling, [2004] 3 S.C.R. 432, 2004 SCC 67	BINNIE J.	unanimous	Ontario	Constitutional law	C	not followed	Kyllo v. United States, 533 U.S. 27 (2001)	SC	US	45 In this case, the image was taken of the exterior of the respondent's home, a place which, as Abella J.A. pointed out (at para. 42), traditionally has been accorded the highest degree of privacy. She relied, in part, on the concurring judgment of McLachlin J. in Plant, at p. 302: The [electricity consumption] records are capable of telling much about one's personal lifestyle, such as how many people lived in the house and what sort of activities were probably taking place there. The records tell a story about what is happening inside a private dwelling, the most private of places. The United States Supreme Court declared the use of FLIR technology to image the outside of a house to be unconstitutional in Kyllo v. United States, 533 U.S. 27 (2001), based largely on the "sanctity of the home" (p. 37). We do not go so far. The fact that it was the respondent's home that was imaged using FLIR technology is an important factor but it is not controlling and must be looked at in context and in particular, in this case, in relation to the nature and quality of the information made accessible by FLIR technology to the police. 51 Of course the respondent objects to this form of state surveillance of his home. He points out that if the Crown is correct that what was done with FLIR technology in this case is not a s. 8 search, it would follow that the police are at liberty to take "heat pictures" of homes and other shelters whenever they wish, targeting whomever they wish, without any prior judicial authorization. This is true, but I agree with Stevens J., at p. 45, speaking for the minority in Kyllo, that public officials should not have to avert their senses or their equipment from detecting emissions in the public domain such as excessive heat, traces of smoke, suspicious odors, odorless gases, airborne particulates, or radioactive emissions, any of which could identify hazards to the community. 57 This was also a key element in the decision of the U.S. Supreme Court in Kyllo in which the majority judgment, written by Scalia J., concluded (at p. 40): Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant. [Emphasis added.] 58 Scalia J. does not elaborate on what he means by "a device that is not in general public use" and the dissenters suggested such a standard is unworkable (Kyllo, supra, at p. 47). On the evidence here, FLIR imaging does not disclose "details of the home", as has already been
2004	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin	10/1/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2174/index.do	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin, [2004] 3 S.C.R. 257, 2004 SCC 59	LEBEL J.	unanonimous	Quebec	Guarantee and suretyship	C	referred to	Com. November 3, 1988, Bull. civ. IV, No. 283, p. 193 (Prette v. Banque internationale pour l'Afrique occidentale (BIAO))	SC	France	35 While some trial courts have accepted this theory, the Court of Cassation has consistently refused to endorse it (see, for example: Com. November 3, 1988, Bull. civ. IV, No. 283, p. 193 (Prette v. Banque internationale pour l'Afrique occidentale (BIAO)); Com. December 6, 1988, Bull. civ. IV, No. 334, p. 225 (Crédit du Nord v. Bourlet); Com. May 30, 1989, Bull. civ. IV, No. 166, p. 110 (Crédit lyonnais v. Bonche); Com. April 24, 1990, D. 1991.177 (Simon v. Banque française de l'agriculture et du crédit mutuel), Annot. Morvan). The court's decision of April 24, 1990 is clear: [TRANSLATION] "a suretyship contracted by a senior officer of a company [is] limited to the term of his or her duties only if such a limitation is set out in the suretyship contract". Thus, according to the Court of Cassation, the cessation of the surety's duties is an extinctive term of the suretyship only if the parties have expressly provided for this (M. Bandrac, "Sûretés", Rev. trim. dr. civ. 1989.358, at p. 361).
2004	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin	10/1/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2174/index.do	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin, [2004] 3 S.C.R. 257, 2004 SCC 59	LEBEL J.	unanonimous	Quebec	Guarantee and suretyship	C	referred to	Com. December 6, 1988, Bull. civ. IV, No. 334, p. 225 (Crédit du Nord v. Bourlet)	SC	France	35 While some trial courts have accepted this theory, the Court of Cassation has consistently refused to endorse it (see, for example: Com. November 3, 1988, Bull. civ. IV, No. 283, p. 193 (Prette v. Banque internationale pour l'Afrique occidentale (BIAO)); Com. December 6, 1988, Bull. civ. IV, No. 334, p. 225 (Crédit du Nord v. Bourlet); Com. May 30, 1989, Bull. civ. IV, No. 166, p. 110 (Crédit lyonnais v. Bonche); Com. April 24, 1990, D. 1991.177 (Simon v. Banque française de l'agriculture et du crédit mutuel), Annot. Morvan). The court's decision of April 24, 1990 is clear: [TRANSLATION] "a suretyship contracted by a senior officer of a company [is] limited to the term of his or her duties only if such a limitation is set out in the suretyship contract". Thus, according to the Court of Cassation, the cessation of the surety's duties is an extinctive term of the suretyship only if the parties have expressly provided for this (M. Bandrac, "Sûretés", Rev. trim. dr. civ. 1989.358, at p. 361).
2004	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin	10/1/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2174/index.do	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin, [2004] 3 S.C.R. 257, 2004 SCC 59	LEBEL J.	unanonimous	Quebec	Guarantee and suretyship	C	referred to	Com. May 30, 1989, Bull. civ. IV, No. 166, p. 110 (Crédit lyonnais v. Bonche)	SC	France	35 While some trial courts have accepted this theory, the Court of Cassation has consistently refused to endorse it (see, for example: Com. November 3, 1988, Bull. civ. IV, No. 283, p. 193 (Prette v. Banque internationale pour l'Afrique occidentale (BIAO)); Com. December 6, 1988, Bull. civ. IV, No. 334, p. 225 (Crédit du Nord v. Bourlet); Com. May 30, 1989, Bull. civ. IV, No. 166, p. 110 (Crédit lyonnais v. Bonche); Com. April 24, 1990, D. 1991.177 (Simon v. Banque française de l'agriculture et du crédit mutuel), Annot. Morvan). The court's decision of April 24, 1990 is clear: [TRANSLATION] "a suretyship contracted by a senior officer of a company [is] limited to the term of his or her duties only if such a limitation is set out in the suretyship contract". Thus, according to the Court of Cassation, the cessation of the surety's duties is an extinctive term of the suretyship only if the parties have expressly provided for this (M. Bandrac, "Sûretés", Rev. trim. dr. civ. 1989.358, at p. 361).
2004	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin	10/1/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2174/index.do	Épiciers Unis Métro-Richelieu Inc., division "Écnogros" v. Collin, [2004] 3 S.C.R. 257, 2004 SCC 59	LEBEL J.	unanonimous	Quebec	Guarantee and suretyship	C	referred to	Com. April 24, 1990, D.1991.177, (Simon v. Banque française de l'agriculture et du crédit mutuel (BFACM), Annot. Morvan)	SC	France	35 While some trial courts have accepted this theory, the Court of Cassation has consistently refused to endorse it (see, for example: Com. November 3, 1988, Bull. civ. IV, No. 283, p. 193 (Prette v. Banque internationale pour l'Afrique occidentale (BIAO)); Com. December 6, 1988, Bull. civ. IV, No. 334, p. 225 (Crédit du Nord v. Bourlet); Com. May 30, 1989, Bull. civ. IV, No. 166, p. 110 (Crédit lyonnais v. Bonche); Com. April 24, 1990, D. 1991.177 (Simon v. Banque française de l'agriculture et du crédit mutuel), Annot. Morvan). The court's decision of April 24, 1990 is clear: [TRANSLATION] "a suretyship contracted by a senior officer of a company [is] limited to the term of his or her duties only if such a limitation is set out in the suretyship contract". Thus, according to the Court of Cassation, the cessation of the surety's duties is an extinctive term of the suretyship only if the parties have expressly provided for this (M. Bandrac, "Sûretés", Rev. trim. dr. civ. 1989.358, at p. 361).

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2004	R. v. Perrier	9/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2171/index.do	R. v. Perrier, [2004] 3 S.C.R. 228, 2004 SCC 56	MAJOR J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Brown, [1996] E.W.J. No. 2403 (QL)	lower-level court	UK	27 The respondent Crown relied on a series of English cases to support its submission that similar fact evidence could be used in the context of crimes committed by groups. In particular, it relied on R. v. Brown, [1996] E.W.J. No. 2403 (QL) (C.A.), and R. v. Lee, [1996] E.W.C.A. Crim. 59 (QL), where, in both cases, the England and Wales Court of Appeal (Criminal Division) admitted evidence linking an appellant to one group crime as evidence against him on the other. 29 Similarly, in Brown, supra, the England and Wales Court of Appeal (Criminal Division) stated, at para. 82: The issue for the jury, once they are satisfied that it is the same gang who have committed both groups of offences, will be whether the prosecution have established on all the admissible evidence that the particular defendant was a member of that gang and, where the prosecution say that that defendant was a member of the gang on both occasions, whether the totality of the evidence has established that beyond reasonable doubt. [Emphasis added.]
2004	R. v. Perrier	9/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2171/index.do	R. v. Perrier, [2004] 3 S.C.R. 228, 2004 SCC 56	MAJOR J.	unanimous	British Columbia	Criminal law	C	referred to	R. v. Lee, [1996] E.W.C.A. Crim. 59	lower-level court	UK	27 The respondent Crown relied on a series of English cases to support its submission that similar fact evidence could be used in the context of crimes committed by groups. In particular, it relied on R. v. Brown, [1996] E.W.J. No. 2403 (QL) (C.A.), and R. v. Lee, [1996] E.W.C.A. Crim. 59 (QL), where, in both cases, the England and Wales Court of Appeal (Criminal Division) admitted evidence linking an appellant to one group crime as evidence against him on the other. 28 In Lee, supra, the England and Wales Court of Appeal (Criminal Division) held that . . . what may be called “group identification evidence” was admissible against each of the defendants whether or not there was other evidence against them individually on count 2. However, the court qualified this statement by adding that: This would be subject always to any application which might be made on their behalf as individuals which called for an assessment of the overall strength
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Deschamps J.	dissenting	Manitoba	Constitutional law Criminal law Professional law	C	D	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	65 I agree with the majority that there is a power to search incidental to detention at common law, stemming from the test set out in R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.). I wish to add, however, that I do not believe that such a search must always be restricted to concerns for the safety of a police officer. In the case at bar, security was the only ground raised by the respondent. However, other circumstances may justify resorting to a search incidental to detention. 66 A good example of a lawful search incidental to detention which was not motivated by safety concerns is provided by the decision of the Quebec Court of Appeal in R. v. Murray (1999), 136 C.C.C. (3d) 197. In that case, a robbery had been committed by three individuals. The police had set up a road block on a bridge which would have been a likely avenue of flight from the scene of the crime, and were stopping all vehicles which could hide three people. One of the individuals stopped and questioned was the respondent, who was driving a pickup truck. A taut piece of canvass blocked the view of the vehicle’s cargo area. Thinking that the suspects in the robbery could be hiding beneath the canvass, a police officer removed it and discovered smuggled cigarettes. Fish J.A. (as he then was) applied the Waterfield test and concluded that the search was a valid exercise of the common law power of search incidental to detention. He wrote (at p. 212): A search incident to detention is a valid exercise of police powers at common law only if the detention is itself lawful. The search must be for a valid purpose that is rationally connected to the purposes of the initial detention. It must also be reasonably necessary: (1) to secure non-conscriptive evidence of a crime; (2) to protect the police or any member of the public from imminent danger; or (3) to discover and secure
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Deschamps J.	dissenting	Manitoba	Constitutional law Criminal law Professional law			Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	63 Iacobucci J. is of the view that in formulating the standard which must be met in order to give rise to the common law power to detain, the term “reasonable grounds to detain” is preferable to the term “articulable cause” (para. 33). I disagree. “Articulable cause” is a criterion which Canadian courts are familiar with and which they have had little difficulty applying. In the years since R. v. Simpson (1993), 12 O.R. (3d) 182, was decided by the Ontario Court of Appeal, it has been adopted by many lower courts across the country, including the courts of appeal of three provinces besides Ontario (see R. v. Davis (2004), 346 A.R. 141, 2004 ABCA 33; R. v. Campbell (2003), 175 C.C.C. (3d) 452, 2003 MBCA 76; R. v. Bernard, [2003] Q.J. No. 5394 (QL)). Furthermore, as my colleague points out, it has been in use in the United States for nearly 40 years (see Terry v. Ohio, 392 U.S. 1 (1968)), a fact which lends further support to the view that it is a useful and workable standard.

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2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	R. v. Waterfield, [1963] 3 All E.R. 659	lower-level court	UK	11 Twaddle J.A. began with the proposition that a warrantless search is prima facie unreasonable, and that the burden falls on the Crown to show that the search was nevertheless reasonable on a balance of probabilities. He then turned to consider whether there existed common law authority for the initial detention. Applying the test set out in R. v. Waterfield, [1963] 3 All E.R. 659 (C.C.A.), he held that the detention was authorized at law based on the facts. He noted that the circumstances fell within the general scope of the duties of a police officer, and that the detention was further justified given the similarity of the appellant's description to that of the suspect. 24 The test for whether a police officer has acted within his or her common law powers was first expressed by the English Court of Criminal Appeal in Waterfield, supra, at pp. 660-61. From the decision emerged a two-pronged analysis where the officer's conduct is prima facie an unlawful interference with an individual's liberty or property. In those situations, courts must first consider whether the police conduct giving rise to the interference falls within the general scope of any duty imposed on the officer by statute or at common law. If this threshold is met, the analysis continues to consider secondly whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty. 25 This Court has adopted, refined and incrementally applied the Waterfield test in several contexts, including the pre-Charter lawfulness of random automobile stops under the Reduced Impaired Driving Everywhere (R.I.D.E.) Program (Dedman v. The Queen, [1985] 2 S.C.R. 2); the scope of police power to search incident to lawful arrest (Cloutier v. Langlois, [1990] 1 S.C.R. 158); and the scope of police authority to investigate 911 calls (R. v. Godoy, [1999] 1 S.C.R. 311). 26 At the first stage of the Waterfield test, police powers are recognized as deriving from the nature and scope of police duties, including, at common law, "the preservation of the peace, the prevention of crime, and the protection of life and property" (Dedman, supra, at p. 32). The second stage of the test requires a balance between the competing interests of the police duty and of the liberty interests at stake. This aspect of the test requires a consideration of whether an invasion of individual rights is necessary in order for the peace officers to perform their duty, and whether such invasion is reasonable in light of the public purposes served by effective control of criminal acts on the one hand and on the other respect for the liberty and fundamental dignity of individuals. (Cloutier, supra, at pp. 181-82)
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	Terry v. Ohio, 392 U.S. 1 (1968)	SC	US	31 As mentioned above, the articulable cause standard discussed in Simpson has been adopted from American Fourth Amendment jurisprudence, namely the "stop and frisk" doctrine with its genesis in Terry v. Ohio, 392 U.S. 1 (1968). The doctrine developed as an exception to the Fourth Amendment right to be free from unreasonable search and seizure, where detention is viewed as a "seizure" of the person. The United States Supreme Court held in Terry that a police officer may seize an individual reasonably suspected of imminent or on-going criminal activity, ask questions of him or her, and perform a limited frisk search for weapons. Subsequent jurisprudence requires the totality of the circumstances to be taken into account when determining that sufficient reasonable articulable suspicion of criminal activity exists to justify the seizure (see United States v. Cortez, 449 U.S. 411 (1981)). 32 The U.S. case law has evolved significantly since Terry. Police authority was expanded in Adams v. Williams, 407 U.S. 143 (1972), beyond imminent violent offences to possessory offences reported by reliable informants. In 1980, United States v. Mendenhall, 446 U.S. 544 (1980), the U.S. Supreme Court developed a no-seizure rule permitting brief detentions of individuals where reasonable suspicion is lacking. Five years later, in United States v. Hensley, 469 U.S. 221 (1985), the U.S. Supreme Court extended Terry and Adams to permit detention and questioning of persons suspected of involvement in completed felonies, where the suspicion was grounded in specific and articulable facts, on the basis of a public interest in investigating crime and safeguarding the public. 41 The determination as to when a protective search may be merited has been addressed in the United States through several decades of jurisprudence. In Terry, supra, at p. 27, the United States Supreme Court carefully circumscribed the search power, by holding that: . . . there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. In exercising this authority, the officer must not be acting solely on a hunch, but rather is required to act on reasonable and specific inferences drawn
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	United States v. Cortez, 449 U.S. 411 (1981)	SC	US	31 As mentioned above, the articulable cause standard discussed in Simpson has been adopted from American Fourth Amendment jurisprudence, namely the "stop and frisk" doctrine with its genesis in Terry v. Ohio, 392 U.S. 1 (1968). The doctrine developed as an exception to the Fourth Amendment right to be free from unreasonable search and seizure, where detention is viewed as a "seizure" of the person. The United States Supreme Court held in Terry that a police officer may seize an individual reasonably suspected of imminent or on-going criminal activity, ask questions of him or her, and perform a limited frisk search for weapons. Subsequent jurisprudence requires the totality of the circumstances to be taken into account when determining that sufficient reasonable articulable suspicion of criminal activity exists to justify the seizure (see United States v. Cortez, 449 U.S. 411 (1981)).
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	Adams v. Williams, 407 U.S. 143 (1972)	SC	US	32 The U.S. case law has evolved significantly since Terry. Police authority was expanded in Adams v. Williams, 407 U.S. 143 (1972), beyond imminent violent offences to possessory offences reported by reliable informants. In 1980, United States v. Mendenhall, 446 U.S. 544 (1980), the U.S. Supreme Court developed a no-seizure rule permitting brief detentions of individuals where reasonable suspicion is lacking. Five years later, in United States v. Hensley, 469 U.S. 221 (1985), the U.S. Supreme Court extended Terry and Adams to permit detention and questioning of persons suspected of involvement in completed felonies, where the suspicion was grounded in specific and articulable facts, on the basis of a public interest in investigating crime and safeguarding the public.
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2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	United States v. Hensley, 469 U.S. 221 (1985)	SC	US	32 The U.S. case law has evolved significantly since Terry. Police authority was expanded in Adams v. Williams, 407 U.S. 143 (1972), beyond imminent violent offences to possessory offences reported by reliable informants. In 1980, United States v. Mendenhall, 446 U.S. 544 (1980), the U.S. Supreme Court developed a no-seizure rule permitting brief detentions of individuals where reasonable suspicion is lacking. Five years later, in United States v. Hensley, 469 U.S. 221 (1985), the U.S. Supreme Court extended Terry and Adams to permit detention and questioning of persons suspected of involvement in completed felonies, where the suspicion was grounded in specific and articulable facts, on the basis of a public interest in investigating crime and safeguarding the public.
2004	R. v. Mann	7/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2167/index.do	R. v. Mann, [2004] 3 S.C.R. 59, 2004 SCC 52	Iacobucci J.	majority	Manitoba	Constitutional law Criminal law Professional law	C	referred to	Minnesota v. Dickerson, 508 U.S. 366 (1993)	SC	US	42 A similar situation to the one at bar was considered by the United States Supreme Court in Minnesota v. Dickerson, 508 U.S. 366 (1993). In that case, the officer pursued and frisked an individual who had recently exited a notorious crack house, having changed direction upon noticing the officer. A small lump was felt in the individual's jacket pocket, which the officer surmised was likely crack cocaine. The officer reached into the pocket and his suspicions were confirmed. The U.S. Supreme Court refused to allow the crack cocaine to be used as evidence, stating that the scope of the search exceeded its protective justification. The protective nature of the search was affirmed more recently by the U.S. Second Circuit Court of Appeals in U.S. v. Casado, 303 F.3d 440 (2002), where contraband evidence was deemed inadmissible because the officer did not undertake a less-intrusive pat-down search prior to reaching into the detainee's pocket (p. 449).

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2004	R. v. Demers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2160/index.do	R. v. Demers, [2004] 2 S.C.R. 489, 2004 SCC 46	LeBel J.	concurring	Quebec	Constitutional law	C	referred to	Reference re Validity of Section 5(a) of the Dairy Industry Act, [1949] S.C.R. 1, aff'd [1951] A.C. 179 (sub nom. Canadian Federation of Agriculture v. Attorney-General for Quebec)	SC	UK	72 This appeal raises fundamental questions regarding our constitutional structure, including the proper relationship between the Constitution Act, 1867 and the Charter . Historically, the federal criminal law power and the contingent criminal procedure power have been construed broadly. The classic definition of the scope of the criminal law was provided by Rand J. in Reference re Validity of Section 5(a) of the Dairy Industry Act, [1949] S.C.R. 1, at pp. 49-50, aff'd [1951] A.C. 179 (P.C.) (sub nom. Canadian Federation of Agriculture v. Attorney-General for Quebec), as a public purpose that can support the prohibition and penalty as being in relation to criminal law: A crime is an act which the law, with appropriate penal sanctions, forbids; but as prohibitions are not enacted in a vacuum, we can properly look for some evil or injurious or undesirable effect upon the public against which the law is directed. That effect may be in relation to social, economic or political interests; and the legislature has had in mind to suppress the evil or to safeguard the interest threatened. . . . Is the prohibition . . . enacted with a view to a public purpose which can support it as being in relation to criminal law? Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by that law . . . . This wide scope has been consistently affirmed by the Court, as Laskin C.J. remarked in Morgentaler v. The Queen, [1976] 1 S.C.R. 616, at p. 625: The wide scope of the exclusive federal criminal law power has been consistently asserted in the relevant case law in both the Privy Council, when it was Canada's ultimate appellate court, and in this Court. This expansive interpretation has continued more recently in cases such as R. v. Swain, [1991] 1 S.C.R. 933; R. v. Morgentaler, [1993] 3 S.C.R. 463; RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 S.C.R. 199; R. v. Hydro-Québec, [1997] 3 S.C.R. 213; Reference re Firearms Act (Can.), [2000] 1 S.C.R. 783, 2000 SCC 31; see also Professor A. W. MacKay, "The Supreme Court of Canada and Federalism: Does\Should Anyone Care Anymore?" (2001),
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Commission of the European Communities, Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No. COMP/C2/38.014 — IFPI "Simulcasting")	international	EU	64 In a recent decision of the European Commission involving "simulcasting", a model reciprocal agreement approved by the Commission was based on the country-of-destination principle. The decision commented that according to the principle "which appears to reflect the current legal situation in copyright law, the act of communication to the public of a copyright protected work takes place not only in the country of origin (emission-State) but also in all the States where the signals can be received (reception-States)": Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No. COMP/C2/38.014 _ IFPI "Simulcasting"), para. 21 (emphasis added).
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	National Football League v. PrimeTime 24 Joint Venture, 211 F.3d 10 (2000)	lower-level court	US	70 In National Football League v. PrimeTime 24 Joint Venture, 211 F.3d 10 (2d Cir. 2000), the U.S. defendant caused satellite transmission of NFL football games from the U.S. to Canada. The court found this to violate the NFL's U.S. copyright even though the broadcasts were being sent to the satellite and thence to Canada for Canadian viewers. The United States was the country of transmission. It was held sufficient to constitute U.S. copyright infringement that a significant step in the telecommunication had taken place in the United States (at p. 13): . . . it is clear that PrimeTime's uplink transmission of signals captured in the United Sates is a step in the process by which NFL's protected work wends its way to a public audience. In short, PrimeTime publicly displayed or performed material in which the NFL owns the copyright. Because PrimeTime did not have authorization to make such a public performance, PrimeTime infringed the NFL's copyright.
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Los Angeles News Service v. Conus Communications Co., 969 F.Supp. 579 (1997)	lower-level court	US	71 At the same time, some U.S. courts take the view that U.S. copyright is also breached when the U.S. is the country of reception. Thus in Los Angeles News Service v. Conus Communications Co., 969 F.Supp. 579 (C.D. Cal. 1997), the plaintiff had videotaped riots that occurred in Los Angeles in connection with the Rodney King assault case. The CBC broadcast some of the footage in Canada. Inevitably, some homes in border States saw the CBC broadcast. The plaintiff alleged breach of U.S. copyright. The CBC moved to dismiss the U.S. proceeding for lack of jurisdiction, but was unsuccessful. The court held, at pp. 583-84: Under the plain language of the Act, the subject footage was "displayed" on television sets within the United States within the meaning of the Copyright Act . To find otherwise would leave a substantial loophole in the copyright laws. Broadcasters could deliberately transmit potentially infringing material from locations across the U.S. borders for display in the United States without regard to the rights of copyright owners set forth in the U.S. Copyright Act.

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2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	National Football League v. TVRadioNow Corp., 53 USPQ2d 1831 (2000)	lower-level court	US	72 Equally, in National Football League v. TVRadioNow Corp., 53 USPQ2d 1831 (W.D. Pa. 2000), the court found that a Web site in Canada that "streamed" U.S. cable television through the Internet with worldwide availability infringed the U.S. transmission rights of the copyright owners despite the fact that the defendant was located in Canada and arguably was not in violation of Canadian copyright laws.
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Trib. gr. inst. Paris, May 22, 2000 (UEJF v. Yahoo! Inc.); Yahoo! Inc. v. Ligue contre le racisme et l'antisémitisme, 145 F.Supp.2d 1168 (2001)	lower-level court	US	75 An analysis of liability in France suggests that "[c]ourts will likely assert jurisdiction not only over transmissions from France, but also transmissions into France that are alleged to cause damage" (emphasis added); see D. J. Gervais, "Transmissions of Music on the Internet: An Analysis of the Copyright Laws of Canada, France, Germany, Japan, the United Kingdom, and the United States" (2001), 34 Vand. J. Transnatl. L. 1363, at p. 1376. In UEJF v. Yahoo! Inc., Trib. gr. inst. Paris, May 22, 2000, the court ordered Yahoo! Inc., a U.S. based Internet company, to block access by French users to an Internet auction offering Nazi paraphernalia because [TRANSLATION] "the harm is suffered in France". (The U.S. courts refused to give effect in the United States to the French court order, not on jurisdictional grounds as such, but based on First Amendment rights; see Yahoo! Inc. v. Ligue contre le racisme et l'antisémitisme, 145 F.Supp.2d 1168 (N.D. Cal. 2001).)
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Religious Technology Center v. Netcom On-line Communication Services, Inc., 907 F.Supp. 1361 (1995)	lower-level court	US	117 A comparable result has been reached under the U.S. Digital Millennium Copyright Act, which in part codified the result in Religious Technology Center v. Netcom On-line Communication Services, Inc., 907 F.Supp. 1361 (N.D. Cal. 1995), where it was observed, at pp. 1369-70: These parties, who are liable under plaintiffs' theory, do no more than operate or implement a system that is essential if Usenet messages are to be widely distributed. There is no need to construe the Act to make all of these parties infringers. Although copyright is a strict liability statute, there should still be some element of volition or causation which is lacking where a defendant's system is merely used to create a copy by a third party. See also M. B. Nimmer, Nimmer on Copyright (loose-leaf ed.), vol. 3, at p. 12B-13.
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	C.B.S. Inc. v. Ames Records & Tapes Ltd., [1982] 1 Ch. 91	lower-level court	UK	126 In the present appeal, the Federal Court of Appeal stated that, in the case of host servers, "an implicit authorization to communicate infringing material might be inferred from their failure to remove it after they have been advised of its presence on the server and had a reasonable opportunity to take it down" (para. 160). Reference was made to Apple Computer Inc. v. Mackintosh Computers Ltd., [1987] 1 F.C. 173, aff'd [1990] 2 S.C.R. 209, at pp. 211 and 208, citing C.B.S. Inc. v. Ames Records & Tapes Ltd., [1982] 1 Ch. 91, at p. 110, i.e., an Internet Service Provider may attract liability for authorization because ". . . indifference, exhibited by acts of commission or omission, may reach a degree from which authorisation or permission may be inferred. It is a question of fact in each case . . . ." See also Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342 (Q.B.).
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342	lower-level court	UK	126 In the present appeal, the Federal Court of Appeal stated that, in the case of host servers, "an implicit authorization to communicate infringing material might be inferred from their failure to remove it after they have been advised of its presence on the server and had a reasonable opportunity to take it down" (para. 160). Reference was made to Apple Computer Inc. v. Mackintosh Computers Ltd., [1987] 1 F.C. 173, aff'd [1990] 2 S.C.R. 209, at pp. 211 and 208, citing C.B.S. Inc. v. Ames Records & Tapes Ltd., [1982] 1 Ch. 91, at p. 110, i.e., an Internet Service Provider may attract liability for authorization because ". . . indifference, exhibited by acts of commission or omission, may reach a degree from which authorisation or permission may be inferred. It is a question of fact in each case . . . ." See also Godfrey v. Demon Internet Ltd., [1999] 4 All E.R. 342 (Q.B.).
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2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Copyright Act 1968 (Australia), No. 63 of 1968, s. 10(1) "communicate", "to the public".	statute	Australia	73 Australia has recently adopted the Copyright Amendment (Digital Agenda) Act 2000 to implement its obligations under the WIPO treaties. The definition of "communication to the public" appears to apply Australian copyright law to communications entirely within Australia, those originating within Australia and received by an end user outside Australia, and those originating outside Australia but received by an end user in Australia: 10. Interpretation (1) In this Act, unless the contrary intention appears: . . . communicate means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter. . . . to the public means to the public within or outside Australia. [Emphasis added.] (Copyright Act 1968 (Australia), No. 63 of 1968, s. 10(1), as amended by the Copyright Amendment (Digital Agenda) Act 2000, Sch.1, ss. 6 and 16)
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	C	referred to	Copyright Amendment (Digital Agenda) Act 2000 (Australia), No. 110 of 2000, Sch. 1, ss. 6, 16.	statute	Australia	43 In the United States, unlike Canada, detailed legislation has now been enacted to deal specifically with the liability of Internet intermediaries; see the Digital Millennium Copyright Act, 17 U.S.C. § 512 (1998). Australia has enacted its Copyright Amendment (Digital Agenda) Act 2000, No. 110 of 2000. The European Commission has issued a number of directives, as will be discussed. Parliament's response to the World Intellectual Property Organization's ("WIPO") Copyright Treaty (1996), CRNR/DC/94, and the Performances and Phonograms Treaty (1996), CRNR/DC/95, remains to be seen. In the meantime, the courts must struggle to transpose a Copyright Act designed to implement the Berne Convention for the Protection of Literary and Artistic Works of 1886, as revised in Berlin in 1908, and subsequent piecemeal amendments, to the information age, and to technologies undreamt of by those early legislators. 73 Australia has recently adopted the Copyright Amendment (Digital Agenda) Act 2000 to implement its obligations under the WIPO treaties. The definition of "communication to the public" appears to apply Australian copyright law to communications entirely within Australia, those originating within Australia and received by an end user outside Australia, and those originating outside Australia but received by an end user in Australia: 10. Interpretation (1) In this Act, unless the contrary intention appears: . . . communicate means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter. . . . to the public means to the public within or outside Australia. [Emphasis added.]
2004	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do	Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, [2004] 2 S.C.R. 427, 2004 SCC 45	Binnie J.	majority	Federal Court of Appeal	Constitutional law Intellectual property	R		Digital Millennium Copyright Act, 17 U.S.C. § 512 (1998).	SC	US	43 In the United States, unlike Canada, detailed legislation has now been enacted to deal specifically with the liability of Internet intermediaries; see the Digital Millennium Copyright Act, 17 U.S.C. § 512 (1998). Australia has enacted its Copyright Amendment (Digital Agenda) Act 2000, No. 110 of 2000. The European Commission has issued a number of directives, as will be discussed. Parliament's response to the World Intellectual Property Organization's ("WIPO") Copyright Treaty (1996), CRNR/DC/94, and the Performances and Phonograms Treaty (1996), CRNR/DC/95, remains to be seen. In the meantime, the courts must struggle to transpose a Copyright Act designed to implement the Berne Convention for the Protection of Literary and Artistic Works of 1886, as revised in Berlin in 1908, and subsequent piecemeal amendments, to the information age, and to technologies undreamt of by those early legislators. 117 A comparable result has been reached under the U.S. Digital Millennium Copyright Act, which in part codified the result in Religious Technology Center v. Netcom On-line Communication Services, Inc., 907 F.Supp. 1361 (N.D. Cal. 1995), where it was observed, at pp. 1369-70: These parties, who are liable under plaintiffs' theory, do no more than operate or implement a system that is essential if Usenet messages are to be widely distributed. There is no need to construe the Act to make all of these parties infringers. Although copyright is a strict liability statute, there should still be some element of volition or causation which is lacking where a defendant's system is merely used to create a copy by a third party. See also M. B. Nimmer, Nimmer on Copyright (loose-leaf ed.), vol. 3, at p. 12B-13. 125 Under the European E-Commerce Directive, access to cached information must be expeditiously curtailed when the Internet Service Provider becomes aware of infringing content. At that time, the information must be removed or access disabled at the original site (art. 13(1)(e)). Under the U.S. Digital Millennium Copyright Act, those who cache information are not liable where they act expeditiously to remove or disable access to material once notice is received that it infringes copyright (s. 512(b)(2)(E)). If the content provider disputes that the work is covered by copyright, the U.S. Act lays out a procedure for the resolution of that issue.

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2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Bastarache J.	dissenting	Quebec	Constitutional law	C	D	R. v. Registrar General, Ex parte Segerdal, [1970] 2 Q.B. 697	lower-level court	UK	135 These passages seem to show that this Court has interpreted freedom of religion as protecting both religious beliefs, which are considered to be highly personal and private in nature, and consequent religious practices. However, a religion is a system of beliefs and practices based on certain religious precepts. A nexus between personal beliefs and the religion's precepts must therefore be established. This point of view is consistent with those encountered in other common law jurisdictions: Bowman v. Secular Society, Ltd., [1917] A.C. 406 (H.L.); R. v. Registrar General, Ex parte Segerdal, [1970] 2 Q.B. 697 (C.A.); Barralet v. Attorney General, [1980] 3 All E.R. 918 (Ch. D.); Wisconsin v. Yoder, 406 U.S. 205 (1972). Religious precepts constitute a body of objectively identifiable data that permit a distinction to be made between genuine religious beliefs and personal choices or practices that are unrelated to freedom of conscience. Connecting freedom of religion to precepts provides a basis for establishing objectively whether the fundamental right in issue has been violated. By identifying with a religion, an individual makes it known that he or she shares a number of precepts with other followers of the religion. The approach I have adopted here requires not only a personal belief or the adoption of a religious practice that is supported by a personal belief, but also a genuine connection between the belief and the person's religion. In my view, the only way the trial judge can establish that a person has a sincere belief, or has sincerely adopted a religious practice that is genuinely connected with the religion he or she claims to follow, is by applying an objective test. It is one thing to assert that a practice is protected even though certain followers of the religion do not think that the practice is included among the religion's precepts and quite another to assert that a practice must be protected when none of the followers think it is included among those precepts. If, pursuant to s. 3, a practice must be connected with the religion, the connection must be objectively identifiable.
2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Bastarache J.	dissenting	Quebec	Constitutional law	C	D	Barralet v. Attorney General, [1980] 3 All E.R. 918	lower-level court	UK	135 These passages seem to show that this Court has interpreted freedom of religion as protecting both religious beliefs, which are considered to be highly personal and private in nature, and consequent religious practices. However, a religion is a system of beliefs and practices based on certain religious precepts. A nexus between personal beliefs and the religion's precepts must therefore be established. This point of view is consistent with those encountered in other common law jurisdictions: Bowman v. Secular Society, Ltd., [1917] A.C. 406 (H.L.); R. v. Registrar General, Ex parte Segerdal, [1970] 2 Q.B. 697 (C.A.); Barralet v. Attorney General, [1980] 3 All E.R. 918 (Ch. D.); Wisconsin v. Yoder, 406 U.S. 205 (1972). Religious precepts constitute a body of objectively identifiable data that permit a distinction to be made between genuine religious beliefs and personal choices or practices that are unrelated to freedom of conscience. Connecting freedom of religion to precepts provides a basis for establishing objectively whether the fundamental right in issue has been violated. By identifying with a religion, an individual makes it known that he or she shares a number of precepts with other followers of the religion. The approach I have adopted here requires not only a personal belief or the adoption of a religious practice that is supported by a personal belief, but also a genuine connection between the belief and the person's religion. In my view, the only way the trial judge can establish that a person has a sincere belief, or has sincerely adopted a religious practice that is genuinely connected with the religion he or she claims to follow, is by applying an objective test. It is one thing to assert that a practice is protected even though certain followers of the religion do not think that the practice is included among the religion's precepts and quite another to assert that a practice must be protected when none of the followers think it is included among those precepts. If, pursuant to s. 3, a practice must be connected with the religion, the connection must be objectively identifiable.
2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Bastarache J.	dissenting	Quebec	Constitutional law	C	D	Wisconsin v. Yoder, 406 U.S. 205 (1972)	SC	US	135 These passages seem to show that this Court has interpreted freedom of religion as protecting both religious beliefs, which are considered to be highly personal and private in nature, and consequent religious practices. However, a religion is a system of beliefs and practices based on certain religious precepts. A nexus between personal beliefs and the religion's precepts must therefore be established. This point of view is consistent with those encountered in other common law jurisdictions: Bowman v. Secular Society, Ltd., [1917] A.C. 406 (H.L.); R. v. Registrar General, Ex parte Segerdal, [1970] 2 Q.B. 697 (C.A.); Barralet v. Attorney General, [1980] 3 All E.R. 918 (Ch. D.); Wisconsin v. Yoder, 406 U.S. 205 (1972). Religious precepts constitute a body of objectively identifiable data that permit a distinction to be made between genuine religious beliefs and personal choices or practices that are unrelated to freedom of conscience. Connecting freedom of religion to precepts provides a basis for establishing objectively whether the fundamental right in issue has been violated. By identifying with a religion, an individual makes it known that he or she shares a number of precepts with other followers of the religion. The approach I have adopted here requires not only a personal belief or the adoption of a religious practice that is supported by a personal belief, but also a genuine connection between the belief and the person's religion. In my view, the only way the trial judge can establish that a person has a sincere belief, or has sincerely adopted a religious practice that is genuinely connected with the religion he or she claims to follow, is by applying an objective test. It is one thing to assert that a practice is protected even though certain followers of the religion do not think that the practice is included among the religion's precepts and quite another to assert that a practice must be protected when none of the followers think it is included among those precepts. If, pursuant to s. 3, a practice must be connected with the religion, the connection must be objectively identifiable.
2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Bastarache J.	dissenting	Quebec	Constitutional law	C	D	Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)	SC	US	189 I accept that Mr. Amselem has met the threshold test of bringing his claim within the protected zone of religious freedom. (For present purposes, as I conclude the appeal should be dismissed, it is unnecessary to dwell on the alleged insufficiencies of the evidence of the other appellants.) Mr. Amselem clearly respects the succah ritual as a religious precept, by which I understand him to mean a divine command (Shorter Oxford English Dictionary (5th ed. 2002), vol. 2, at p. 2316). There is no doubt expressed by any of the parties that in general terms the precept exists as an article of the Jewish faith. We are not dealing here with a religion of one phenomenon, or a non-traditional claim such as the smoking of peyote as part of a claimed religious experience (Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)). Those types of issues will have to be addressed when they arise.

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2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Iacobucci J.	majority	Quebec	Constitutional law	C	referred to	Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981)	SC	US	45 In the United States, where there is a richness of jurisprudence on this matter, the United States Supreme Court has similarly adopted a subjective, personal and deferential definition of freedom of religion, centred upon sincerity of belief. For example, in Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981), the court held that it was the plaintiff's subjective beliefs, and not the official position of the particular religion, which must be considered in evaluating the free exercise guarantees under the First Amendment of the U.S. Constitution. In delivering the opinion of the U.S. Supreme Court, Chief Justice Burger stated, at pp. 715-16: . . . the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation. The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. [Emphasis added.] This view was repeated in Frazee v. Illinois Department of Employment Security, 489 U.S. 829 (1989), at p. 834, where White J., for a unanimous court, stated: Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under our cases, he was entitled to invoke First Amendment protection. [Emphasis added.] 51 That said, while a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief, it is qualified to inquire into the sincerity of a claimant's belief, where sincerity is in fact at issue: see Jones, supra; Ross, supra. It is important to emphasize, however, that sincerity of belief simply implies an honesty of belief: see Thomas v. Review Board of the Indiana Employment Security Division, supra. 160 In the case at bar, after reviewing the evidence presented to him, including the testimony of two expert witnesses, Rabbi Barry Levy and Rabbi Moïse Ohana, the trial judge came to the following conclusion (at p. 1909):
2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Iacobucci J.	majority	Quebec	Constitutional law	C	referred to	Frazee v. Illinois Department of Employment Security, 489 U.S. 829 (1989)	SC	US	45 In the United States, where there is a richness of jurisprudence on this matter, the United States Supreme Court has similarly adopted a subjective, personal and deferential definition of freedom of religion, centred upon sincerity of belief. For example, in Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981), the court held that it was the plaintiff's subjective beliefs, and not the official position of the particular religion, which must be considered in evaluating the free exercise guarantees under the First Amendment of the U.S. Constitution. In delivering the opinion of the U.S. Supreme Court, Chief Justice Burger stated, at pp. 715-16: . . . the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation. The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. [Emphasis added.] This view was repeated in Frazee v. Illinois Department of Employment Security, 489 U.S. 829 (1989), at p. 834, where White J., for a unanimous court, stated: Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under

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2004	Syndicat Northcrest v. Amselem	6/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47	Iacobucci J.	majority	Quebec	Constitutional law	R		United States Constitution, First Amendment	constitution	US	45 In the United States, where there is a richness of jurisprudence on this matter, the United States Supreme Court has similarly adopted a subjective, personal and deferential definition of freedom of religion, centred upon sincerity of belief. For example, in Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707 (1981), the court held that it was the plaintiff's subjective beliefs, and not the official position of the particular religion, which must be considered in evaluating the free exercise guarantees under the First Amendment of the U.S. Constitution. In delivering the opinion of the U.S. Supreme Court, Chief Justice Burger stated, at pp. 715-16: . . . the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation. The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. [Emphasis added.] This view was repeated in Frazee v. Illinois Department of Employment Security, 489 U.S. 829 (1989), at p. 834, where White J., for a unanimous court, stated: Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization. Here, Frazee's refusal was based on a sincerely held religious belief. Under our cases, he was entitled to invoke First Amendment protection. [Emphasis added.] 52 According to American constitutional law scholar Professor Laurence Tribe, the jurisprudence in this area evinces that inquiries into a claimant's sincerity must be as limited as possible. He argues that "given the widening understanding of what constitutes religion in our society, the very rights ostensibly protected by the free exercise clause might well be jeopardized by any but the most minimal inquiry into sincerity": L. H. Tribe, American Constitutional Law (2nd ed. 1988), at pp. 1245-46. While this was written in the context of the First Amendment to the U.S. Constitution, I believe that it is equally applicable to delimiting the court's role in interpreting religious freedom under the Quebec (or the Canadian) Charter . Indeed, the court's role in assessing sincerity is intended only to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice. Otherwise, nothing short of a religious
2004	Application under s. 83.28 of the Criminal Code (Re)	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2156/index.do	Application under s. 83.28 of the Criminal Code (Re), [2004] 2 S.C.R. 248, 2004 SCC 42	Binnie J.	dissenting	British Columbia	Constitutional law Criminal law	C	D	Terminiello v. Chicago, 337 U.S. 1 (1949)	SC	US	113 My colleagues quote in para. 6 the much repeated dictum of Jackson J. of the United States Supreme Court that the Bill of Rights (or in our case the Canadian Charter of Rights and Freedoms) is not "a suicide pact": Terminiello v. Chicago, 337 U.S. 1 (1949), p. 37 (in dissent). In that case the U.S. Supreme Court upheld the free speech rights of a Chicago priest charged with causing a riot by his inflammatory speech to the Christian Veterans of America. More to the point for our purposes, I think, is the observation of Douglas J. for the majority in the same case, that upholding constitutional rights at times of national stress is "one of the chief distinctions" that sets a liberal democracy apart from the "totalitarian regimes" that were considered at that time a threat to national security (p. 4).
2004	Application under s. 83.28 of the Criminal Code (Re)	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2156/index.do	Application under s. 83.28 of the Criminal Code (Re), [2004] 2 S.C.R. 248, 2004 SCC 42	Iacobucci and Arbour JJ.	majority	British Columbia	Constitutional law Criminal law	C	referred to	Terminiello v. Chicago, 337 U.S. 1 (1949)	SC	US	6 Although terrorism necessarily changes the context in which the rule of law must operate, it does not call for the abdication of law. Yet, at the same time, while respect for the rule of law must be maintained in the response to terrorism, the Constitution is not a suicide pact, to paraphrase Jackson J.: Terminiello v. Chicago, 337 U.S. 1 (1949), at p. 37 (in dissent).
2004	Application under s. 83.28 of the Criminal Code (Re)	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2156/index.do	Application under s. 83.28 of the Criminal Code (Re), [2004] 2 S.C.R. 248, 2004 SCC 42	Iacobucci and Arbour JJ.	majority	British Columbia	Constitutional law Criminal law	G		situation in Spain		Spain	39 It was suggested in submissions that the purpose of the Act should be regarded broadly as the protection of "national security". However, we believe that this characterization has the potential to go too far and would have implications that far outstrip legislative intent. The discussions surrounding the legislation, and the legislative language itself clearly demonstrate that the Act purports to provide means by which terrorism may be prosecuted and prevented. As we cautioned above, courts must not fall prey to the rhetorical urgency of a perceived emergency or an altered security paradigm. While the threat posed by terrorism is certainly more tangible in the aftermath of global events such as those perpetrated in the United States, and since then elsewhere, including very recently in Spain, we must not lose sight of the particular aims of the legislation. Notably, the Canadian government opted to enact specific criminal law and procedure legislation and did not make use of exceptional powers, for example under the Emergencies Act, R.S.C. 1985, c. 22 (4th Supp.), or invoke the notwithstanding clause at s. 33 of the Charter.
2004	Application under s. 83.28 of the Criminal Code (Re)	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2156/index.do	Application under s. 83.28 of the Criminal Code (Re), [2004] 2 S.C.R. 248, 2004 SCC 42	Iacobucci and Arbour JJ.	majority	British Columbia	Constitutional law Criminal law	C	referred to	H.C. 5100/94, Public Committee Against Torture in Israel v. Israel, 53(4) P.D. 817	SC	Israel	7 Consequently, the challenge for a democratic state's answer to terrorism calls for a balancing of what is required for an effective response to terrorism in a way that appropriately recognizes the fundamental values of the rule of law. In a democracy, not every response is available to meet the challenge of terrorism. At first blush, this may appear to be a disadvantage, but in reality, it is not. A response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy. As eloquently put by President Aharon Barak of the Israeli Supreme Court: This is the fate of democracy, as not all means are acceptable to it, and not all methods employed by its enemies are open to it. Sometimes, a democracy must fight with one hand tied behind its back. Nonetheless, it has the upper hand. Preserving the rule of law and recognition of individual liberties constitute an important component of its understanding of security. At the end of the day, they strengthen its spirit and strength and allow it to overcome its difficulties. (H.C. 5100/94, Public Committee Against Torture in Israel v. Israel, 53(4) P.D. 817, at p. 845, cited in Barak, supra, at p. 148.)
2004	R. v. Kerr	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2158/index.do	R. v. Kerr, [2004] 2 S.C.R. 371, 2004 SCC 44	LeBel J.	concurring	Alberta	Criminal law	C	applied	R. v. Howell, [1982] Q.B. 416	lower-level court	UK	65 In R. v. Howell (1981), 73 Crim. App. Rep. 31 (Eng. C.A.), the court noted with approval that violence is "of the essence of a breach of the peace" (p. 37), and affirmed that the "reasonable apprehension of imminent danger of a breach of the peace" justifies arrest not only by a police constable but by "the ordinary citizen" (p. 36). See also Black's Law Dictionary (6th ed. 1990), at p. 189: Breach of the peace is a generic term, and includes all violations of public peace or order and acts tending to a disturbance thereof.

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2004	R. v. Kerr	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2158/index.do	R. v. Kerr, [2004] 2 S.C.R. 371, 2004 SCC 44	LeBel J.	concurring	Alberta	Criminal law	C	referred to	Vallance v. The Queen (1961), 108 C.L.R. 56	SC	Australia	84 The elements of the offence must be distinguished from the evidentiary problems that arise in any offence where the trier of fact is called on to determine the subjective intent of the accused. No earthly judge can enter the mind of the accused. Rather, one must look at externalities or objective indicia of an accused's state of mind. The classic statement explaining this distinction is found in Vallance v. The Queen (1961), 108 C.L.R. 56 (Aust. H.C.), Windeyer J. at p. 83, and adopted by the Ontario Court of Appeal in R. v. Mulligan (1974), 18 C.C.C. (2d) 270, at p. 275: A man's own intention is for him a subjective state, just as are his sensations of pleasure or of pain. But the state of another man's mind, or of his digestion, is an objective fact. When it has to be proved, it is to be proved in the same way as other objective facts are proved. A jury must consider the whole of the evidence relevant to it as a fact in issue. If an accused gives evidence of what his intentions were, the jury must weigh his testimony along with whatever inference as to his intentions can be drawn from his conduct or from other relevant facts. References to a "subjective test" could lead to an idea that the evidence of an accused man as to his intent is more credible than his evidence of other matters. It is not: he may or may not be believed by the jury. Whatever he says, they may be able to conclude from the whole of the evidence that beyond doubt he had a guilty mind and a guilty purpose. But always the questions are what did he in fact know, foresee, expect, intend. [Emphasis in original.] I believe that this is what Gale C.J.O. meant in Nelson, supra, at p. 31, when he stated that the "subjective purpose of the accused, as testified to by him, is a factor but only one of the factors, which must be considered by the trial Judge in deciding [what] was the 'purpose of the possession'" (emphasis in original). In other words, the trier of fact must weigh the credibility of the accused's testimony against all other evidence of his subjective intent. I believe that this is also what McGillivray J.A. meant in Nelson, supra, at p. 35, when he stated: "[s]ubjective evidence is to be considered and weighed just
2004	R. v. Kerr	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2158/index.do	R. v. Kerr, [2004] 2 S.C.R. 371, 2004 SCC 44	Binnie J.	dissenting	Alberta	Criminal law	C	D	R. v. Howell, [1982] Q.B. 416	lower-level court	UK	91 The definition I propose of a danger to the public peace is supported in the English authorities. In R. v. Howell, [1982] Q.B. 416 (C.A.), at pp. 426-27, Watkins L.J. held for the court that there is no breach of the peace unless an act is done or threatened to be done which (a) actually harms a person or, in his presence, his property; (b) is likely to cause such harm; or (c) puts someone in fear of such harm: A comprehensive definition of the term "breach of the peace" has very rarely been formulated so far as, with considerable help from counsel, we have been able to discover from cases which go as far back as the 18th century. The older cases are of considerable interest but they are not a sure guide to what the term is understood to mean today, since keeping the peace in this country in the latter half of the 20th century presents formidable problems which bear upon the evolving process of the development of this breach of the common law. . . . We are emboldened to say that there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance. . . . I see no principled reason why a similar definition, with the incorporation of recklessness, should not apply to "dangerous to the public peace" under s.
2004	R. v. Kerr	6/23/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2158/index.do	R. v. Kerr, [2004] 2 S.C.R. 371, 2004 SCC 44	Bastarache J.	majority	Alberta	Criminal law	C	applied	Chandler v. Director of Public Prosecutions, [1962] 3 All E.R. 142	SC	UK (HL)	34 Thus, given the unique nature of the wording of the provision in question, Canadian decisions addressing the mens rea requirements of other specific intent crimes are of little assistance. What is helpful, however, is the House of Lords decision in Chandler v. Director of Public Prosecutions, [1962] 3 All E.R. 142, where at issue was s. 1(1) of the Official Secrets Act, 1911, which provided as follows: If any person for any purpose prejudicial to the safety or interests of the state — (a) approaches or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act . . . he shall be guilty of felony . . . . The similarity in the wording of this provision to that at issue — "for any purpose prejudicial" versus "for a purpose dangerous" — is readily apparent. On the meaning of the term "purpose", Lord Devlin stated at p. 155: I shall begin by considering the word "purpose", for both sides have relied on this word in different senses. Broadly, the appellants contend that it is to be given a subjective meaning and the Crown an objective one. I have no doubt that it is subjective. A purpose must exist in the mind. It cannot exist anywhere else. The word can be used to designate either the main object which a man wants or hopes to achieve by the contemplated act, or it can be used to designate those objects which he knows will probably be achieved by the act, whether he wants them or not. I am satisfied that in the criminal law in general, and in this statute in particular, its ordinary sense is the latter one. In the former sense it cannot in practice be distinguished from motive which is normally irrelevant in criminal law. Its use in that sense would make this statute quite inept. As my noble and learned friend LORD REID pointed out during the argument, a spy could secure an acquittal by satisfying the jury that his purpose was to make money for himself, a purpose not in itself prejudicial to the state, and that he was indifferent to all the other consequences of his acts. Accordingly, all the results which a man appreciates will probably flow from his act are classifiable as "purposes" within the meaning of s. 1: and since the statute refers to "any purpose", the prosecution is entitled to rely on any of them. The next question then is whether the selected purpose is "prejudicial" or not and that question is in my opinion to be answered objectively. [Emphasis added.] This mens rea analysis is precisely that proposed herein: first, the individual's purpose is to be determined subjectively, and second, the dangerousness of the purpose is to be determined objectively (see also R. v. Dugan (1974), 21 C.C.C. (2d) 45 (Ont. Prov. Ct.); R. v. Beeds, [1972] 6 W.W.R. 44 (Sask. Q.B.)).

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2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	LeBel J.	dissenting	British Columbia	Torts	C	D	Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918	SC	US	171 Canfor has only established that the target rate is maintained by charging higher stumpage rates to others. That the target revenue is maintained as a result is by no means certain. In fact, a basic rule of economics states that when prices rise, the quantity demanded falls. Even for a monopolistic supplier of timber licences, as the Crown is in the B.C. Interior, there are consequences to raising stumpage rates as a result of forest fires, consequences which are too numerous to consider and beyond the competence of the courts. If this Court wishes to allow the defence that the Crown has recouped all of its losses from the forest fire by charging higher stumpage rates to other customers in the B.C. Interior, then to be fair it should carry this analysis to its bitter end. This would require that the Court inquire into whether the Crown suffered any economic loss as a result of increased stumpage fees charged to other licensees. Did this lead to less harvesting overall? Did it result in less corporate taxes for the Crown? Did it have any effect on employment in the forest sector, thereby affecting personal income taxes and social program spending? As I will discuss below, in my consideration of the passing-on defence, this type of analysis would be "endless and futile" and would tax the institutional capacities of the courts. As Holmes J. stated, quite succinctly, in Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918), at pp. 533-34: The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to a defendant so it holds him liable if proximately the plaintiff has suffered a loss. Here, proximately, the plaintiff has suffered a loss. To the extent that the Crown has shown that it has received less stumpage revenue in the Stone Creek fire area as a result of Canfor's negligence, it has established a right of recovery in damages. The fact that the Crown had a system in place whereby it attempted to recoup that loss by charging higher stumpage rates to others in the B.C. Interior should be an irrelevant factor when it comes to
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	LeBel J.	dissenting	British Columbia	Torts	C	D	Hussain v. New Taplow Paper Mills Ltd., [1988] 1 All E.R. 541	SC	UK (HL)	190 McLachlin J.'s overview of the U.K. jurisprudence is illustrative of the focus of her analysis. McLachlin J. began to illustrate how the general applicability of Bradburn had been eroding by considering Browning v. War Office, [1962] 3 All E.R. 1089 (C.A.), where Lord Denning held that the amount of the plaintiff's veteran benefit should be deducted from a damage award. Only a few years later, Lord Reid held in Parry v. Cleaver, [1969] 1 All E.R. 555 (H.L.), that a policeman's pension should not be deducted from damages for loss of earnings. Sick pay was, however, deemed deductible from a damage award in Hussain v. New Taplow Paper Mills Ltd., [1988] 1 All E.R. 541 (H.L.). McLachlin J. stated as follows in Ratych, at p. 967: The jurisprudence in England on the question before this Court may be summarized as follows. While some benefits, like private insurance, remain non-deductible, wages or sick benefits paid during the period the plaintiff is unable to work have always been required to be brought into account in calculating the plaintiff's damages.
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	LeBel J.	dissenting	British Columbia	Torts	C	D	Browning v. War Office, [1962] 3 All E.R. 1089	SC	UK (HL)	188 In Ratych, the respondent police officer was injured in a motor vehicle accident. The appellant was clearly at fault. The officer was unable to work for several months because of his injuries but continued to be paid pursuant to the terms of his collective agreement. The central issue was whether these payments, made by an employer during the period when a plaintiff could not work, should be brought into account in assessing his damages for loss of earnings. Since the officer had continued to receive wages, there was no actual wage loss to speak of. At p. 964, McLachlin J. stated as follows: I conclude that the general principles underlying our system of tort law suggest that the damages awarded to the plaintiff should be confined to his or her actual loss, as closely as that can be calculated. The damages should be in an amount which will restore the plaintiff to his pre-accident position. Where pecuniary losses, such as loss of earnings, are at stake, the measure of damages is normally the plaintiff's actual financial loss. Unless the plaintiff can demonstrate such loss, he or she is not entitled to recover. This is because an essential element of tortious liability is lacking in the absence of loss. As Lord Diplock stated in Browning v. War Office, [1962] 3 All E.R. 1089, at pp. 1094-95: "A person who acts without reasonable care does no wrong in law; he commits no tort. He only does wrong, he only commits a tort, if his lack of care causes damage to the plaintiff." 190 McLachlin J.'s overview of the U.K. jurisprudence is illustrative of the focus of her analysis. McLachlin J. began to illustrate how the general applicability of Bradburn had been eroding by considering Browning v. War Office, [1962] 3 All E.R. 1089 (C.A.), where Lord Denning held that the amount of the plaintiff's veteran benefit should be deducted from a damage award. Only a few years later, Lord Reid held in Parry v. Cleaver, [1969] 1 All E.R. 555 (H.L.), that a policeman's pension should not be deducted from damages for loss of earnings. Sick pay was, however, deemed deductible from a damage award in Hussain v. New Taplow Paper Mills Ltd., [1988] 1 All E.R. 541 (H.L.). McLachlin J. stated as follows in Ratych, at p. 967: The jurisprudence in England on the question before this Court may be summarized as follows. While some benefits, like private insurance, remain non-deductible, wages or sick benefits paid during the period the plaintiff is unable to work have always been required to be brought into account in calculating the plaintiff's damages. 191 McLachlin J. then briefly showed that Australia has adopted a similar approach to deductibility of wage payments. In the United States the matter had been dealt with in large part by legislation providing for the deduction of an "array of different benefits" (p. 968). McLachlin J. then turned to the Canadian jurisprudence. She determined that, as in the United Kingdom, the influence of Bradburn had caused the courts to take a general non-deductibility approach to all types of "collateral benefits", but along with Lord Denning in Browning's case, Canadian courts shifted to deductibility. As McLachlin J. states at p. 969: As a consequence of Browning's case, Canadian courts shifted to deductibility. They deducted from damages salary continuation payments, both ex
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	LeBel J.	dissenting	British Columbia	Torts	C	D	Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968)	SC	US	205 Consider the "endlessness and futility" of the effort the Crown would have to make to rebut the presumption that has been held against it in the courts below, the presumption that it fully recouped its losses by raising stumpage rates via the CVP system after the Stone Creek fire. For each individual third-party licensee it would become necessary to individually determine, perhaps by survey or otherwise, whether they decreased their consumption as a result of the increase in stumpage fees. That is, did they put off logging until the following year, or did they continue on as planned despite the increase in prices? On a macro-economic level, the Crown would be unable to separate the effect of the increased stumpage fees resulting from the forest fire from the effect of the increased stumpage stemming from other factors affecting the timber harvesting market in the B.C. Interior. The comments of White J. are apposite in Hanover Shoe, Inc. v. United Shoe Machinery Corp., 392 U.S. 481 (1968), with respect to conducting this kind of after-the-fact analysis. At pp. 492-93, White J. remarks: We are not impressed with the argument that sound laws of economics require recognizing this [passing-on] defense. A wide range of factors influence a company's pricing policies. Normally the impact of a single change in the relevant conditions cannot be measured after the fact; indeed a businessman may be unable to state whether, had one fact been different (a single supply less expensive, general economic conditions more buoyant, or the labor market tighter, for example), he would have chosen a different price. Equally difficult to determine, in the real economic world rather than an economist's hypothetical model, is what effect a change in a company's price will have on its total sales. Finally, costs per unit for a different volume of total sales are hard to estimate. Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price had the overcharge been discontinued. Since establishing the applicability of the passing-on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable. [Emphasis added.] To the concerns of White J. I would add that one should in theory also look into the effect on corporate taxes, jobs and income tax levels on the Crown's ultimate revenues. The analysis would be "endless and futile" and the burden on the Crown next to impossible. The costs of mounting such an action are cause for concern, without even considering the near impossibility of conducting the full economic analysis necessary to convince a court that the losses

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2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	Missouri v. Illinois, 180 U.S. 208 (1901)	SC	US	78 Under the common law in that country, it has long been accepted that the state has a common law parens patriae jurisdiction to represent the collective interests of the public. This jurisdiction has historically been successfully exercised in relation to environmental claims involving injunctive relief against interstate public nuisances: see, e.g., North Dakota v. Minnesota, 263 U.S. 365 (1923), at p. 374; Missouri v. Illinois, 180 U.S. 208 (1901); Kansas v. Colorado, 206 U.S. 46 (1907); Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); and New York v. New Jersey, 256 U.S. 296 (1921). In Tennessee Copper, Holmes J. held for the Supreme Court of the United States, at p. 237, that, "the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain" (emphasis added).
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2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	New Jersey, Department of Environmental Protection v. Jersey Central Power and Light Co., 336 A.2d 750 (1975)	lower-level court	US	80 The parens patriae and "public trust" doctrines have led in the United States to successful claims for monetary compensation. Thus in New Jersey, Department of Environmental Protection v. Jersey Central Power and Light Co., 336 A.2d 750 (N.J. Super. Ct. App. Div. 1975), the State sued a power plant operator for a fish kill in tidal waters caused by negligent pumping that caused a temperature variation in the fish habitat. The State sought compensatory damages for the harm to public resources. The court concluded that the State had the "right and the fiduciary duty to seek damages for the destruction of wildlife which are part of the public trust" in "compensation for any diminution in that [public] trust corpus" (p. 759), noting that: It seems to us that absent some special interest in some private citizen, it is questionable whether anyone but the State can be considered the proper party to sue for recovery of damages to the environment. See also State of Washington, Department of Fisheries v. Gillette, 621 P.2d 764 (Wash. Ct. App. 1980), and State of California, Department of Fish and Game v. S.S. Bournemouth, 307 F.Supp. 922 (C.D. Cal. 1969). The potential availability of damages in parens patriae and "public trust" environmental actions has also been affirmed in State of Maine v. M/V Tamano, 357 F.Supp. 1097 (D. Me. 1973), and State of Maryland, Department of Natural
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2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	Bellingham v. Dhillon, [1973] Q.B. 304	lower-level court	UK	107 The British Westinghouse principle of mitigation has been extended to tort claims: Andros Springs v. World Beauty, [1970] P. 144 (C.A.); Bellingham v. Dhillon, [1973] Q.B. 304 (C.A.); 1874000 Nova Scotia Ltd. v. Adams (1997), 146 D.L.R. (4th) 466 (N.S.C.A.); and S. M. Waddams, The Law of Damages (4th ed. 2004), at para. 15.730. Waddams summarizes the effect of the mitigation cases, at para. 15.800: These considerations suggest what seems to be a test often applied, that is, whether the plaintiff could, even in the absence of the wrong, have made the disputed profit. If so, it is treated as collateral. If not, it goes to reduce the plaintiff's loss. See also Karas v. Rowlett, [1944] S.C.R. 1; Cemco Electrical Manufacturing Co. v. Van Snellenberg, [1947] S.C.R. 121; Apeco of Canada, Ltd. v. Windmill Place, [1978] 2 S.C.R. 385; Asamera Oil Corp. v. Sea Oil & General Corp., [1979] 1 S.C.R. 633
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918	SC	US	111 Almost any business will have to "pass on" the impact of a business loss to its clients or customers. It is not generally open to a wrongdoer to dispute the existence of a loss on the basis it has been "passed on" by the plaintiff. Such an argument would require the court to engage in "the endlessness and futility of the effort to follow every transaction to its ultimate result": see Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531 (1918), per Holmes J., at p. 534; Oshawa Group Ltd. v. Great American Insurance Co. (1982), 36 O.R. (2d) 424 (C.A.), at pp. 430-33; Attorney-General for Nova Scotia v. Christian (1974), 49 D.L.R. (3d) 742 (S.C. App. Div.), at p. 752. However, if no revenue loss was suffered in the first place, no loss was "passed on", and the whole "passing-on" concept is irrelevant.
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	Hussain v. New Taplow Paper Mills Ltd., [1988] 1 All E.R. 541	SC	UK (HL)	113 Moreover, even where a "proximate" loss is established, the courts routinely go on to consider whether a plaintiff can recoup the loss by accessing "other sources of revenue or exercising contractual . . . rights". Contractual entitlements under collective agreements (Ratych, supra; Cunningham, supra), sick pay (Hussain v. New Taplow Paper Mills Ltd., [1988] 1 All E.R. 541 (H.L.)), private pension plans, CPP payments and other benefits discussed by my colleague LeBel J., at paras. 187 to 190, are all common instances where such consideration is given. The issue is thus not whether "other sources of revenue" can be taken into account, but whether there has been a proper analysis of the relationship between those other sources and "the loss" alleged by the plaintiff. Here the operation of the CVP is part and parcel of the pricing/revenue provisions of a legislative scheme which collectively define the Province's entitlement.
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	Bilambil-Terranora Pty Ltd. v. Tweed Shire Council, [1980] 1 N.S.W.L.R. 465	lower-level court	Australia	123 I accept in principle that in setting aside environmentally sensitive areas the Province concluded that the protected trees "had a greater value . . . left standing than being cut". I also accept that the Crown should not be penalized for acting with "ecological and environmental sanity" (para. 130). On the contrary, "the fact that the owner of property does not desire to use it, or to use it to the best economic advantage, has not meant that its value is less than it would be in the hands of one who regarded it differently": Bilambil-Terranora Pty Ltd. v. Tweed Shire Council, [1980] 1 N.S.W.L.R. 465 (C.A.), at para. 113. See also S. M. Waddams, The Law of Damages (loose-leaf ed.), at para. 1.1410.
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	C	referred to	State of Ohio v. U.S. Department of the Interior, 880 F.2d 432 (1989)	lower-level court	US	132 The provincial Crown's position is supported by the federal Crown, who argues that excessive focus on market values is inappropriate when attempting to assess and quantify damages to the environment (quoting State of Ohio v. U.S. Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989), at pp. 462-63): While it is not irrational to look to market price as one factor in determining the use value of a resource, it is unreasonable to view market price as the exclusive factor, or even the predominant one. From the bald eagle to the blue whale and snail darter, natural resources have values that are not fully captured by the market system. [Emphasis in original.] 140 The inclusion of passive-use values was upheld in the context of CERCLA (Superfund) by the Court of Appeals for the District of Columbia in State of Ohio v. U.S. Department of the Interior, supra, provided, the court added, such values could be reliably measured. The issue of reliable measurement (together with proper pleading) lies at the root of the present appeal

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2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	R		Civil Code (France), art. 538.	statute	France	75 A similar notion persisted in European legal systems. According to the French Civil Code, art. 538, there was common property in navigable rivers and streams, beaches, ports, and harbours. A similar set of ideas was put forward by H. de Bracton in his treatise on English law in the mid-13th century (Bracton on the Laws and Customs of England (1968), vol. 2, at pp. 39-40): By natural law these are common to all: running water, air, the sea and the shores of the sea . . . . No one therefore is forbidden access to the seashore . . . . All rivers and ports are public, so that the right to fish therein is common to all persons. The use of river banks, as of the river itself, is also public by the jus gentium
2004	British Columbia v. Canadian Forest Products Ltd.	6/11/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2152/index.do	British Columbia v. Canadian Forest Products Ltd., [2004] 2 S.C.R. 74, 2004 SCC 38	Binnie J.	majority	British Columbia	Torts	R		Comprehensive Environmental Responses, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (1982 Supp. V 1987).	statute	US	65 In this Court, the Crown suggested that it was entitled to collect damages in negligence, "to effectively deter environmental harm and compensate the public for environmental damage". Canfor took the position that any such claim amounted to a "public law" remedy available only under special legislation such as the United States' Comprehensive Environmental Responses, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (1982 Supp. V 1987) ("CERCLA"), often called the "Superfund" law. Such losses are not, Canfor says, recoverable by a landowner in tort. The Crown's argument, Canfor implies, confuses distributive justice with corrective justice. Canfor was supported in this regard by the industry intervener, the Council of Forest Industries ("COFI") and others. Canfor and COFI took the view that when the Crown sues in tort, it is limited to the rights of a private party. It was conceded that there is an accepted role for the Attorney General as defender of the public interest in the law of public nuisance, but the remedy available in such cases is injunctive, not compensatory.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	Kirin Amgen Inc. v. Hoechst Marion Roussel Ltd., [2002] E.W.J. No. 3792 (QL), [2002] EWCA Civ. 1096	lower-level court	UK	127 This interpretation is fair and predictable because the public must equally be entitled to rely on this Court's jurisprudence in determining the scope of patent claims: Kirin Amgen Inc. v. Hoechst Marion Roussel Ltd., [2002] E.W.J. No. 3792 (QL), [2002] EWCA Civ. 1096, at para. 60. In Kirin Amgen, the English Court of Appeal considered the testimony of opposing experts (persons skilled in the art) and narrowed a patent claim over a naturally occurring DNA sequence (EPO gene) so that it excluded that DNA sequence in its natural and therefore unpatentable form. In doing so, the court stated at para. 60: The patentee could not monopolise the gene per se as that existed in nature. The patentee therefore monopolised the DNA sequence encoding for DNA when isolated and in that respect was suitable for use to express EPO in a host cell. As of 1984 such a monopoly would have seemed to give fair protection. To seek to monopolise use of the sequence when not isolated by inserting a construct into a human cell would provide a monopoly not properly supported by the description in the specification. We also believe that third parties could reasonably expect that if they did not use a DNA sequence for insertion into a host cell, there would be no infringement. [Emphasis added.] 141 The issue at this stage is whether the appellants used the invention so as to interfere with the exclusive rights of the patentee, keeping in mind that the scope of Monsanto's patent does not extend to plants. The public is entitled to rely on the reasonable expectation that unpatentable subject matter falls outside the scope of patent protection and its use does not constitute an infringement. Kirin Amgen, supra, at para. 60
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	Pfizer Corp. v. Ministry of Health, [1965] A.C. 512	SC	UK (HL)	158 Most people are not aware of the contents of patents but are effectively deemed to have knowledge. What matters is what the person does. If the person's acts interfere with the exclusive rights granted by the patent, then there is infringement: Pfizer Corp. v. Ministry of Health, [1965] A.C. 512 (H.L.). A case such as British United Shoe Machinery Co. v. Simon Collier Ltd. (1910), 27 R.P.C. 567 (H.L.), that may suggest the contrary is unusual and restricted to its facts: Pfizer, supra, or goes to remedy and not infringement: Terrell on the Law of Patents, supra, at para. 8.09. As pointed out by my colleagues, the presumption of use may only be rebutted in the very rare circumstances, such as in British United Shoe Machinery Co. v. Simon Collier Ltd., supra, where neither the product nor its stand-by value was used.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368 (1998)	lower-level court	US	133 Subject matters that are specifically precluded by statute from patent protection are natural phenomena, laws of nature, and scientific principles: s. 27(8) . Other subject matter has been excluded by judicial interpretation of s. 2 definitions of "invention" and "process" and s. 27(8) . For example, the following have been excluded: computer programs if the discovery involved is a method of calculation (Schlumberger Canada Ltd. v. Commissioner of Patents, [1982] 1 F.C. 845 (C.A.)); methods of medical treatment (Tennessee Eastman Co. v. Commissioner of Patents, [1974] S.C.R. 111); higher life forms (Harvard College, supra); business systems and methods and professional skills and methods (State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998)); printed matter producing only an artistic intellectual or literary result (Re Application of Boussac, CIPO, Commissioner's Decision No. 143, March 10, 1973); mere human conduct or mental steps, or instructions (Re Application of Ijzerman, CIPO, Commissioner's Decision No. 254, July 4, 1975; Gale's Application, [1991] R.P.C. 305 (Pat. Ct.), at p. 323); and architectural plans (Application No. 995 for a Townhouse Building Design (Re) (1979), 53 C.P.R. (2d) 211 (Pat. App. Bd.)). These examples demonstrate that it is not unusual for courts and the Patent Office to interpret provisions of the Patent Act so as to exclude subject matter from patentability.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	Gale's Application, [1991] R.P.C. 305	lower-level court	UK	133 Subject matters that are specifically precluded by statute from patent protection are natural phenomena, laws of nature, and scientific principles: s. 27(8) . Other subject matter has been excluded by judicial interpretation of s. 2 definitions of "invention" and "process" and s. 27(8) . For example, the following have been excluded: computer programs if the discovery involved is a method of calculation (Schlumberger Canada Ltd. v. Commissioner of Patents, [1982] 1 F.C. 845 (C.A.)); methods of medical treatment (Tennessee Eastman Co. v. Commissioner of Patents, [1974] S.C.R. 111); higher life forms (Harvard College, supra); business systems and methods and professional skills and methods (State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998)); printed matter producing only an artistic intellectual or literary result (Re Application of Boussac, CIPO, Commissioner's Decision No. 143, March 10, 1973); mere human conduct or mental steps, or instructions (Re Application of Ijzerman, CIPO, Commissioner's Decision No. 254, July 4, 1975; Gale's Application, [1991] R.P.C. 305 (Pat. Ct.), at p. 323); and architectural plans (Application No. 995 for a Townhouse Building Design (Re) (1979), 53 C.P.R. (2d) 211 (Pat. App. Bd.)). These examples demonstrate that it is not unusual for courts and the Patent Office to interpret provisions of the Patent Act so as to exclude subject matter from patentability.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	The King v. American Optical Co. (1950), 11 Fox Pat. C. 62	lower-level court	UK	146 Dickson J. (as he then was) in Consolboard, supra, cited with approval, at p. 526, the following passage, per Thorson P. in The King v. American Optical Co. (1950), 11 Fox Pat. C. 62 (Ex. Ct.), at p. 85: If an inventor has adequately defined his invention he is entitled to its benefit even if he does not fully appreciate or realize the advantages that flow from it or cannot give the scientific reasons for them. It is sufficient if the specification correctly and fully describes the invention and its operation or use as contemplated by the inventor, so that the public, meaning thereby persons skilled in the art, may be able, with only the specification, to use the invention as successfully as the inventor could himself.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	American Cyanamid Co. v. Charles E. Frosst & Co. (1965), 29 Fox Pat. C. 153	lower-level court	UK	155 It is well established that the use or sale of unpatented subject matter may still infringe a patent where the unpatented subject matter is made employing a patented process: Saccharin Corp. v. Anglo-Continental Chemical Works, Ld. (1900), 17 R.P.C. 307 (H.C.J.); F. Hoffmann-Laroche, supra, at p. 415; Wellcome Foundation Ltd. v. Apotex Inc. (1991), 39 C.P.R. (3d) 289 (F.C.T.D.); American Cyanamid Co. v. Charles E. Frosst & Co. (1965), 29 Fox Pat. C. 153 (Ex. Ct.). This proposition does not assist the respondent, however. The appellants have not infringed the process claim because they have not used the claimed method to produce their canola crop.
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	Arbour J.	dissenting in part	Federal Court of Appeal	Intellectual property	C	D	Merrell Dow Pharmaceuticals Inc. v. H.N. Norton & Co., [1996] R.P.C. 76	lower-level court	UK	157 One option that was urged on us by the appellants was to incorporate a knowledge element into the definition of "use". Such a solution would be broadly applicable to other types of patents and lend uncertainty to a settled issue in Canadian patent law that intention is irrelevant to infringement: Terrell on the Law of Patents (15th ed. 2000), at para. 8.10; Hughes and Woodley on Patents (1984), at § 26; British United Shoe Machinery Co. v. Gimson Shoe Machinery Co. (1928), 45 R.P.C. 290 (C.A.), at p. 308; Computalog Ltd. v. Comtech Logging Ltd. (1992), 44 C.P.R. (3d) 77 (F.C.A.), at p. 88; Illinois Tool Works Inc. v. Cobra Anchors Co. (2002), 221 F.T.R. 161, 2002 FCT 829. Lord Hoffmann in Merrell Dow Pharmaceuticals Inc. v. H.N. Norton & Co., [1996] R.P.C. 76 (H.L.), at p. 92, pointed out that since liability is absolute, the alleged infringer's state of mind is irrelevant. "[I]t is and always has been the law in relation to direct infringement that the knowledge or intention of the infringer is irrelevant" (Terrell on the Law of Patents, supra, at para. 8.08).

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2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	McLachlin C.J. and Fish J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	Pfizer Corp. v. Ministry of Health, [1965] A.C. 512	SC	UK (HL)	55 Commenting on British United Shoe in Pfizer Corp. v. Ministry of Health, [1965] A.C. 512 (H.L.), Lord Wilberforce observed that "if it can positively be proved that the possession was innocent of any actual use or intention to use, the defendant will not be held to have infringed" (p. 572). Possession requires an "additional ingredient" to make up an infringement (p. 572). In Pfizer, according to Lord Wilberforce, use arose from the transportation of patented articles (possession) with a view to trade (the additional ingredient). Where the patent holder shows that the defendant possessed the patented invention, it is up to the defendant to show the absence of the "additional ingredient".
2004	Monsanto Canada Inc. v. Schmeiser	5/21/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do	Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34	McLachlin C.J. and Fish J.	majority	Federal Court of Appeal	Intellectual property	R		Directive 98/44/EC of the European Parliament and of the Council of July 6, 1998 on the legal protection of biotechnological inventions, [1998] O.J. L. 213/13	international	EU	89 This is also the perspective adopted by Arbour J. In support of the proposition that infringement of gene claims occurs only in a laboratory setting, she cites Kirin Amgen Inc. v. Hoechst Marion Roussel Ltd., [2002] E.W.J. No. 3792 (QL), [2002] EWCA Civ. 1096 (C.A.). That case dealt with a protein useful in the diagnosis and treatment of blood disorders. The English court construed the claims to exclude the naturally occurring form of the DNA sequence in a human cell. However, this was done to accord with the provisions of a regulatory scheme that has no parallel in Canada: Article 5 of the European Parliament's Directive 98/44/EC, which regulates patentability of biotechnological inventions. It states that the discovery of elements of the human body, including genes, is not patentable, although such elements are patentable when isolated or otherwise produced through technical means. The legislature has not enacted a comparable statutory scheme in Canada to narrow the scope of patent construction. Thus, Kirin Amgen is not applicable to the case before this Court.
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2004	Harper v. Canada (Attorney General)	5/18/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2146/index.do	Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827, 2004 SCC 33	McLachlin C.J. and Major J.	dissenting in part	Alberta	Constitutional law	C	D	Martin v. City of Struthers, 319 U.S. 141 (1943)	SC	US	18 This is not a Canadian idiosyncrasy. The right to receive information is enshrined in both the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), and the International Covenant on Civil and Political Rights, Can. T.S. 1976 No. 47. Canada is a signatory to both. American listeners enjoy the same right; see Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367 (1969), at p. 390; Martin v. City of Struthers, 319 U.S. 141 (1943), at p. 143. The words of Marshall J., dissenting, in Kleindienst v. Mandel, 408 U.S. 753 (1972), at p. 775, ring as true in this country as they do in our neighbour to the south: [T]he right to speak and hear — including the right to inform others and to be informed about public issues — are inextricably part of [the First Amendment]. The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth. [Citations omitted.]
2004	Harper v. Canada (Attorney General)	5/18/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2146/index.do	Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827, 2004 SCC 33	McLachlin C.J. and Major J.	dissenting in part	Alberta	Constitutional law	C	D	Kleindienst v. Mandel, 408 U.S. 753 (1972)	SC	US	18 This is not a Canadian idiosyncrasy. The right to receive information is enshrined in both the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), and the International Covenant on Civil and Political Rights, Can. T.S. 1976 No. 47. Canada is a signatory to both. American listeners enjoy the same right; see Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367 (1969), at p. 390; Martin v. City of Struthers, 319 U.S. 141 (1943), at p. 143. The words of Marshall J., dissenting, in Kleindienst v. Mandel, 408 U.S. 753 (1972), at p. 775, ring as true in this country as they do in our neighbour to the south: [T]he right to speak and hear — including the right to inform others and to be informed about public issues — are inextricably part of [the First Amendment]. The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth. [Citations omitted.]
2004	Harper v. Canada (Attorney General)	5/18/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2146/index.do	Harper v. Canada (Attorney General), [2004] 1 S.C.R. 827, 2004 SCC 33	McLachlin C.J. and Major J.	dissenting in part	Alberta	Constitutional law	C	D	United States v. Dellinger, 472 F.2d 340 (1972)	lower-level court	US	20 It is clear that the right here at issue is of vital importance to Canadian democracy. In the democracy of ancient Athens, all citizens were able to meet and discuss the issues of the day in person. In our modern democracy, we cannot speak personally with each of our fellow citizens. We can convey our message only through methods of mass communication. Advertising through mail-outs and the media is one of the most effective means of communication on a large scale. We need only look at the reliance of political parties on advertising to realize how important it is to actually reaching citizens — in a word, to effective participation. The ability to speak in one's own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present her views for public consumption and attempt to persuade her fellow citizens. Pell J.'s observation could not be more apt: "[s]peech without effective communication is not speech but an idle monologue in the wilderness": see United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), at p. 415.
2004	Pritchard v. Ontario (Human Rights Commission)	5/14/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2144/index.do	Pritchard v. Ontario (Human Rights Commission), [2004] 1 S.C.R. 809, 2004 SCC 31	MAJOR J.	unanimous	Ontario	Administrative law Professional law	C	referred to	Buttes Gas & Oil Co. v. Hammer (No. 3), [1980] 3 All E.R. 475	lower-level court	UK	24 The common interest exception originated in the context of parties sharing a common goal or seeking a common outcome, a "selfsame interest" as Lord Denning, M.R., described it in Buttes Gas & Oil Co. v. Hammer (No. 3), [1980] 3 All E.R. 475 (C.A.), at p. 483. It has since been narrowly expanded to cover those situations in which a fiduciary or like duty has been found to exist between the parties so as to create common interest. These include trustee-beneficiary relations, fiduciary aspects of Crown-aboriginal relations and certain types of contractual or agency relations, none of which are at issue here.
2004	Cartaway Resources Corp. (Re)	4/22/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2139/index.do	Cartaway Resources Corp. (Re), [2004] 1 S.C.R. 672, 2004 SCC 26	LEBEL J.	unanimous	British Columbia	Action Administrative law Securities	C	referred to	United States v. Matthews, 787 F.2d 38 (1986)	lower-level court	US	56 This approach is consonant with United States securities jurisprudence, which accepts that general deterrence may be a consideration in imposing penalties for fraudulent behaviour. The rationale is that the public interest demands appropriate sanctions to secure compliance with the rules, regulations and policies of the Securities and Exchange Commission ("SEC"): see, e.g., United States v. Matthews, 787 F.2d 38 (2d Cir. 1986), at p. 47. Civil penalties are increasingly important to the SEC for a number of reasons, including general deterrence: see R. G. Ryan, "Securities Enforcement: Civil Penalties in SEC Enforcement Cases: A Rising Tide" (2003), 17 Insights 17.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2004	Garland v. Consumers' Gas Co.	4/22/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2138/index.do	Garland v. Consumers' Gas Co., [2004] 1 S.C.R. 629, 2004 SCC 25	IACOBUCCI J.	unanimous	Ontario	Action	C	referred to	Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512	SC	UK (HL)	64 The appellant submits that the defence of change of position is not available to a defendant who is a wrongdoer and that, since the respondent in this case was enriched by its own criminal misconduct, it should not be permitted to avail itself of the defence. I agree. The rationale for the change of position defence appears to flow from considerations of equity. G. H. L. Fridman writes that "[o]ne situation which would appear to render it inequitable for the defendant to be required to disgorge a benefit received from the plaintiff in the absence of any wrongdoing on the part of the defendant would be if he has changed his position for the worse as a result of the receipt of the money in question" (Restitution (2nd ed. 1992), at p. 458). In the leading British case on the defence, Lipkin Gorman v. Karpnale Ltd., [1992] 4 All E.R. 512 (H.L.), Lord Goff stated (at p. 533): [I]t is right that we should ask ourselves: why do we feel that it would be unjust to allow restitution in cases such as these [where the defendant has changed his or her position]? The answer must be that, where an innocent defendant's position is so changed that he will suffer an injustice if called upon to repay or to repay in full, the injustice of requiring him so to repay outweighs the injustice of denying the plaintiff restitution.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Moorhouse v. University of New South Wales, [1976] R.P.C. 151	SC	Australia	40 The trial judge declined to deal with this issue, in part because of the limited nature of the evidence on this question. The Federal Court of Appeal, relying in part on the Australian High Court decision in Moorhouse v. University of New South Wales, [1976] R.P.C. 151, concluded that the Law Society implicitly sanctioned, approved or countenanced copyright infringement of the publishers' works by failing to control copying and instead merely posting a notice indicating that the Law Society was not responsible for infringing copies made by the machine's users. 41 With respect, I do not agree that this amounted to authorizing breach of copyright. Moorhouse, supra, is inconsistent with previous Canadian and British approaches to this issue. See D. Vaver, Copyright Law (2000), at p. 27, and McKeown, supra, at p. 21-108. In my view, the Moorhouse approach to authorization shifts the balance in copyright too far in favour of the owner's rights and unnecessarily interferes with the proper use of copyrighted works for the good of society as a whole.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Moreau v. St. Vincent, [1950] Ex. C.R. 198	lower-level court	UK	8 Copyright law in Canada protects a wide range of works including every original literary, dramatic, musical and artistic work, computer programs, translations and compilations of works: see ss. 5 , 2 and 2.1 of the Copyright Act . Copyright law protects the expression of ideas in these works; it does not protect ideas in and of themselves. Thorson P. explained it thus in Moreau v. St. Vincent, [1950] Ex. C.R. 198, at p. 203: It is, I think, an elementary principle of copyright law that an author has no copyright in ideas but only in his expression of them. The law of copyright does not give him any monopoly in the use of the ideas with which he deals or any property in them, even if they are original. His copyright is confined to the literary work in which he has expressed them. The ideas are public property, the literary work is his own. It flows from the fact that copyright only protects the expression of ideas that a work must also be in a fixed material form to attract copyright protection: see s. 2 definitions of "dramatic work" and "computer program" and, more generally, Goldner v. Canadian Broadcasting Corp. (1972), 7 C.P.R. (2d) 158 (F.C.T.D.), at p. 162; Grignon v. Roussel (1991), 38 C.P.R. (3d) 4 (F.C.T.D.), at p. 7.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991)	SC	US	15 There are competing views on the meaning of "original" in copyright law. Some courts have found that a work that originates from an author and is more than a mere copy of a work is sufficient to ground copyright. See, for example, University of London Press, Ltd. v. University Tutorial Press, Ltd., [1916] 2 Ch. 601; U & R Tax Services Ltd. v. H & R Block Canada Inc. (1995), 62 C.P.R. (3d) 257 (F.C.T.D.). This approach is consistent with the "sweat of the brow" or "industriousness" standard of originality, which is premised on a natural rights or Lockean theory of "just desserts", namely that an author deserves to have his or her efforts in producing a work rewarded. Other courts have required that a work must be creative to be "original" and thus protected by copyright. See, for example, Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991); Tele-Direct (Publications) Inc. v. American Business Information, Inc., [1998] 2 F.C. 22 (C.A.). This approach is also consistent with a natural rights theory of property law; however it is less absolute in that only those works that are the product of creativity will be rewarded with copyright protection. It has been suggested that the "creativity" approach to originality helps ensure that copyright protection only extends to the expression of ideas as opposed to the underlying ideas or facts. See Feist, supra, at p. 353.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Ladbroke (Football) Ltd. v. William Hill (Football) Ltd., [1964] 1 All E.R. 465	SC	UK (HL)	33 The reported judicial decisions, when properly understood as a compilation of the headnote and the accompanying edited judicial reasons, are "original" works covered by copyright. Copyright protects originality of form or expression. A compilation takes existing material and casts it in a different form. The arranger does not have copyright in the individual components. However, the arranger may have copyright in the form represented by the compilation. "It is not the several components that are the subject of the copyright, but the over-all arrangement of them which the plaintiff through his industry has produced": Slumber-Magic Adjustable Bed Co. v. Sleep-King Adjustable Bed Co. (1984), 3 C.P.R. (3d) 81 (B.C.S.C.), at p. 84; see also Ladbroke (Football) Ltd. v. William Hill (Football) Ltd., [1964] 1 All E.R. 465 (H.L.), at p. 469.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	CBS Inc. v. Ames Records & Tapes Ltd., [1981] 2 All E.R. 812	lower-level court	UK	38 "Authorize" means to "sanction, approve and countenance": Muzak Corp. v. Composers, Authors and Publishers Association of Canada, Ltd., [1953] 2 S.C.R. 182, at p. 193; De Tervagne v. Belœil (Town), [1993] 3 F.C. 227 (T.D.). Countenance in the context of authorizing copyright infringement must be understood in its strongest dictionary meaning, namely, "[g]ive approval to; sanction, permit; favour, encourage": see The New Shorter Oxford English Dictionary (1993), vol. 1, at p. 526. Authorization is a question of fact that depends on the circumstances of each particular case and can be inferred from acts that are less than direct and positive, including a sufficient degree of indifference: CBS Inc. v. Ames Records & Tapes Ltd., [1981] 2 All E.R. 812 (Ch. D.), at pp. 823-24. However, a person does not authorize infringement by authorizing the mere use of equipment that could be used to infringe copyright. Courts should presume that a person who authorizes an activity does so only so far as it is in accordance with the law: Muzak, supra. This presumption may be rebutted if it is shown that a certain relationship or degree of control existed between the alleged authorizer and the persons who committed the copyright infringement: Muzak, supra; De Tervagne, supra; see also J. S. McKeown, Fox Canadian Law of Copyright and Industrial Designs (4th ed. (loose-leaf)), at p. 21-104, and P. D. Hitchcock, "Home Copying and Authorization" (1983), 67 C.P.R. (2d) 17, at pp. 29-33.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Hubbard v. Vosper, [1972] 1 All E.R. 1023	lower-level court	UK	52 The Copyright Act does not define what will be "fair"; whether something is fair is a question of fact and depends on the facts of each case. See McKeown, supra, at p. 23-6. Lord Denning explained this eloquently in Hubbard v. Vosper, [1972] 1 All E.R. 1023 (C.A.), at p. 1027: It is impossible to define what is 'fair dealing'. It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be a fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide. 53 At the Court of Appeal, Linden J.A. acknowledged that there was no set test for fairness, but outlined a series of factors that could be considered to help assess whether a dealing is fair. Drawing on the decision in Hubbard, supra, as well as the doctrine of fair use in the United States, he proposed that the following factors be considered in assessing whether a dealing was fair: (1) the purpose of the dealing; (2) the character of the dealing; (3) the amount of the dealing; (4) alternatives to the dealing; (5) the nature of the work; and (6) the effect of the dealing on the work. Although these considerations will not all arise in every case of fair dealing, this list of factors provides a useful analytical framework to govern determinations of fairness in future cases. 56 Both the amount of the dealing and importance of the work allegedly infringed should be considered in assessing fairness. If the amount taken from a work is trivial, the fair dealing analysis need not be undertaken at all because the court will have concluded that there was no copyright infringement. As the passage from Hubbard indicates, the quantity of the work taken will not be determinative of fairness, but it can help in the determination. It may be possible to deal fairly with a whole work. As Vaver points out, there might be no other way to criticize or review certain types of works such as photographs: see Vaver, supra, at p. 191. The amount taken may also be more or less fair depending on the purpose. For example, for the purpose of research or private study, it may be essential to copy an entire academic article or an entire judicial decision. However, if a work of literature is copied for the purpose of criticism, it will be unlikely to be fair, as the purpose of criticism is not served by copying the whole work.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Associated Newspapers Group plc v. News Group Newspapers Ltd., [1986] R.P.C. 515	lower-level court	UK	54 In Canada, the purpose of the dealing will be fair if it is for one of the allowable purposes under the Copyright Act , namely research, private study, criticism, review or news reporting: see ss. 29 , 29.1 and 29.2 of the Copyright Act . As discussed, these allowable purposes should not be given a restrictive interpretation or this could result in the undue restriction of users' rights. This said, courts should attempt to make an objective assessment of the user/defendant's real purpose or motive in using the copyrighted work. See McKeown, supra, at p. 23-6. See also Associated Newspapers Group plc v. News Group Newspapers Ltd., [1986] R.P.C. 515 (Ch. D.). Moreover, as the Court of Appeal explained, some dealings, even if for an allowable purpose, may be more or less fair than others; research done for commercial purposes may not be as fair as research done for charitable purposes.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Sillitoe v. McGraw-Hill Book Co. (U.K.), [1983] F.S.R. 545	lower-level court	UK	55 In assessing the character of a dealing, courts must examine how the works were dealt with. If multiple copies of works are being widely distributed, this will tend to be unfair. If, however, a single copy of a work is used for a specific legitimate purpose, then it may be easier to conclude that it was a fair dealing. If the copy of the work is destroyed after it is used for its specific intended purpose, this may also favour a finding of fairness. It may be relevant to consider the custom or practice in a particular trade or industry to determine whether or not the character of the dealing is fair. For example, in Sillitoe v. McGraw-Hill Book Co. (U.K.), [1983] F.S.R. 545 (Ch. D.), the importers and distributors of "study notes" that incorporated large passages from published works attempted to claim that the copies were fair dealings because they were for the purpose of criticism. The court reviewed the ways in which copied works were customarily dealt with in literary criticism textbooks to help it conclude that the study notes were not fair dealings for the purpose of criticism.
2004	CCH Canadian Ltd. v. Law Society of Upper Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2125/index.do	CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13	McLachlin C.J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Beloff v. Pressdram Ltd., [1973] 1 All E.R. 241	lower-level court	UK	58 The nature of the work in question should also be considered by courts assessing whether a dealing is fair. Although certainly not determinative, if a work has not been published, the dealing may be more fair in that its reproduction with acknowledgement could lead to a wider public dissemination of the work — one of the goals of copyright law. If, however, the work in question was confidential, this may tip the scales towards finding that the dealing was unfair. See Beloff v. Pressdram Ltd., [1973] 1 All E.R. 241 (Ch. D.), at p. 264.
2004	Gifford v. Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2127/index.do	Gifford v. Canada, [2004] 1 S.C.R. 411, 2004 SCC 15	MAJOR J.	unanimous	Federal Court of Appeal	Taxation	C	referred to	Wharf Properties Ltd. v. Commissioner of Inland Revenue, [1997] 2 W.L.R. 334	SC	UK (PC)	9 Rothstein J.A., in reversing the Tax Court decision, held the simple lack of a proprietary interest in the list did not preclude the application of previous client list cases. Applying those cases and the tests from Johns-Manville, supra, he found the payment to Bentley to be a capital expense. On the question of interest deductibility, Rothstein J.A. determined that he was prevented from finding interest a current expense for two reasons: (1) earlier decisions of this Court had held that interest was always a capital expense; and (2) the Act was a complete code on the deductibility of interest. His conclusion was that if it were not for these two reasons then, as a matter of logic, he would have agreed the interest payment was a current expense in accordance with the test used by the Privy Council in Wharf Properties Ltd. v. Commissioner of Inland Revenue, [1997] 2 W.L.R. 334. 38 There are a number of ways to characterize the payment of interest. The method adopted by Bowman A.C.J.T.C., which looked at the purpose the proceeds of the loan were being used for, is in accordance with general accounting principles and logic. In Steele v. Deputy Commissioner of Taxation (1999), 161 A.L.R. 201, the Australian High Court adopted a test that results in interest almost always being a current expense. In Wharf Properties, supra, the Privy Council adopted a test that looked at what the loan proceeds were being used for at the point in time when the interest was paid. While these tests are not all the same, they have one underlying feature that significantly reduces their application to determining the deductibility of interest in Canada. They are all concerned with determining whether each payment of interest is an "expenditure of a capital nature" (Wharf Properties, supra), or an "outgoing of a capital nature" (Steele, supra), neither of which answers the question which is relevant for Canadian purposes of whether it was a payment "on account of capital". In attempting to determine if the expenditure or outgoing was of a capital nature, as required by the relevant statutes, other jurisdictions have looked to what the loan proceeds were spent on. Under the current wording in our Act this is not necessary, as we are only concerned with whether the payment is "on account of capital". 39 Under our current Act it is not necessary to determine whether the payment is a capital expenditure but to determine whether the payment is being made "on account of capital". This distinction in terms is particularly important in relation to interest payments, because loan proceeds are seldom retained in the form they are received, unlike other capital assets. This distinction means that under our Act it is only necessary to consider what the proceeds of the loan are to the borrower when they are received, and does not require an examination of what those loan proceeds are spent on. If the money adds to the financial capital then the payment of interest on that loan will be considered to be a payment "on account of capital". If the loan proceeds constitute the inventory of the borrower, as is the case with moneylenders, then the payment of interest would be deductible. Lord Hoffmann in Wharf Properties, supra, discussed how loan proceeds can be different things to the borrower, at p. 339: This decision does not seem to their Lordships to help Mr. Gardiner at all. It is directed to a different question, namely whether the sum borrowed constitutes an addition to the company's capital or is a revenue receipt. In other words, it looks at the nature of the loan in the hands of the recipient rather than the question of whether a payment of interest is a capital or revenue expense. It is unusual for a loan of money to constitute a revenue receipt but this can be the case if borrowing money is "part of the ordinary day to day incidence of carrying on the business" (per Lord Templeman in the Beauchamp case, at p. 497) which may be the case in businesses of banking, financing or otherwise dealing in money: see Farmer v. Scottish North American Trust Ltd. [1912] A.C. 118. Ordinarily, however, a loan to a trading company, whatever the purpose for which it is intended to be used, will be an addition to that company's capital. Mr. Gardiner did submit that the shortness of the successive terms of the loans in this case was enough to make them revenue receipts, but their Lordships do not agree. The borrowing did not form part of the company's trading activities. While it or a replacement loan remained in place it was an addition to Wharf's capital: compare European Investment Trust Co. Ltd. v. Jackson (1932) 18 T.C. 1. [Italics in original;
2004	Gifford v. Canada	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2127/index.do	Gifford v. Canada, [2004] 1 S.C.R. 411, 2004 SCC 15	MAJOR J.	unanimous	Federal Court of Appeal	Taxation	C	referred to	Steele v. Deputy Commissioner of Taxation (1999), 161 A.L.R. 201	SC	Australia	38 There are a number of ways to characterize the payment of interest. The method adopted by Bowman A.C.J.T.C., which looked at the purpose the proceeds of the loan were being used for, is in accordance with general accounting principles and logic. In Steele v. Deputy Commissioner of Taxation (1999), 161 A.L.R. 201, the Australian High Court adopted a test that results in interest almost always being a current expense. In Wharf Properties, supra, the Privy Council adopted a test that looked at what the loan proceeds were being used for at the point in time when the interest was paid. While these tests are not all the same, they have one underlying feature that significantly reduces their application to determining the deductibility of interest in Canada. They are all concerned with determining whether each payment of interest is an "expenditure of a capital nature" (Wharf Properties, supra), or an "outgoing of a capital nature" (Steele, supra), neither of which answers the question which is relevant for Canadian purposes of whether it was a payment "on account of capital". In attempting to determine if the expenditure or outgoing was of a capital nature, as required by the relevant statutes, other jurisdictions have looked to what the loan proceeds were spent on. Under the current wording in our Act this is not necessary, as we are only concerned with whether the payment is "on account of capital"
2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	R. v. Kearley (No. 2), [1994] 3 All E.R. 246	SC	UK (HL)	11 The traditional view in Canada was that a criminal appeal ought never to survive the death of the accused, although the courts did not always make it clear whether this was thought to result from a lack of jurisdiction, or a rule of practice and procedure. See, e.g., R. v. Hay, [1994] O.J. No. 2598 (QL) (C.A.), and R. v. Lewis (1997), 153 D.L.R. (4th) 184 (B.C.C.A.). Abatement occurred even if the appeal had been argued and the decision reserved (see Re Collins and The Queen (1973), 13 C.C.C. (2d) 172 (Ont. C.A.)), and occurred as well where the appellant was the Crown and it was the accused respondent who died (see Re Cadeddu and The Queen (1983), 4 C.C.C. (3d) 112 (Ont. C.A.)). The "dead can't appeal" approach is also followed in England. See, e.g., R. v. Kearley (No. 2), [1994] 3 All E.R. 246, where the House of Lords held that a criminal appeal abates upon death, leaving the conviction and the sentence intact, per Lord Jauncey, at p. 253: My Lords, as a pure matter of construction untrammelled by authority I should have had little hesitation in concluding that a right of appeal to the Court of Appeal under Pt I of the 1968 Act was personal to the convicted person
2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Dove v. United States, 423 U.S. 325 (1976)	SC	US	12 Although the House of Lords recognized that abatement could cause injustice in some circumstances, it was concluded that reform was a matter for Parliament. Subsequently, Parliament enacted the Criminal Appeal Act 1995 (U.K.), 1995, c. 35, which established the Criminal Cases Review Commission with power, in specified circumstances, to refer the conviction or sentence for review by the Court of Appeal even in the absence of an appeal commenced in the lifetime of the convicted person. Abatement of the appeal leaving the conviction intact is also the rule in some of the American jurisdictions: see Dove v. United States, 423 U.S. 325 (1976); State v. Christensen, 866 P.2d 533 (Utah 1993), at p. 535; United States v. Rorie, 58 M.J. 399 (C.A.A.F. 2003); and Whitehouse v. State, 364 N.E.2d 1015 (Ind. 1977), at pp. 1015-16.
2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	State v. Christensen, 866 P.2d 533 (1993)	lower-level court	US	12 Although the House of Lords recognized that abatement could cause injustice in some circumstances, it was concluded that reform was a matter for Parliament. Subsequently, Parliament enacted the Criminal Appeal Act 1995 (U.K.), 1995, c. 35, which established the Criminal Cases Review Commission with power, in specified circumstances, to refer the conviction or sentence for review by the Court of Appeal even in the absence of an appeal commenced in the lifetime of the convicted person. Abatement of the appeal leaving the conviction intact is also the rule in some of the American jurisdictions: see Dove v. United States, 423 U.S. 325 (1976); State v. Christensen, 866 P.2d 533 (Utah 1993), at p. 535; United States v. Rorie, 58 M.J. 399 (C.A.A.F. 2003); and Whitehouse v. State, 364 N.E.2d 1015 (Ind. 1977), at pp. 1015-16.
2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	United States v. Rorie, 58 M.J. 399 (2003)	lower-level court	US	12 Although the House of Lords recognized that abatement could cause injustice in some circumstances, it was concluded that reform was a matter for Parliament. Subsequently, Parliament enacted the Criminal Appeal Act 1995 (U.K.), 1995, c. 35, which established the Criminal Cases Review Commission with power, in specified circumstances, to refer the conviction or sentence for review by the Court of Appeal even in the absence of an appeal commenced in the lifetime of the convicted person. Abatement of the appeal leaving the conviction intact is also the rule in some of the American jurisdictions: see Dove v. United States, 423 U.S. 325 (1976); State v. Christensen, 866 P.2d 533 (Utah 1993), at p. 535; United States v. Rorie, 58 M.J. 399 (C.A.A.F. 2003); and Whitehouse v. State, 364 N.E.2d 1015 (Ind. 1977), at pp. 1015-16.
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2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Griffin v. Illinois, 351 U.S. 12 (1956)	SC	US	an appellant's death. A second possible outcome, with considerable support in the United States, is that death pending appeal of a criminal conviction from the trial court abates the prosecution ab initio, i.e., vacating all proceedings in the prosecution since its inception including the conviction (Durham v. United States, 401 U.S. 481 (1971), and see summary of this position in State v. Makaila, 897 P.2d 967 (Haw. 1995), at p. 969). There are several rationales given for vacating the conviction as well as abating the appeal. Some courts take the view that appellate review of a conviction is so integral to the array of procedural safeguards due an accused that incapacity to obtain such review nullifies the verdict of guilt. An accused should "not stand convicted without resolution of the merits of his appeal . . ." (United States v. Moehlenkamp, 557 F.2d 126 (7th Cir. 1977), at p. 128; see also Griffin v. Illinois, 351 U.S. 12 (1956), at p. 18; United States v. Schumann, 861 F.2d 1234 (11th Cir. 1988); United States v. Oberlin, 718 F.2d 894 (9th Cir. 1983), at p. 896, and United States v. Pauline, 625 F.2d 684 (5th Cir. 1980)).
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2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	United States v. Dudley, 739 F.2d 175 (1984)	lower-level court	US	15 Other courts base themselves on the proposition that the role and function of the criminal process is to punish the guilty. Punishment of a convicted criminal is inherently personal and, as the death of the accused eliminates the possibility of punishment, it therefore eliminates the purpose of the criminal proceeding: [P]unishment, incarceration, or rehabilitation have heretofore largely been the exclusive purposes of sentences and so ordinarily should be abated upon death for shuffling off the mortal coil completely forecloses punishment, incarceration, or rehabilitation, this side of the grave at any rate. (United States v. Dudley, 739 F.2d 175 (4th Cir. 1984), at p. 177)
2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Commonwealth v. Walker, 288 A.2d 741 (1972)	lower-level court	US	19 A similar discretion to continue an appeal, which by reason of the appellant's death is rendered moot, is also accepted in some American jurisdictions. In Commonwealth v. Walker, 288 A.2d 741 (1972), for example, the Supreme Court of Pennsylvania stated that it was in the interests of the accused's estate and society that a challenge instituted by the accused in his lifetime to the regularity or constitutionality of a criminal proceeding be fully reviewed and decided by the appeal process, notwithstanding the death of the appellant. See also State v. Jones, 551 P.2d 801 (Kan. 1976), at p. 804; and State v. McGettrick, 509 N.E.2d 378 (Ohio 1987).
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2004	R. v. Smith	3/4/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2126/index.do	R. v. Smith, [2004] 1 S.C.R. 385, 2004 SCC 14	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	R		Criminal Appeal Act 1995 (U.K.), 1995, c. 35.	statute	UK	12 Although the House of Lords recognized that abatement could cause injustice in some circumstances, it was concluded that reform was a matter for Parliament. Subsequently, Parliament enacted the Criminal Appeal Act 1995 (U.K.), 1995, c. 35, which established the Criminal Cases Review Commission with power, in specified circumstances, to refer the conviction or sentence for review by the Court of Appeal even in the absence of an appeal commenced in the lifetime of the convicted person. Abatement of the appeal leaving the conviction intact is also the rule in some of the American jurisdictions: see Dove v. United States, 423 U.S. 325 (1976); State v. Christensen, 866 P.2d 533 (Utah 1993), at p. 535; United States v. Rorie, 58 M.J. 399 (C.A.A.F. 2003); and Whitehouse v. State, 364 N.E.2d 1015 (Ind. 1977), at pp. 1015-16.

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2004	Hamilton v. Open Window Bakery Ltd.	2/19/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2120/index.do	Hamilton v. Open Window Bakery Ltd., [2004] 1 S.C.R. 303, 2004 SCC 9	ARBOUR J.	unanimous	Ontario	Civil procedure Contract	C	referred to	Lavarack v. Woods of Colchester Ltd., [1967] 1 Q.B. 278	lower-level court	UK	11 There is a general principle regarding damages awarded in cases where a defendant who wrongfully repudiated a contract had alternative modes of performing the contract. This general principle traces its roots at least as far back as the case of Cockburn v. Alexander (1848), 6 C.B. 791. In that case, Maule J. articulated the general principle, at p. 814, as follows: Generally speaking, where there are several ways in which the contract might be performed, that mode is adopted which is the least profitable to the plaintiff, and the least burthensome to the defendant. This general principle has been adopted by decisions in Canada (see Park v. Parsons Brown & Co. (1989), 39 B.C.L.R. (2d) 107 (C.A.); Aldo Ippolito & Co. v. Canada Packers Inc. (1986), 57 O.R. (2d) 65 (C.A.); and, more generally, S. M. Waddams, The Law of Damages (loose-leaf ed.), at pp. 13-19 to 13-21), and has been confirmed in the United Kingdom (see Lavarack v. Woods of Colchester Ltd., [1967] 1 Q.B. 278 (C.A.); and The "World Navigator", [1991] 2 Lloyd's Rep. 23 (C.A.)).
2004	Hamilton v. Open Window Bakery Ltd.	2/19/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2120/index.do	Hamilton v. Open Window Bakery Ltd., [2004] 1 S.C.R. 303, 2004 SCC 9	ARBOUR J.	unanimous	Ontario	Civil procedure Contract	C	referred to	The "World Navigator", [1991] 2 Lloyd's Rep. 23	lower-level court	UK	11 There is a general principle regarding damages awarded in cases where a defendant who wrongfully repudiated a contract had alternative modes of performing the contract. This general principle traces its roots at least as far back as the case of Cockburn v. Alexander (1848), 6 C.B. 791. In that case, Maule J. articulated the general principle, at p. 814, as follows: Generally speaking, where there are several ways in which the contract might be performed, that mode is adopted which is the least profitable to the plaintiff, and the least burthensome to the defendant. This general principle has been adopted by decisions in Canada (see Park v. Parsons Brown & Co. (1989), 39 B.C.L.R. (2d) 107 (C.A.); Aldo Ippolito & Co. v. Canada Packers Inc. (1986), 57 O.R. (2d) 65 (C.A.); and, more generally, S. M. Waddams, The Law of Damages (loose-leaf ed.), at pp. 13-19 to 13-21), and has been confirmed in the United Kingdom (see Lavarack v. Woods of Colchester Ltd., [1967] 1 Q.B. 278 (C.A.); and The "World Navigator", [1991] 2 Lloyd's Rep. 23 (C.A.)).
2004	Hamilton v. Open Window Bakery Ltd.	2/19/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2120/index.do	Hamilton v. Open Window Bakery Ltd., [2004] 1 S.C.R. 303, 2004 SCC 9	ARBOUR J.	unanimous	Ontario	Civil procedure Contract	C	referred to	Western Oil & Fuel Co. v. Kemp, 245 F.2d 633 (1957	lower-level court	US	12 This approach is also the one that is generally applicable in the United States (see, for example, Restatement (Second) of Contracts § 344 (1981); Williston on Contracts (3rd ed. 1968) § 1407; Western Oil & Fuel Co. v. Kemp, 245 F.2d 633 (8th Cir. 1957), at p. 640; Stewart v. Cran-Vela Rental Co., 510 F.2d 982 (5th Cir. 1975), at p. 986; and 22 Am. Jur. 2d Damages § 126 (1988)).
2004	Hamilton v. Open Window Bakery Ltd.	2/19/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2120/index.do	Hamilton v. Open Window Bakery Ltd., [2004] 1 S.C.R. 303, 2004 SCC 9	ARBOUR J.	unanimous	Ontario	Civil procedure Contract	C	referred to	Stewart v. Cran-Vela Rental Co., 510 F.2d 982 (1975)	lower-level court	US	12 This approach is also the one that is generally applicable in the United States (see, for example, Restatement (Second) of Contracts § 344 (1981); Williston on Contracts (3rd ed. 1968) § 1407; Western Oil & Fuel Co. v. Kemp, 245 F.2d 633 (8th Cir. 1957), at p. 640; Stewart v. Cran-Vela Rental Co., 510 F.2d 982 (5th Cir. 1975), at p. 986; and 22 Am. Jur. 2d Damages § 126 (1988)).
2004	R. v. Kehler	2/19/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2123/index.do	R. v. Kehler, [2004] 1 S.C.R. 328, 2004 SCC 11	FISH J.	unanimous	Alberta	Criminal law	C	referred to	Director of Public Prosecutions v. Hester, [1972] 3 All E.R. 105	SC	UK (HL)	19 Thus, speaking for the Court in Vetrovec, supra, at p. 829, Dickson J. (later C.J.) cited with approval Lord Diplock's observation in Director of Public Prosecutions v. Hester, [1972] 3 All E.R. 1056 (H.L.), at p. 1073: What is looked for under the common law rule is confirmation from some other source that the suspect witness is telling the truth in some part of his story which goes to show that the accused committed the offence with which he is charged. [Emphasis added.] And, at pp. 832-33, Dickson J. explained: . . . The question that must be kept in mind is: does this supporting evidence strengthen our belief that Langvand [the tainted witness] is telling the truth? The answer to this question can only be in the affirmative. Langvand had testified as to a trip to Hong Kong in 1975 for the purpose of purchasing and importing heroin. The supporting evidence strongly implicated the accused in illegal drug trafficking. As Mr. Justice Seaton noted in the Court below, the supporting evidence against Gaja [co-accused with Vetrovec] would, considered alone, have been sufficient to support his conviction on the charge. As for the appellant Vetrovec, the material found in his apartment all pointed to his participation in illegal drug trafficking (see the evidence on this point of Sgt. Domansky, at trial). The items of evidence were, to use the phrase of Mr. Justice Seaton, "badges of membership in this conspiracy". All of this incriminating evidence, when considered together, strongly strengthens the belief that Langvand was telling the truth regarding the participation of Vetrovec and Gaja. It rebuts any suggestion that he is falsely implicating innocent individuals. The fact that this supporting evidence does not directly relate to the other overt acts testified to by Langvand is irrelevant. The evidence is capable of inducing a rational belief that Langvand is telling the truth and is for that reason corroborative. It seems to me that the point was covered in R. v. Bulleyment (1979), 46 C.C.C. (2d) 429 (Ont. C.A.), and in my view that case was correctly decided. [Emphasis added.]
2004	R. v. Lyttle	2/12/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2116/index.do	R. v. Lyttle, [2004] 1 S.C.R. 193, 2004 SCC 5	MAJOR AND FISH JJ.	unanimous	Ontario	Criminal law	C	referred to	Michelson v. United States, 335 U.S. 469 (1948)	SC	US	51 A trial judge must balance the rights of an accused to receive a fair trial with the need to prevent unethical cross-examination. There will thus be instances where a trial judge will want to ensure that "counsel [is] not merely taking a random shot at a reputation imprudently exposed or asking a groundless question to waft an unwarranted innuendo into the jury box". See Michelson v. United States, 335 U.S. 469 (1948), at p. 481, per Jackson J.
2004	R. v. Lyttle	2/12/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2116/index.do	R. v. Lyttle, [2004] 1 S.C.R. 193, 2004 SCC 5	MAJOR AND FISH JJ.	unanimous	Ontario	Criminal law	C	referred to	Rondel v. Worsley, [1969] 1 A.C. 191	SC	UK (HL)	66 As long as counsel has a good faith basis for asking an otherwise permissible question in cross-examination, the question should be allowed. In our view, no distinction need be made between expert and lay witnesses within the broad scope of this general principle. Counsel, however, bear important professional duties and ethical responsibilities, not just at trial, but on appeal as well. This point was emphasized by Lord Reid in Rondel v. Worsley, [1969] 1 A.C. 191 (H.L.), at pp. 227-28, when he said: Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. But, as an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. [Emphasis added.]

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2004	Transport North American Express Inc. v. New Solutions Financial Corp.	2/12/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2118/index.do	Transport North American Express Inc. v. New Solutions Financial Corp., [2004] 1 S.C.R. 249, 2004 SCC 7	BASTARACHE J.	dissenting	Ontario	Contract	C	D	Carney v. Herbert, [1985] 1 All E.R. 438	SC	UK (PC)	55 Over time, the lower courts in Canada moved away from this strict approach because it was viewed as harsh and inequitable in some cases and could result in a windfall to one party. Courts have come to apply a modern approach when faced with a contract that contains an illegal provision. Under the modern approach to illegality, a contract that violates a statute may be enforceable, but not in its entirety. In Carney v. Herbert, [1985] 1 All E.R. 438, the Privy Council succinctly summarized the principles to be applied. At p. 443 of the decision, their Lordships quoted with approval the following statements made in an Australian case, McFarlane v. Daniell (1938), 38 S.R. 337 (N.S.W. Dist. Ct. App.), at p. 345: When valid promises supported by legal consideration are associated with, but separate in form from, invalid promises, the test of whether they are severable is whether they are in substance so connected with the others as to form an indivisible whole which cannot be taken to pieces without altering its nature . . . . If the elimination of the invalid promises changes the extent only but not the kind of the contract, the valid promises are severable . . . . If the substantial promises were all illegal or void, merely ancillary promises would be inseverable. Accordingly, the illegal promise may be severed from the rest of the contract, leaving the remaining promises to be enforced by the court. See G. H. L. Fridman, The Law of Contract in Canada (4th ed. 1999), at pp. 441-45; S. M. Waddams, The Law of Contracts (4th ed. 1999), at p. 421. This has been referred to as the "blue pencil" test, a label first used in the case of Attwood v. Lamont, [1920] 3 K.B. 571 (C.A.).
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	Binnie J.	dissenting in part	Ontario	Constitutional law	R		Crimes Act 1961 (N.Z.), 1961, No. 43, s. 59.	statute	New Zealand	127 The question is whether the undoubted need to keep order in schools justifies the s. 43 exemption of teachers from the assault provisions of the Criminal Code . The Law Reform Commission of Canada recommended the repeal of the s. 43 defence for school teachers, stating that the ultimate sanction should be the removal of a child from school, not corporal punishment: Law Reform Commission of Canada, Working Paper 38, Assault (1984), at p. 44. A number of countries have abolished or modified similar legislative immunities for teachers: see, e.g., s. 47 of the British Education (No. 2) Act 1986 (U.K.), 1986, c. 61; s. 59 of the New Zealand Crimes Act 1961 (N.Z.), 1961, No. 43; and s. 139A of the New Zealand Education Act 1989 (N.Z.), 1989, No. 80.
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	Binnie J.	dissenting in part	Ontario	Constitutional law	R		Education Act 1989 (N.Z.), 1989, No. 80, s. 139A.	statute	New Zealand	127 The question is whether the undoubted need to keep order in schools justifies the s. 43 exemption of teachers from the assault provisions of the Criminal Code . The Law Reform Commission of Canada recommended the repeal of the s. 43 defence for school teachers, stating that the ultimate sanction should be the removal of a child from school, not corporal punishment: Law Reform Commission of Canada, Working Paper 38, Assault (1984), at p. 44. A number of countries have abolished or modified similar legislative immunities for teachers: see, e.g., s. 47 of the British Education (No. 2) Act 1986 (U.K.), 1986, c. 61; s. 59 of the New Zealand Crimes Act 1961 (N.Z.), 1961, No. 43; and s. 139A of the New Zealand Education Act 1989 (N.Z.), 1989, No. 80.
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	Binnie J.	dissenting in part	Ontario	Constitutional law	R		Swedish law in general		Sweden	118 We are not asked in this case to establish the threshold for a criminal "assault" in the family context, or whether the unwanted touching in Gonthier J.'s example could be said to be "by way of correction". Section 43 presupposes the existence of conduct that does amount to a criminal assault. Section 265 would clearly be triggered by much of the non-violent physical contact that is not out of place growing up in a robust family environment. The appellant points to some other jurisdictions like Sweden, which do without a parental defence provision equivalent to s. 43; but Sweden, at least, has a very different criminal law regime applicable to physical assaults.
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	Binnie J.	dissenting in part	Ontario	Constitutional law	R		Education (No. 2) Act 1986 (U.K.), 1986, c. 61, s. 47.	statute	UK	127 The question is whether the undoubted need to keep order in schools justifies the s. 43 exemption of teachers from the assault provisions of the Criminal Code . The Law Reform Commission of Canada recommended the repeal of the s. 43 defence for school teachers, stating that the ultimate sanction should be the removal of a child from school, not corporal punishment: Law Reform Commission of Canada, Working Paper 38, Assault (1984), at p. 44. A number of countries have abolished or modified similar legislative immunities for teachers: see, e.g., s. 47 of the British Education (No. 2) Act 1986 (U.K.), 1986, c. 61; s. 59 of the New Zealand Crimes Act 1961 (N.Z.), 1961, No. 43; and s. 139A of the New Zealand Education Act 1989 (N.Z.), 1989, No. 80.
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	McLachlin C.J.	majority	Ontario	Constitutional law	C	referred to	Grayned v. City of Rockford, 408 U.S. 104 (1972)	SC	US	16 A law must set an intelligible standard both for the citizens it governs and the officials who must enforce it. The two are interconnected. A vague law prevents the citizen from realizing when he or she is entering an area of risk for criminal sanction. It similarly makes it difficult for law enforcement officers and judges to determine whether a crime has been committed. This invokes the further concern of putting too much discretion in the hands of law enforcement officials, and violates the precept that individuals should be governed by the rule of law, not the rule of persons. The doctrine of vagueness is directed generally at the evil of leaving "basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application": Grayned v. City of Rockford, 408 U.S. 104 (1972), at p. 109.
2004	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)	1/30/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do	Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] 1 S.C.R. 76, 2004 SCC 4	McLachlin C.J.	majority	Ontario	Constitutional law	C	referred to	Eur. Court H. R., A. v. United Kingdom, judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI	international	ECHR	34 Section 43's ambit is further defined by the direction to consider the circumstances under which corrective force is used. National and international precedents have set out factors to be considered. Article 3 of the European Convention on Human Rights, 213 U.N.T.S. 221, forbids inhuman and degrading treatment. The European Court of Human Rights, in determining whether parental treatment of a child was severe enough to fall within the scope of Article 3, held that assessment must take account of "all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim": Eur. Court H.R., A. v. United Kingdom, judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI, p. 2699. These factors properly focus on the prospective effect of the corrective force upon the child, as required by s. 43.
2004	Crystalline Investments Ltd. v. Domgroup Ltd.	1/29/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2114/index.do	Crystalline Investments Ltd. v. Domgroup Ltd., [2004] 1 S.C.R. 60, 2004 SCC 3	MAJOR J.	unanimous	Ontario	Bankruptcy and insolvency Lease	C	referred to	Warnford Investments Ltd. v. Duckworth, [1978] 2 All E.R. 517	lower-level court	UK	30 Both the British Columbia Court of Appeal in Transco Mills Ltd. v. Percan Enterprises Ltd. (1993), 100 D.L.R. (4th) 359, at p. 366, and Carthy J.A., here, at para. 16, quoted from Vice-Chancellor Megarry in Warnford Investments Ltd. v. Duckworth, [1978] 2 All E.R. 517 (Ch. D.), at p. 526, where the position of an original tenant in bankruptcy proceedings is discussed. It is worth repeating: The original lessee is a person who as principal, undertook towards the lessor, the obligations of the lease for the whole term; and there is nothing in the process of assignment which replaced this liability by the mere collateral liability of a surety who must pay the rent only if the assignee does not. The bankruptcy of the assignee has for the time being destroyed the original lessee's right against the assignee to require him to discharge the obligations of the lease, and it has impaired the lessee's right of indemnity against him when he has to discharge the obligations himself; but it has not affected his primary liability towards the lessor, which continues unaffected. At no time does an original lessee become a mere guarantor to the lessor of the liability of any assignee of the lease. [Emphasis added.]

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2004	Crystalline Investments Ltd. v. Domgroup Ltd.	1/29/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2114/index.do	Crystalline Investments Ltd. v. Domgroup Ltd., [2004] 1 S.C.R. 60, 2004 SCC 3	MAJOR J.	unanimous	Ontario	Bankruptcy and insolvency Lease	C	referred to	Hindcastle Ltd. v. Barbara Attenborough Associates Ltd., [1996] 1 All E.R. 737	SC	UK (HL)	41 Not surprisingly, Stacey v. Hill, supra, led to a similar situation in England. In Hindcastle Ltd. v. Barbara Attenborough Associates Ltd., [1996] 1 All E.R. 737 (H.L.), Lord Nicholls, faced with facts involving a guarantor of an assignor of a lease, gave a convincing illustration of the absurdity of maintaining this distinction, at p. 754: This would make no sort of legal or commercial sense. This would mean that directors who guarantee their company's obligations would not be liable if their own company became insolvent whilst tenant, but they would be liable if an assignee from their company encountered financial difficulties whilst tenant. Mr. Whitten, as guarantor of CIT's obligations, remains liable to the landlord. According to Stacey v. Hill, had he been a guarantor of Prest's liabilities [the assignee who became bankrupt], the disclaimer would have released him. What sort of a law would this be? [Emphasis in original.] 43 The appellant submits that the English bankruptcy statute that was applied in Hindcastle clearly stated that disclaimer will not "affect the rights or liabilities of any other person", and that s. 65.2 of the Act has no similar wording. I agree with the respondents' rebuttal to this argument that the English wording affirms the ordinary construction of the statute. In other words, explicit statutory language is required to divest persons of rights they otherwise enjoy at law. As Carthy J.A. observed in the Court of Appeal, at paras. 11-12, the lease may have real value to the original tenant and, on the wording of s. 65.2 , cannot be eliminated in the absence of the original tenant's agreement. In any event, so long as the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert provincially regulated property and civil rights. See [illegible]
2004	Crystalline Investments Ltd. v. Domgroup Ltd.	1/29/2004	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2114/index.do	Crystalline Investments Ltd. v. Domgroup Ltd., [2004] 1 S.C.R. 60, 2004 SCC 3	MAJOR J.	unanimous	Ontario	Bankruptcy and insolvency Lease	R		Landlord and Tenant (Covenants) Act 1995 (U.K.), 1995, c. 30.	statute	UK	31 From the time a lease is completed, the original tenant is bound by all the conditions, including the term. Despite the hardship that may later develop, the covenant is fully enforceable even if it has been assigned. In England, however, public concern over the continuing liability of original tenants in post-assignment bankruptcy situations resulted in the enactment of the Landlord and Tenant (Covenants) Act 1995 (U.K.), 1995, c. 30. As a result, when a tenant in England lawfully assigns a lease, that tenant will have no further obligations with respect to the covenant. To effect the same result in Canada, similar legislation is needed.
2003	R. v. Clay	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2111/index.do	R. v. Clay, [2003] 3 S.C.R. 735, 2003 SCC 75	Gonthier and Binnie JJ.	majority	Ontario	Constitutional law	C	referred to	R. v. Morgan, [2002] E.W.J. No. 1244 (QL), [2002] EWCA Crim 721	lower-level court	UK	32 With respect, there is nothing "inherently personal" or "inherently private" about smoking marihuana for recreation. The appellant says that users almost always smoke in the privacy of their homes, but that is a function of lifestyle preference and is not "inherent" in the activity of smoking itself. Indeed, as the appellant together with Malmo-Levine and Caine set out in their Joint Statement of Legislative Facts, cannabis "is used predominantly as a social activity engaged in with friends and partners during evenings, weekends, and other leisure time" (para. 18). The trial judge was impressed by the view expressed by the defence expert, Dr. J. P. Morgan, that marihuana is largely used for occasional recreation. Reference might also be made on this point to a case under the European Convention on Human Rights decided recently by the English courts under the Human Rights Act 1998 (U.K.). In R. v. Morgan, [2002] E.W.J. No. 1244 (QL), [2002] EWCA Crim 721, the English Court of Criminal Appeal observed, at para. 11, that: A right to private life did not involve or include a right to self intoxication, nor the right to possession or cultivation of cannabis, whether for personal consumption within one's home or otherwise. See also R. v. Ham, [2002] E.W.J. No. 2551 (QL), [2002] EWCA Crim 1353. Recreational smoking is not on a par with other activities that have been held to go to the heart of an individual's private existence. 48 While the trial judge did not make a specific finding on this point, he was generally accepting of the evidence of the Crown expert, Dr. Harold Kalant, who testified that with much puffing some intoxicating effect would be produced by 0.1 percent THC. A defence witness, Dr. J. P. Morgan, would have raised the required THC level to 0.5 percent. However, we too are not required to reach a conclusion on this point.
2003	R. v. Clay	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2111/index.do	R. v. Clay, [2003] 3 S.C.R. 735, 2003 SCC 75	Gonthier and Binnie JJ.	majority	Ontario	Constitutional law	C	referred to	R. v. Ham, [2002] E.W.J. No. 2551 (QL), [2002] EWCA Crim 1353	lower-level court	UK	32 With respect, there is nothing "inherently personal" or "inherently private" about smoking marihuana for recreation. The appellant says that users almost always smoke in the privacy of their homes, but that is a function of lifestyle preference and is not "inherent" in the activity of smoking itself. Indeed, as the appellant together with Malmo-Levine and Caine set out in their Joint Statement of Legislative Facts, cannabis "is used predominantly as a social activity engaged in with friends and partners during evenings, weekends, and other leisure time" (para. 18). The trial judge was impressed by the view expressed by the defence expert, Dr. J. P. Morgan, that marihuana is largely used for occasional recreation. Reference might also be made on this point to a case under the European Convention on Human Rights decided recently by the English courts under the Human Rights Act 1998 (U.K.). In R. v. Morgan, [2002] E.W.J. No. 1244 (QL), [2002] EWCA Crim 721, the English Court of Criminal Appeal observed, at para. 11, that: A right to private life did not involve or include a right to self intoxication, nor the right to possession or cultivation of cannabis, whether for personal consumption within one's home or otherwise. See also R. v. Ham, [2002] E.W.J. No. 2551 (QL), [2002] EWCA Crim 1353. Recreational smoking is not on a par with other activities that have been held to go to the heart of an individual's private existence.
2003	R. v. Clay	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2111/index.do	R. v. Clay, [2003] 3 S.C.R. 735, 2003 SCC 75	Gonthier and Binnie JJ.	majority	Ontario	Constitutional law	R		Human Rights Act 1998 (U.K.	statute	UK	32 With respect, there is nothing "inherently personal" or "inherently private" about smoking marihuana for recreation. The appellant says that users almost always smoke in the privacy of their homes, but that is a function of lifestyle preference and is not "inherent" in the activity of smoking itself. Indeed, as the appellant together with Malmo-Levine and Caine set out in their Joint Statement of Legislative Facts, cannabis "is used predominantly as a social activity engaged in with friends and partners during evenings, weekends, and other leisure time" (para. 18). The trial judge was impressed by the view expressed by the defence expert, Dr. J. P. Morgan, that marihuana is largely used for occasional recreation. Reference might also be made on this point to a case under the European Convention on Human Rights decided recently by the English courts under the Human Rights Act 1998 (U.K.). In R. v. Morgan, [2002] E.W.J. No. 1244 (QL), [2002] EWCA Crim 721, the English Court of Criminal Appeal observed, at para. 11, that: A right to private life did not involve or include a right to self intoxication, nor the right to possession or cultivation of cannabis, whether for personal consumption within one's home or otherwise. See also R. v. Ham, [2002] E.W.J. No. 2551 (QL), [2002] EWCA Crim 1353. Recreational smoking is not on a par with other activities that have been held to go to the heart of an individual's private existence.
2003	R. v. Malmo-Levine; R. v. Caine	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2109/index.do	R. v. Malmo-Levine; R. v. Caine, [2003] 3 S.C.R. 571, 2003 SCC 74	Arbour J.	dissenting	British Columbia	Constitutional law	G		general		Greece	193 After having thus established what harms are not associated with marihuana use, McCart J. found, at paras. 26-27: Having said all of this, there was also general consensus among the experts who testified that the consumption of marijuana is not completely harmless. While marijuana may not cause schizophrenia, it may trigger it. Bronchial pulmonary damage is at risk of occurring with heavy use. However, to be fair, there is also general agreement among the experts who testified that moderate use of marijuana causes no physical or psychological harm. Field studies in Greece, Costa Rica and Jamaica generally supported the idea that marijuana was a relatively safe drug — not totally free from potential harm, but unlikely to create serious harm for most individual users or society.

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2003	R. v. Malmo-Levine; R. v. Caine	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2109/index.do	R. v. Malmo-Levine; R. v. Caine, [2003] 3 S.C.R. 571, 2003 SCC 74	Arbour J.	dissenting	British Columbia	Constitutional law	G		general		Costa Rica	193 After having thus established what harms are not associated with marihuana use, McCart J. found, at paras. 26-27: Having said all of this, there was also general consensus among the experts who testified that the consumption of marijuana is not completely harmless. While marijuana may not cause schizophrenia, it may trigger it. Bronchial pulmonary damage is at risk of occurring with heavy use. However, to be fair, there is also general agreement among the experts who testified that moderate use of marijuana causes no physical or psychological harm. Field studies in Greece, Costa Rica and Jamaica generally supported the idea that marijuana was a relatively safe drug — not totally free from potential harm, but unlikely to create serious harm for most individual users or society
2003	R. v. Malmo-Levine; R. v. Caine	12/23/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2109/index.do	R. v. Malmo-Levine; R. v. Caine, [2003] 3 S.C.R. 571, 2003 SCC 74	Arbour J.	dissenting	British Columbia	Constitutional law	G		general		Jamaica	193 After having thus established what harms are not associated with marihuana use, McCart J. found, at paras. 26-27: Having said all of this, there was also general consensus among the experts who testified that the consumption of marijuana is not completely harmless. While marijuana may not cause schizophrenia, it may trigger it. Bronchial pulmonary damage is at risk of occurring with heavy use. However, to be fair, there is also general agreement among the experts who testified that moderate use of marijuana causes no physical or psychological harm. Field studies in Greece, Costa Rica and Jamaica generally supported the idea that marijuana was a relatively safe drug — not totally free from potential harm, but unlikely to create serious harm for most individual users or society
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	Binnie J.	dissenting	Ontario	Action Constitutional law International law	C	D	Adams v. Cape Industries plc, [1991] 1 All E.R. 929	lower-level court	UK	128 I agree in this respect with the view of the English Court of Appeal in Adams v. Cape Industries plc, [1991] 1 All E.R. 929, at pp. 1052-53, that the availability of an appeal in the foreign jurisdiction is not necessarily determinative. Cape Industries was also a case of a default judgment.
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	Binnie J.	dissenting	Ontario	Action Constitutional law International law	R		Fla. Stat. Ann. R. Civ. P. § 1.190(a) (West 1967).	lower-level statute	US	105 Under Rule 1.190(a) of the Florida Rules of Civil Procedure (Fla. Stat. Ann. R. Civ. P. § 1.190(a)), the appellants were required to refile their Defence every time the respondents amended their Complaint, even if the amendments were solely directed at other defendants. This was nowhere brought to the appellants' attention. As mentioned earlier, I think the appellants could fairly understand from the "warning" in the original Complaint that only if no defence were filed would there be a pleadings default in the action. Otherwise there would be no pleadings default. The respondents never amended their Complaint against the appellants. There was therefore nothing further for the appellants "to answer". They were nevertheless noted in default for failing to file a defence.
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	Adams v. Cape Industries plc, [1991] 1 All E.R. 929	lower-level court	UK	241 Authority for the proposition that natural justice comprises substantive principles of justice, as well as minimum procedural standards, is to be found in the judgment of the English Court of Appeal in Adams v. Cape Industries plc, [1991] 1 All E.R. 929, the leading English case on the enforcement of foreign judgments. The judgment sought to be enforced in that case originated in Texas and arose from a complex asbestos-poisoning action involving numerous plaintiffs and defendants. Damages were assessed in a rather unconventional way. On the suggestion of plaintiffs' counsel, the judge arrived at a global amount of damages to be distributed among the plaintiffs in fixed amounts which were not based on proof of the damages suffered by each individual plaintiff. This method of calculating damages was held by the English court to be contrary to natural justice because it was "not the result of a judicial assessment of the individual entitlements of the respective plaintiffs" and because no proper judicial hearing had been held on the quantum of damages (Adams, supra, at p. 1042). Slade L.J. held that it was a principle of substantive justice that unliquidated damages must be assessed "objectively by the independent judge on proof by the plaintiff of the relevant facts" (p. 1050). 242 Adams sets out a flexible and pragmatic approach to the natural justice defence which is appropriate for the Canadian context following Morguard. I agree with the English Court of Appeal that the defence can be triggered by principles of substantive justice, such as the proposition that damages should be based on objective proof and judicial assessment. In Weiler J.A.'s words, "the ultimate guidepost in deciding whether the defence of natural justice may be raised is procedural fairness based on underlying fundamental principles of justice" (p. 675). The category is not closed. If a defendant can establish that the process by which the foreign judgment was obtained was contrary to the Canadian conception of natural justice — because the process itself is flawed, by reason of the way the plaintiff manipulated the process, or both — then the foreign judgment should not be enforced. 243 Weiler J.A. understood La Forest J.'s allusion to "fair process" in Morguard to refer to the rules of natural justice (p. 671). My colleague Major J. also appears to be of this opinion when he states, under the heading of "The Defence of Natural Justice", that the enforcing court must ensure that the judgment originates from a fair legal system (para. 61). While these concepts are certainly related, in my view there is a meaningful distinction between the fairness of the legal system from which the judgment came and the fairness of the procedure followed in the particular case. Slade L.J. underlined this distinction in Adams, supra, when he observed that the Texas judgment originated from "an unimpeachable system of justice within one of the great common law jurisdictions of the world" (p. 1048). The defendants in Adams argued not that the judgment was a product of an unfair system of justice, but that the judge's method of assessing damages did not comply with the rules of that system. 245 Finally, the obligation of a defendant to pursue remedies available in the originating jurisdiction must be addressed. In Adams, supra, Slade L.J. held that opportunities for correcting a denial of natural justice that existed in the originating jurisdiction should be taken into account in assessing whether the defence of natural justice has been made out. It does not follow that the existence of such remedies automatically cures a failure of natural justice. Slade L.J. also recognized that the significance and weight of the fact that remedies were available in the originating forum must be assessed in light of all the relevant factors, including "the reasonableness in the circumstances of requiring or expecting that [the defendants] made use of the remedy in all the particular circumstances" (pp. 1052-53). 257 I would also note that in this case it appears that the judgment may have offended substantive principles of natural justice of the kind addressed in Adams, supra. It seems likely that the quantum of damages was fixed without proof that
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	Hilton v. Guyot, 159 U.S. 113 (1895)	SC	US	167 One of those differences is that the rules that apply within the Canadian federation are "constitutional imperatives". Comity as between sovereign nations is not an obligation in the same sense, although it is more than a matter of mere discretion or preference. In Morguard, La Forest J. adopted the definition of comity stated by the United States Supreme Court in Hilton v. Guyot, 159 U.S. 113 (1895), at pp. 163-64 (cited in Morguard, at p. 1096): "Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	Yahoo!, Inc. v. Ligue contre le racisme et l'antisémitisme, 169 F.Supp.2d 1181 (2001)	lower-level court	US	171 A context-sensitive jurisdiction test ought to take into account the difficulty of defending in a foreign jurisdiction and the possibility that the quality of justice there may not meet Canadian standards. Judgments should travel more easily across provincial borders than across international ones, both because of the relative ease of mobility between the provinces and because of the consistent nationwide standards of the Canadian justice system. When a judgment comes from a foreign country, the logistical difficulties of defending in the originating forum may be much greater, and the foreign legal system may be different from those with which Canadians are familiar. Canada is a single country with a fully integrated economy, but the world is not. In Morguard, at p. 1095, this Court rightly emphasized that "[m]odern states . . . cannot live in splendid isolation." But we still do not live in a borderless global village; our modern world is "home to widely varied cultures with radically divergent value systems" (Yahoo!, Inc. v. Ligue contre le racisme et l'antisémitisme, 169 F.Supp.2d 1181 (N.D. Cal. 2001), at p. 1186)

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2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996)	SC	US	227 Some very large judgments of this kind have gained a certain level of notoriety and are probably the first to come to mind when concerns about the size of punitive damage awards are raised. A well-known example is BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), where the United States Supreme Court overturned a judgment of the Alabama Supreme Court which had awarded $2 million against BMW because they had sold the defendant a car without revealing that it had been repainted.
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	Owens Bank Ltd. v. Bracco, [1992] 2 All E.R. 193	SC	UK (HL)	231 Courts have attempted to resolve this conflict by distinguishing between the kind of fraud of which evidence will be admitted by the domestic court, and allegations of fraud which are considered to have been directly or impliedly disposed of by the foreign judgment and cannot be raised again. Different courts have drawn the line in different places. At one end of the spectrum is the very strict rule followed in Woodruff v. McLennan (1887), 14 O.A.R. 242, admitting only evidence of "extrinsic fraud" (fraud going to the jurisdiction of the court that issued the judgment, or affecting the defendant's opportunity to present her case). At the other is the liberal rule followed by the English courts in Abouloff v. Oppenheimer (1882), 10 Q.B.D. 295 (C.A.), and recently affirmed by the House of Lords in Owens Bank Ltd. v. Bracco, [1992] 2 All E.R. 193, whereby the judgment will be vitiated by evidence that the foreign court was deliberately deceived on any matter, including on the merits of the case. A middle position was taken by the Ontario Court of Appeal in Jacobs v. Beaver (1908), 17 O.L.R. 496, and in this case, where it was held that fraud can only be argued on the basis of fresh evidence that was not known, and could not have been discovered with reasonable effort, at the time of the original decision.
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	LeBel J.	dissenting	Ontario	Action Constitutional law International law	C	D	United States Constitution, Article IV, Amendment V, Amendment XIV.	constitution	US	164 In Morguard, La Forest J. emphasized that the integrated character of the Canadian federation makes a high degree of cooperation between the courts of the various provinces a practical necessity. As this Court later confirmed in Hunt v. T&N plc, [1993] 4 S.C.R. 289, it is a "constitutional imperative", inherent in the relationship between the units of our federal state, that each province must recognize the properly assumed jurisdiction of another, and conversely that no court in a province can intermeddle in matters that are without a constitutionally sufficient connection to that province. Provided that a court's assumption of jurisdiction is based on a real and substantial connection to the forum, the matter is within the sphere of provincial authority, and the resulting judgment is entitled to "full faith and credit", to borrow the language of the United States Constitution (Article IV), in all the other provinces.
2003	Beals v. Saldanha	12/18/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2107/index.do	Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72	Major J.	majority	Ontario	Action Constitutional law International law	C	referred to	Indyka v. Indyka, [1969] 1 A.C. 33	SC	UK (HL)	21 Early common law rules were amended by rules intended to facilitate the flow of wealth, skills and people across boundaries, particularly boundaries of a federal state. Morguard established that the determination of the proper exercise of jurisdiction by a court depended upon two principles (relied on by the Ontario Court of Appeal in Muscutt v. Courcelles (2002), 213 D.L.R. (4th) 577, at para. 34), the first being the need for "order and fairness". The second was the existence of a "real and substantial connection" (see also Indyka v. Indyka, [1969] 1 A.C. 33 (H.L.); Moran v. Pyle National (Canada) Ltd., [1975] 1 S.C.R. 393).
2003	Odhavji Estate v. Woodhouse	12/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2104/index.do	Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69	IACOBUCCI J.	unanimous	Ontario	Action Civil procedure Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	46 It is now well established in Canada that the existence of such a duty is to be determined in accordance with the two-step analysis first enunciated by the House of Lords in Anns v. Merton London Borough Council, [1978] A.C. 728, at pp. 751-52: First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter — in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise. See for example Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2; B.D.C. Ltd. v. Hofstrand Farms Ltd., [1986] 1 S.C.R. 228; Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021; London Drugs Ltd. v. Kuehne & Nagel International Ltd., [1992] 3 S.C.R. 299; Winnipeg Condominium Corporation No. 36 v. Bird Construction Co., [1995] 1 S.C.R. 85; and Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79. 49 McLachlin C.J. and Major J. concluded, at para. 32, that the term "proximity", in the context of negligence law, is used to describe the type of relationship in which a duty of care to guard against foreseeable harm may rightly be imposed. As this Court stated in Hercules Managements Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165, at para. 24: The label "proximity", as it was used by Lord Wilberforce in Anns, supra, was clearly intended to connote that the circumstances of the relationship inhering between the plaintiff and the defendant are of such a nature that the defendant may be said to be under an obligation to be mindful of the plaintiff's legitimate interests in conducting his or her affairs. 51 The second stage of the Anns test requires the trial judge to consider whether there exist any residual policy considerations that ought to negative or reduce the scope of the duty or the class of persons to whom it is owed. In Cooper, McLachlin C.J. and Major J. wrote, at para. 37, that this stage of the analysis is not concerned with the relationship between the parties but, rather, with the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally. At this stage of the analysis, the question to be asked is whether there exist broad policy considerations that would make the imposition of a duty of care unwise, despite the fact that harm was a reasonably foreseeable consequence of the conduct in question and there was a sufficient degree of proximity between the parties that the imposition of a duty would not be unfair. (2) Application of the Anns Test
2003	Odhavji Estate v. Woodhouse	12/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2104/index.do	Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69	IACOBUCCI J.	unanimous	Ontario	Action Civil procedure Torts	C	referred to	Northern Territory of Australia v. Mengel (1995), 129 A.L.R. 1	SC	Australia	20 This understanding of the tort is consistent with the widespread consensus in other common law jurisdictions that there is a broad range of misconduct that can found an action for misfeasance in a public office. For example, in Northern Territory of Australia v. Mengel (1995), 129 A.L.R. 1 (H.C.), Brennan J. wrote as follows, at p. 25: The tort is not limited to an abuse of office by exercise of a statutory power. Henly v. Mayor of Lyme [(1828), 5 Bing. 91, 130 E.R. 995] was not a case arising from an impugned exercise of a statutory power. It arose from an alleged failure to maintain a sea wall or bank, the maintenance of which was a condition of the grant to the corporation of Lyme of the sea wall or bank and the appurtenant right to tolls. Any act or omission done or made by a public official in the purported performance of the functions of the office can found an action for misfeasance in public office. [Emphasis added.] In Garrett v. Attorney-General, [1997] 2 N.Z.L.R. 332, the Court of Appeal for New Zealand considered an allegation that a sergeant failed to investigate properly the plaintiff's claim that she had been sexually assaulted by a police constable. Blanchard J. concluded, at p. 344, that the tort can be committed "by an official who acts or omits to act in breach of duty knowing about the breach and also knowing harm or loss is thereby likely to be occasioned to the [plaintiff]".

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2003	Odhavji Estate v. Woodhouse	12/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2104/index.do	Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69	IACOBUCCI J.	unanimous	Ontario	Action Civil procedure Torts	C	referred to	Garrett v. Attorney-General, [1997] 2 N.Z.L.R. 332	lower-level court	New Zealand	20 This understanding of the tort is consistent with the widespread consensus in other common law jurisdictions that there is a broad range of misconduct that can found an action for misfeasance in a public office. For example, in Northern Territory of Australia v. Mengel (1995), 129 A.L.R. 1 (H.C.), Brennan J. wrote as follows, at p. 25: The tort is not limited to an abuse of office by exercise of a statutory power. Henly v. Mayor of Lyme [(1828), 5 Bing. 91, 130 E.R. 995] was not a case arising from an impugned exercise of a statutory power. It arose from an alleged failure to maintain a sea wall or bank, the maintenance of which was a condition of the grant to the corporation of Lyme of the sea wall or bank and the appurtenant right to tolls. Any act or omission done or made by a public official in the purported performance of the functions of the office can found an action for misfeasance in public office. [Emphasis added.] In Garrett v. Attorney-General, [1997] 2 N.Z.L.R. 332, the Court of Appeal for New Zealand considered an allegation that a sergeant failed to investigate properly the plaintiff's claim that she had been sexually assaulted by a police constable. Blanchard J. concluded, at p. 344, that the tort can be committed "by an official who acts or omits to act in breach of duty knowing about the breach and also knowing harm or loss is thereby likely to be occasioned to the plaintiff". 26 As is often the case, there are a number of phrases that might be used to describe the essence of the tort. In Garrett, supra, Blanchard J. stated, at p. 350, that "[t]he purpose behind the imposition of this form of tortious liability is to prevent the deliberate injuring of members of the public by deliberate disregard of official duty." In Three Rivers, supra, Lord Steyn stated, at p. 1230, that "[t]he rationale of the tort is that in a legal system based on the rule of law executive or administrative power 'may be exercised only for the public good' and not for ulterior and improper purposes." As each passage makes clear, misfeasance in a public office is not directed at a public officer who inadvertently or negligently fails adequately to discharge the obligations of his or her office: see Three Rivers, at p. 1273, per Lord Millett. Nor is the tort directed at a public officer who fails adequately to discharge the obligations of the office as a consequence of budgetary constraints or other factors beyond his or her control. A public officer who cannot adequately discharge his or her duties because of budgetary constraints has not deliberately disregarded his or her official duties. The tort is not directed at a public officer who is unable to discharge his or her obligations because of factors beyond his or her control but, rather, at a public officer who could have discharged his or her public obligations, yet wilfully chose to do otherwise.
2003	Odhavji Estate v. Woodhouse	12/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2104/index.do	Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69	IACOBUCCI J.	unanimous	Ontario	Action Civil procedure Torts	C	referred to	Three Rivers District Council v. Bank of England (No. 3), [2000] 2 W.L.R. 1220	SC	UK (HL)	21 The House of Lords reached the same conclusion in Three Rivers District Council v. Bank of England (No. 3), [2000] 2 W.L.R. 1220. In Three Rivers, the plaintiffs alleged that officers with the Bank of England improperly issued a licence to the Bank of Credit and Commerce International and then failed to close the bank once it became evident that such action was necessary. Forced to consider whether the tort could apply in the case of omissions, the House of Lords concluded that "the tort can be constituted by an omission by a public officer as well as by acts on his part" (per Lord Hutton, at p. 1267). In Australia, New Zealand and the United Kingdom, it is equally clear that the tort of misfeasance is not limited to the unlawful exercise of a statutory or prerogative power actually held.
2003	Odhavji Estate v. Woodhouse	12/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2104/index.do	Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69	IACOBUCCI J.	unanimous	Ontario	Action Civil procedure Torts	C	referred to	R. v. Dytham, [1979] Q.B. 722	lower-level court	UK	24 Insofar as the nature of the misconduct is concerned, the essential question to be determined is not whether the officer has unlawfully exercised a power actually possessed, but whether the alleged misconduct is deliberate and unlawful. As Lord Hobhouse wrote in Three Rivers, supra, at p. 1269: The relevant act (or omission, in the sense described) must be unlawful. This may arise from a straightforward breach of the relevant statutory provisions or from acting in excess of the powers granted or for an improper purpose. Lord Millett reached a similar conclusion, namely, that a failure to act can amount to misfeasance in a public office, but only in those circumstances in which the public officer is under a legal obligation to act. Lord Hobhouse stated the principle in the following terms, at p. 1269: "If there is a legal duty to act and the decision not to act amounts to an unlawful breach of that legal duty, the omission can amount to misfeasance [in a public office]." See also R. v. Dytham, [1979] Q.B. 722 (C.A.). So, in the United Kingdom, a failure to act can constitute misfeasance in a public office, but only if the failure to act constitutes a deliberate breach of official duty
2003	Doucet-Boudreau v. Nova Scotia (Minister of Education)	11/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2096/index.do	Doucet-Boudreau v. Nova Scotia (Minister of Education), [2003] 3 S.C.R. 3, 2003 SCC 62	Iacobucci and Arbour JJ.	majority	Nova Scotia	Appeal Constitutional law	C	referred to	Mareva Compania Naviera S.A. v. International Bulkcarriers S.A., [1975] 2 Lloyd's Rep. 509	lower-level court	UK	71 Although it may not be common in the context of Charter remedies, the reporting order issued by LeBlanc J. was judicial in the sense that it called on the functions and powers known to courts. In several different contexts, courts order remedies that involve their continuing involvement in the relations between the parties (see R. J. Sharpe, Injunctions and Specific Performance (2nd ed. (loose-leaf)), at paras. 1.260-1.490). Superior courts, which under the Judicature Acts possess the powers of common law courts and courts of equity, have "assumed active and even managerial roles in the exercise of their traditional equitable powers" (K. Roach, Constitutional Remedies in Canada (loose-leaf), at para. 13.60). A panoply of equitable remedies are now available to courts in support of the litigation process and the final adjudication of disputes. For example, prejudgment remedies developed in such cases as Mareva Compania Naviera S.A. v. International Bulkcarriers S.A., [1975] 2 Lloyd's Rep. 509 (C.A.), and Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55 (C.A.), involve the court in the preservation of evidence and the management of parties' assets prior to trial. In bankruptcy and receivership matters, courts may be called on to supervise fairly complex and ongoing commercial transactions relating to debtors' assets. Court-appointed receivers may report to and seek guidance from the courts and in some cases must seek the permission of the courts before disposing of property (see Bennett on Receiverships (2nd ed. 1999), at pp. 21-37, 443-45). Similarly, the courts' jurisdiction in respect of trusts and estates may sometimes entail detailed and continuing supervision and support of their administration (see D. W. M. Waters, Law of Trusts in Canada (2nd ed. 1984), at pp. 904-9; Oosterhoff on Wills and Succession (5th ed. 2001), at pp. 27-28). Courts may also retain an ongoing jurisdiction in family law cases to order alterations in maintenance payments or parenting arrangements as circumstances change. Finally, this Court has in the past remained seized of a matter so as to facilitate the implementation of constitutional language rights: see Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721; Re Manitoba Language Rights Order, [1985] 2 S.C.R. 347; Re Manitoba Language Rights Order, [1990] 3 S.C.R. 1417; Reference re Manitoba Language Rights, [1992] 1 S.C.R. 212. Lower courts have also retained jurisdiction in s. 23 cases: British Columbia (Association des parents francophones) v. British Columbia (1996), 139 D.L.R. (4th) 356 (B.C.S.C.), at p. 380; Lavoie, supra, at pp. 593-95; Société des Acadiens du Nouveau-Brunswick Inc. v.
2003	Doucet-Boudreau v. Nova Scotia (Minister of Education)	11/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2096/index.do	Doucet-Boudreau v. Nova Scotia (Minister of Education), [2003] 3 S.C.R. 3, 2003 SCC 62	Iacobucci and Arbour JJ.	majority	Nova Scotia	Appeal Constitutional law	C	referred to	Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55	lower-level court	UK	71 Although it may not be common in the context of Charter remedies, the reporting order issued by LeBlanc J. was judicial in the sense that it called on the functions and powers known to courts. In several different contexts, courts order remedies that involve their continuing involvement in the relations between the parties (see R. J. Sharpe, Injunctions and Specific Performance (2nd ed. (loose-leaf)), at paras. 1.260-1.490). Superior courts, which under the Judicature Acts possess the powers of common law courts and courts of equity, have "assumed active and even managerial roles in the exercise of their traditional equitable powers" (K. Roach, Constitutional Remedies in Canada (loose-leaf), at para. 13.60). A panoply of equitable remedies are now available to courts in support of the litigation process and the final adjudication of disputes. For example, prejudgment remedies developed in such cases as Mareva Compania Naviera S.A. v. International Bulkcarriers S.A., [1975] 2 Lloyd's Rep. 509 (C.A.), and Anton Piller KG v. Manufacturing Processes Ltd., [1976] 1 Ch. 55 (C.A.), involve the court in the preservation of evidence and the management of parties' assets prior to trial. In bankruptcy and receivership matters, courts may be called on to supervise fairly complex and ongoing commercial transactions relating to debtors' assets. Court-appointed receivers may report to and seek guidance from the courts and in some cases must seek the permission of the courts before disposing of property (see Bennett on Receiverships (2nd ed. 1999), at pp. 21-37, 443-45). Similarly, the courts' jurisdiction in respect of trusts and estates may sometimes entail detailed and continuing supervision and support of their administration (see D. W. M. Waters, Law of Trusts in Canada (2nd ed. 1984), at pp. 904-9; Oosterhoff on Wills and Succession (5th ed. 2001), at pp. 27-28). Courts may also retain an ongoing jurisdiction in family law cases to order alterations in maintenance payments or parenting arrangements as circumstances change. Finally, this Court has in the past remained seized of a matter so as to facilitate the implementation of constitutional language rights: see Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721; Re Manitoba Language Rights Order, [1985] 2 S.C.R. 347; Re Manitoba Language Rights Order, [1990] 3 S.C.R. 1417; Reference re Manitoba Language Rights, [1992] 1 S.C.R. 212. Lower courts have also retained jurisdiction in s. 23 cases: British Columbia (Association des parents francophones) v. British Columbia (1996), 139 D.L.R. (4th) 356 (B.C.S.C.), at p. 380; Lavoie, supra, at pp. 593-95; Société des Acadiens du Nouveau-Brunswick Inc. v.

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2003	Toronto (City) v. C.U.P.E., Local 79	11/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2097/index.do	Toronto (City) v. C.U.P.E., Local 79, [2003] 3 S.C.R. 77, 2003 SCC 63	LeBel J.	concurring	Ontario	Administrative law Labour law	C	referred to	Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147	SC	UK (HL)	87 Curiously, as Mullan notes, this list "repeats the list of 'nullifying' errors that Lord Reid laid out in the landmark House of Lords' judgment" in Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147. Anisminic "is usually treated as the foundation case in establishing in English law the reviewability of all issues of law on a correctness basis" (emphasis added), and, indeed, the Court "had cited with approval this portion of Lord Reid's judgment and deployed it to justify judicial intervention in a case described as the 'high water mark of activist' review in Canada: Metropolitan Life Insurance Co. v. International Union of Operating Engineers, Local 796", [1970] S.C.R. 425 (see Mullan, Administrative Law, supra, at pp. 69-70; see also National Corn Growers, supra, at p. 1335, per Wilson J.). 88 In characterizing patent unreasonableness in CUPE, then, Dickson J. simultaneously invoked a highly deferential standard (choice among a range of reasonable alternatives) and a historically interventionist one (based on the presence of nullifying errors). For this reason, as Mullan acknowledges, "it is easy to see why Dickson J.'s use of [the quotation from Anisminic] is problematic" (Mullan, Administrative Law, supra, at p. 70). 89 If Dickson J.'s reference to Anisminic in CUPE, supra, suggests some ambiguity as to the intended scope of "patent unreasonableness" review, later judgments also evidence a somewhat unclear relationship between patent unreasonableness and correctness in terms of establishing and, particularly, applying the methodology for review under the patent unreasonableness standard. The tension in this respect is rooted, in part, in differing views of the premise from which patent unreasonableness review should begin. A useful example is provided by CAIMAW v. Paccar of Canada Ltd.,
2003	Toronto (City) v. C.U.P.E., Local 79	11/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2097/index.do	Toronto (City) v. C.U.P.E., Local 79, [2003] 3 S.C.R. 77, 2003 SCC 63	Arbour J.	majority	Ontario	Administrative law Labour law	C	referred to	Hunter v. Chief Constable of the West Midlands Police, [1982] A.C. 529, aff'g McIlkenny v. Chief Constable of the West Midlands, [1980] 1 Q.B. 283	lower-level court	UK	20 This interpretation is consistent with the rule of interpretation that legislation is presumed not to depart from general principles of law without an express indication to that effect. This presumption was reviewed and applied by Iacobucci J. in Parry Sound, supra, at para 39. Section 22.1 reflected the law established in the leading Canadian case of Demeter v. British Pacific Life Insurance Co. (1983), 150 D.L.R. (3d) 249 (Ont. H.C.), at p. 264, aff'd (1984), 48 O.R. (2d) 266 (C.A.), wherein after a thorough review of Canadian and English jurisprudence, Osler J. held that a criminal conviction is admissible in subsequent civil litigation as prima facie proof that the convicted individual committed the alleged act, "subject to rebuttal by the plaintiff on the merits". However, the common law also recognized that the presumption of guilt established by a conviction is rebuttable only where the rebuttal does not constitute an abuse of the process of the court (Demeter (H.C.), supra, at p. 265; Hunter v. Chief Constable of the West Midlands Police, [1982] A.C. 529 (H.L.), at p. 541; see also Re Del Core and Ontario College of Pharmacists (1985), 51 O.R. (2d) 1 (C.A.), at p. 22, per Blair J.A.). Section 22.1 does not change this; the legislature has not explicitly displaced the common law doctrines and the rebuttal is consequently subject to them.39 The locus classicus for the modern doctrine of abuse of process and its relationship to res judicata is Hunter, supra, aff'g McIlkenny v. Chief Constable of the West Midlands, [1980] Q.B. 283 (C.A.). The case involved an action for damages for personal injuries brought by the six men convicted of bombing two pubs in Birmingham. They claimed that they had been beaten by the police during their interrogation. The plaintiffs had raised the same issue at their criminal trial, where it was found by both the judge and jury that the confessions were voluntary and that the police had not used violence. At the Court of Appeal, Lord Denning, M.R., endorsed non-mutual issue estoppel and held that the question of whether any beatings had taken place was estopped by the earlier determination, although it was raised here against a different opponent. He noted that in analogous cases, courts had sometimes refused to allow a party to raise an issue for a second time because it was an "abuse of the process of the court", but held that the proper characterization of the matter was through non-mutual issue estoppel. 41 It is important to note that a public inquiry after the civil action of the six accused in Hunter, supra, resulted in the finding that the confessions of the Birmingham six had been extracted through police brutality (see R. v. McIlkenny (1991), 93 Cr. App. R. 287 (C.A.), at pp. 304 et seq.). In my view, this does not support a relaxation of the existing procedural mechanisms designed to ensure finality in criminal proceedings. The danger of wrongful convictions has been acknowledged by this Court and other courts (see United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7, at para. 1; and R. v. Bromley (2001), 151 C.C.C. (3d) 480 (Nfld. C.A.), at pp. 517-18). Although safeguards must be put in place for the protection of the innocent, and, more generally, to ensure the trustworthiness of court findings, continuous re-litigation is not a guarantee of factual accuracy. 42 The attraction of the doctrine of abuse of process is that it is unencumbered by the specific requirements of res judicata while offering the discretion to prevent relitigation, essentially for the purpose of preserving the integrity of the court's process. (See Doherty J.A.'s reasons, at para. 65; see also Demeter (H.C.), supra, at p. 264, and Hunter, supra, at p. 536.) 43 Critics of that approach have argued that when abuse of process is used as a proxy for issue estoppel, it obscures the true question while adding nothing but a vague sense of discretion. I disagree. At least in the context before us, namely, an attempt to relitigate a criminal conviction, I believe that abuse of process is a doctrine much more responsive to the real concerns at play. In all of its applications, the primary focus of the doctrine
2003	Toronto (City) v. C.U.P.E., Local 79	11/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2097/index.do	Toronto (City) v. C.U.P.E., Local 79, [2003] 3 S.C.R. 77, 2003 SCC 63	Arbour J.	majority	Ontario	Administrative law Labour law	C	referred to	Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)	SC	US	27 Professor Watson then exposes the additional difficulties that arise if the mutuality requirement is removed when issue estoppel is raised offensively, as was done by the United States Supreme Court in Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979). He describes the offensive use of non mutual issue estoppel as follows (at p. 631): The power of this offensive non-mutual issue estoppel doctrine is illustrated by single event disaster cases, such as an airline crash. Assume P1 sues Airline for negligence in the operation of the aircraft and in that action Airline is found to have been negligent. Offensive non-mutual issue estoppel permits P2 through P20, etc., now to sue Airline and successfully plead issue estoppel on the question of the airline's negligence. The rationale is that if Airline fully and fairly litigated the issue of its negligence in action #1 it has had its day in court; it has had due process and it should not be permitted to re-litigate the negligence issue. However, the court in Parklane realized that in order to ensure fairness in the operation of offensive non-mutual issue estoppel the doctrine has to be subject to qualifications. 28 Properly understood, our case could be viewed as falling under this second category — what would be described in U.S. law as "non-mutual offensive preclusion". Although technically speaking the City of Toronto is not the "plaintiff" in the arbitration proceedings, the City wishes to take advantage of the conviction obtained by the Crown against Oliver in a different, prior proceeding to which the City was not a party. It wishes to preclude Oliver from relitigating an issue that he fought and lost in the criminal forum. U.S. law acknowledges the peculiar difficulties with offensive use of non-mutual estoppel. Professor Watson explains, at pp. 632-33: First, the court acknowledged that the effects of non-mutuality differ depending on whether issue estoppel is used offensively or defensively. While defensive preclusion helps to reduce litigation offensive preclusion, by contrast, encourages potential plaintiffs not to join in the first action. "Since a plaintiff will be able to rely on a previous judgment against a defendant but will not be bound by that judgment if the defendant wins, the plaintiff has every incentive to adopt a 'wait and see' attitude, in the hope that the first action by another plaintiff will result in a favorable judgment". Thus, without some limit, non-mutual offensive preclusion would increase rather than decrease the total amount of litigation. To meet this problem the Parklane court held that preclusion should be denied in action #2 "where a plaintiff could easily have joined in the earlier action". Second, the court recognized that in some circumstances to permit non-mutual preclusion "would be unfair to the defendant" and the court referred to specific situations of unfairness: (a) the defendant may have had little incentive to defend vigorously the first action, that is, if she was sued for small or nominal damages, particularly if future suits were not foreseeable; (b) offensive preclusion may be unfair if the judgment relied upon as a basis for estoppel is itself inconsistent with one or more previous judgments in favour of the defendant; or (c) the second action affords to the defendant procedural opportunities unavailable in the first action that could readily result in a different outcome, that is, where the defendant in the first action was forced to defend in an inconvenient forum and was unable to call witnesses, or where in the first action much more limited discovery was available to the defendant than in the second action.

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2003	Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur	10/3/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2088/index.do	Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur, [2003] 2 S.C.R. 504, 2003 SCC 54	GONTHIER J.	unanimous	Nova Scotia	Administrative law Constitutional law	C	referred to	David Taylor & Son, Ltd. v. Barnett, [1953] 1 All E.R. 843	lower-level court	UK	45 In applying the approach set out above, there is in my view no need to draw any distinction between "general" and "limited" questions of law, as was admittedly done in Cooper, supra. An administrative body will normally either have or not have the power to decide questions of law. As stated above, administrative bodies that do have that power may presumptively go beyond the bounds of their enabling statute and decide issues of common law or statutory interpretation that arise in the course of a case properly before them, subject to judicial review on the appropriate standard: see, e.g., McLeod v. Egan, [1975] 1 S.C.R. 517; David Taylor & Son, Ltd. v. Barnett, [1953] 1 All E.R. 843 (C.A.); Canadian Broadcasting Corp. v. Canada (Labour Relations Board), [1995] 1 S.C.R. 157. Absent a clear expression or implication of contrary intent, such administrative bodies will also have jurisdiction to subject the statutory provisions over which they have jurisdiction to Charter scrutiny, while those tribunals without power to decide questions of law will not.
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	distinguished	Lister v. Hesley Hall Ltd., [2002] 1 A.C. 215	Sc	UK (HL)	27 I note in conclusion on this point that this case is significantly different from Lister v. Hesley Hall Ltd., [2002] 1 A.C. 215, where the House of Lords held a company that ran a private boarding annex vicariously liable for the sexual assaults committed by the warden of the annex. The boarding annex was designed to provide a home environment for a number of troubled boys, in the company of the warden and his wife; in this respect, it was similar to a foster home. In that case, the warden was clearly an employee acting on behalf of the company. The care was given in the boarding annex, not in a private home. The warden received a salary, instead of the cost-recovery payments made per child to foster parents. The warden would have been perceived as acting on behalf of the company. By contrast, the foster parents in the present appeal are not reasonably perceived as acting on behalf of the government.
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	referred to	Wilsher v. Essex Area Health Authority, [1988] 2 W.L.R. 557	Sc	UK (HL)	13 These unchallenged findings are fully supported on the record. Before turning to this, however, it is worth noting that the private nature of the abuse may heighten the difficulty of proving the abuse and its connection to the government's conduct in placement and supervision. As in other areas of negligence law, judges should assess causation using what Sopinka J., citing Lord Bridge in Wilsher v. Essex Area Health Authority, [1988] 2 W.L.R. 557 (H.L.), at p. 569, referred to as a "robust and pragmatic approach" (Snell v. Farrell, [1990] 2 S.C.R. 311, at p. 330). As Sopinka J. emphasized, "[c]ausation need not be determined [with] scientific precision" (Snell, at p. 328). A common sense approach sensitive to the realities of the situation suffices.
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	referred to	Ali v. Sydney Mitchell & Co., [1980] A.C. 198	Sc	UK (HL)	14 Turning first to the duty of care, the Act stipulates, in s. 8(12), that the Superintendent of Child Welfare must make such arrangements for the placement of a child in a foster home "as will best meet the needs of the child". (The relevant legislative provisions are reproduced in the Appendix.) This imposes a high standard of care. In most contexts, the law of negligence requires reasonable care, not perfection: Challand v. Bell (1959), 18 D.L.R. (2d) 150 (Alta. S.C.); Ali v. Sydney Mitchell & Co., [1980] A.C. 198 (H.L.). In the case of those exercising a form of control over a child comparable to that of a parent, however, the law imposes a heightened degree of attentiveness. The "careful parent test" imposes the standard of a prudent parent solicitous for the welfare of his or her child (Durham v. Public School Board of Township School Area of North Oxford (1960), 23 D.L.R. (2d) 711 (Ont. C.A.), at p. 717; McKay v. Board of Govan School Unit No. 29 of Saskatchewan, [1968] S.C.R. 589; Myers v. Peel County Board of Education, [1981] 2 S.C.R. 21). This is the test that governs the placement and supervision of children in foster care under the Protection of Children Act. It does not make the government a guarantor against all harm. But it holds it responsible for harm sustained by children in foster care, when, judged by the standards of the day, it was reasonably foreseeable that the government's conduct would expose these children to harm of the sort that they sustained.
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	referred to	Cassidy v. Ministry of Health, [1951] 2 K.B. 343	lower-level court	UK	30 The appellants argue that the government is liable for their losses on the basis of the doctrine of non-delegable duty. The idea that a person who delegates work to another person may be held responsible for torts committed by that person in executing the work on grounds other than vicarious liability has been discussed for some time. More than 50 years ago, Denning L.J. stated in Cassidy v. Ministry of Health, [1951] 2 K.B. 343 (C.A.), at p. 363: "where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation be to a servant under a contract of service or to an independent contractor under a contract for services".
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	referred to	Emery v. Emery, 289 P.2d 218 (1955)	lower-level court	US	42 Case law has traditionally described the parental fiduciary duty in narrow terms, as a duty to avoid certain harmful actions which find their origin in parents abandoning and abusing the position of trust they hold with respect to their children. The content of the parent-child fiduciary obligation has been held to include the duty not to exercise undue influence over the child in the context of economic matters and contractual relations between parent and child: M. (K.) v. M. (H.), supra, at p. 66; Meagher, Gummow and Lehane's Equity, Doctrines and Remedies (4th ed. 2002), at pp. 508-9. In the United States, the parental fiduciary duty has been extended to a duty not to wilfully inflict personal injuries on the child "beyond the limits of reasonable parental discipline" (Emery v. Emery, 289 P.2d 218 (Cal. 1955), at p. 224; see also Evans v. Eckelman, 265 Cal. Rptr. 605 (Cal. Ct. App. 1990)). In the same vein, this Court held in M. (K.) v. M. (H.) that incest amounts to a breach of the parental fiduciary duty. La Forest J. there described "the essence of the parental obligation . . . [as] simply to refrain from inflicting personal injuries upon one's child" (p. 67).
2003	K.L.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2085/index.do	K.L.B. v. British Columbia, [2003] 2 S.C.R. 403, 2003 SCC 51	McLachlin C.J.	majority	British Columbia	Action Torts	C	referred to	Evans v. Eckelman, 265 Cal. Rptr. 605 (1990)	lower-level court	US	42 Case law has traditionally described the parental fiduciary duty in narrow terms, as a duty to avoid certain harmful actions which find their origin in parents abandoning and abusing the position of trust they hold with respect to their children. The content of the parent-child fiduciary obligation has been held to include the duty not to exercise undue influence over the child in the context of economic matters and contractual relations between parent and child: M. (K.) v. M. (H.), supra, at p. 66; Meagher, Gummow and Lehane's Equity, Doctrines and Remedies (4th ed. 2002), at pp. 508-9. In the United States, the parental fiduciary duty has been extended to a duty not to wilfully inflict personal injuries on the child "beyond the limits of reasonable parental discipline" (Emery v. Emery, 289 P.2d 218 (Cal. 1955), at p. 224; see also Evans v. Eckelman, 265 Cal. Rptr. 605 (Cal. Ct. App. 1990)). In the same vein, this Court held in M. (K.) v. M. (H.) that incest amounts to a breach of the parental fiduciary duty. La Forest J. there described "the essence of the parental obligation . . . [as] simply to refrain from inflicting personal injuries upon one's child" (p. 67).
2003	M.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2087/index.do	M.B. v. British Columbia, [2003] 2 S.C.R. 477, 2003 SCC 53	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Lincoln v. Hayman, [1982] 2 All E.R. 819	lower-level court	uk	41 Prior to the enactment of this legislation, both the English Court of Appeal and the House of Lords had recommended deductibility of social assistance benefits (reversing the earlier common law rule of non-deductibility). In Lincoln v. Hayman, [1982] 2 All E.R. 819, the Court of Appeal held that a statutory income support payment received by the plaintiff was deductible from an award for past loss of earnings. Lord Waller, at p. 823, gave a helpful statement of why deductibility was necessary to avoid double recovery. The rationale that he put forward there seems also to apply to the case at bar: When he [the plaintiff] became unemployed he did not lose the total of his wages because part of that loss was replaced by supplementary benefit. If the supplementary benefit is not taken into account and deducted the plaintiff will recover more damages than he has suffered. It will be a fortuitous windfall. Similarly, in Hodgson v. Trapp, [1989] 1 A.C. 807, the House of Lords stated that statutory benefits in the form of mobility and attendance allowances were deductible from a tort damage award, on the grounds that "[t]o allow double recovery . . . at the expense of both taxpayers and insurers seems to
2003	M.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2087/index.do	M.B. v. British Columbia, [2003] 2 S.C.R. 477, 2003 SCC 53	McLachlin C.J.	majority	British Columbia	Torts	C	referred to	Hodgson v. Trapp, [1989] 1 A.C. 807	SC	UK (HL)	41 Prior to the enactment of this legislation, both the English Court of Appeal and the House of Lords had recommended deductibility of social assistance benefits (reversing the earlier common law rule of non-deductibility). In Lincoln v. Hayman, [1982] 2 All E.R. 819, the Court of Appeal held that a statutory income support payment received by the plaintiff was deductible from an award for past loss of earnings. Lord Waller, at p. 823, gave a helpful statement of why deductibility was necessary to avoid double recovery. The rationale that he put forward there seems also to apply to the case at bar: When he [the plaintiff] became unemployed he did not lose the total of his wages because part of that loss was replaced by supplementary benefit. If the supplementary benefit is not taken into account and deducted the plaintiff will recover more damages than he has suffered. It will be a fortuitous windfall. Similarly, in Hodgson v. Trapp, [1989] 1 A.C. 807, the House of Lords stated that statutory benefits in the form of mobility and attendance allowances were deductible from a tort damage award, on the grounds that "[t]o allow double recovery . . . at the expense of both taxpayers and insurers seems to

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2003	M.B. v. British Columbia	10/2/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2087/index.do	M.B. v. British Columbia, [2003] 2 S.C.R. 477, 2003 SCC 53	McLachlin C.J.	majority	British Columbia	Torts	R		Social Security (Recovery of Benefits) Act 1997 (U.K.), 1997, c. 27.	statute	UK	40 Finally, other jurisdictions are increasingly moving toward a policy of deductibility. In England, the Pearson Commission concluded in 1978 that: . . . the time has come for full co-ordination of the compensation provided by tort and social security. An injured person, or his dependants, should not have the same need met twice, not only because it is inequitable, but because it is wasteful. (Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (1978), vol. I, p. 107, at para. 475) Parliament followed this advice in 1989, introducing a recoupment scheme whereby the state may recoup the value of a number of benefits paid out to those who subsequently receive damage awards. The scheme is now in force through the Social Security (Recovery of Benefits) Act 1997 (U.K.), 1997, c. 27. Public benefits that fall outside the recoupment scheme are subject to a common law rule of deductibility.
2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	distinguished	R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2), [1999] 2 W.L.R. 272	SC	UK (HL)	70 This has been described as "automatic disqualification", and was recently revisited by the House of Lords in R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 2), [1999] 2 W.L.R. 272. There, the House of Lords dealt with a situation in which Lord Hoffmann had participated in a decision in which Amnesty International was an intervener, while sitting as a director and chairperson of a charity closely allied with Amnesty International and sharing its objects. In that context, it was found that the rule of "automatic disqualification" extended to a limited class of non-financial interests, where the judge has such a relevant interest in the subject matter of the case that he or she is effectively in the position of a party to the cause. As a result, Lord Hoffmann was disqualified, and the decision of the House of Lords was set aside, in a judgment that drew much attention around the world. 72 Whatever the case in Britain, the idea of a rule of automatic disqualification takes a different shade in Canada, in light of our insistence that disqualification rest either on actual bias or on the reasonable apprehension of bias, both of which, as we have said, require a consideration of the judge's state of mind, either as a matter of fact or as imagined by the reasonable person. In any event, even on the assumption that the line of reasoning developed in Pinochet, supra, is authoritative in Canada, it is of no relevance in the present case. On the facts before us, there is no suggestion that Binnie J. had any financial interest in the appeals, or had such an interest in the subject matter of the case that he was effectively in the position of a party to the cause.
2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	referred to	Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., [2000] Q.B. 451	lower-level court	UK	53 The Crown submitted that since Binnie J. had no recollection, he brought no knowledge of his prior participation by way of discussions about Campbell River's claim. As a result, there was neither actual bias nor any reasonable apprehension of bias on his part. Relying on the English Court of Appeal's decision in Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., [2000] Q.B. 451, the Crown submitted that Binnie J.'s lack of recollection dispels any appearance of possible bias. According to the Crown, the fact that Binnie J.'s prior involvement occurred 17 years earlier reinforces the conclusion that there can be no reasonable apprehension of bias. On this point, the bands concede that the passage of time is a relevant factor. Finally, the Crown submitted that since the judgment of the Court was unanimous in dismissing the appeals, and since Binnie J. had no recollection of his earlier involvement, no reasonable person could conclude that he somehow influenced the minds of the other eight judges who heard the case. 64 First, when parties say that there was no actual bias on the part of the judge, they may mean that the current standard for disqualification does not require that they prove it. In that sense, the "reasonable apprehension of bias" can be seen as a surrogate for actual bias, on the assumption that it may be unwise or unrealistic to require that kind of evidence. It is obviously impossible to determine the precise state of mind of an adjudicator (Cory J. in Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), [1992] 1 S.C.R. 623, at p. 636). As stated by the English Court of Appeal in Locabail (U.K.), supra, at p. 472: The proof of actual bias is very difficult, because the law does not countenance the questioning of a judge about extraneous influences affecting his mind; and the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring them to show that such bias actually exists. Again, in the present instance, no one suggests that Binnie J. was consciously allowing extraneous influences to affect his mind. Consequently, it would appear that reasonable apprehension of bias is not invoked here as a surrogate for actual bias. 71 A more recent decision of the English Court of Appeal suggests that this extension of the rule of automatic disqualification, beyond cases of financial interests, is likely to remain exceptional (Locabail (U.K.), supra). Even so extended, the rule of automatic disqualification does not apply to the situation in which the decision-maker was somehow involved in the litigation or linked to counsel at an earlier stage, as is argued here. 86 In Locabail (U.K.), supra, at p. 480, the English Court of Appeal stated: . . . every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be. 88 In the present instance, Binnie J.'s limited supervisory role in relation to this case dates back over 15 years. This lengthy period is obviously significant in relation to Binnie J.'s statement that when the appeals were heard and decided, he had no recollection of his involvement in this file from the 1980s. The lack of knowledge or recollection of the relevant facts was addressed by the English Court of Appeal in Locabail (U.K.), supra. There, at p. 487, the Court

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2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	referred to	R. v. Gough, [1993] A.C. 646	SC	UK (HL)	65 Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that: Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit. As framed, some of the arguments presented by the parties suggest that they are preoccupied that Binnie J. may have been unconsciously biased despite his good faith. 66 Finally, when parties concede that there was no actual bias, they may be suggesting that looking for real bias is simply not the relevant inquiry. In the present case, as is most common, parties have relied on Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice". 69 At the opposite end from claims of actual bias, it has been suggested that it is wrong to be a judge in one's own cause, whether or not one knows this to be the case. The idea has been linked to the early decision of Dimes v. Proprietors of the Grand Junction Canal (1852), 3 H.L.C. 759, 10 E.R. 301. More recently, in Gough, supra, at p. 661, Lord Goff stated that there are certain cases in which it has been considered that the circumstances are such that they must inevitably shake public confidence in the integrity of the administration of justice if the decision is to be allowed to stand. . . . These cases arise where a person sitting in a judicial capacity has a pecuniary interest in the outcome of the proceedings. . . . In such a case, . . . not only is it irrelevant that there was in fact no bias on the part of the tribunal, but there is no question of investigating, from an objective point of view, whether there was any real likelihood of bias, or any reasonable suspicion of bias, on the facts of the particular case. The nature of the interest is such that public confidence in the administration of justice requires that the decision
2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	referred to	The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167	lower-level court	UK	65 Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that: Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit. As framed, some of the arguments presented by the parties suggest that they are preoccupied that Binnie J. may have been unconsciously biased despite his good faith.
2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	referred to	Man O'War Station Ltd. v. Auckland City Council (Judgment No. 1), [2002] 3 N.Z.L.R. 577, [2002] UKPC 28	SC	UK (PC)	77 Second, this is an inquiry that remains highly fact-specific. In Man O'War Station Ltd. v. Auckland City Council (Judgment No. 1), [2002] 3 N.Z.L.R. 577, [2002] UKPC 28, at par. 11, Lord Steyn stated that "This is a corner of the law in which the context, and the particular circumstances, are of supreme importance." As a result, it cannot be addressed through peremptory rules, and contrary to what was submitted during oral argument, there are no "textbook" instances. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.
2003	Wewaykum Indian Band v. Canada	9/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2078/index.do	Wewaykum Indian Band v. Canada, [2003] 2 S.C.R. 259, 2003 SCC 45	The Court	unanimous	Canada	Courts	C	referred to	Panton v. Minister of Finance, [2001] 5 L.R.C. 132, [2001] UKPC 33	SC	UK (PC)	87 Similarly, in Panton v. Minister of Finance, [2001] 5 L.R.C. 132, [2001] UKPC 33, at para. 15, the Privy Council said: Another consideration which weighs against any idea of apparent or potential bias in the present case is the length of time which intervened between Rattray P.'s conduct in connection with the Act or indeed his holding of the office of Attorney General and the time when he sat as President in the Court of Appeal to hear the present case. . . . It appears that Rattray P. retired as Attorney General in 1993. The hearing of the appeal was in 1998. While that interval of time is not so great as to make the former connection with the Act one of remote history, it is nevertheless of some significance in diminishing to some degree the strength of any objection which could be made to his qualification to hear the case

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2003	Authorson v. Canada (Attorney General)	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2072/index.do	Authorson v. Canada (Attorney General), [2003] 2 S.C.R. 40, 2003 SCC 39	MAJOR J.	unanimous	Ontario	Constitutional law	C	referred to	Lochner v. New York, 198 U.S. 45 (1905)	SC	US	48 Canadian courts have been wary of recognizing such protections, in part perhaps because of the American experience with the substantive due process enforcement of property and contract rights. Professor Hogg has summarized the constitutional crisis that resulted from what many at the time and since felt to be extreme judicial policy making. The occasion of this historical episode was Lochner v. New York, 198 U.S. 45 (1905) (striking down state legislation setting maximum work hours in New York bakeries on due process grounds). See P. W. Hogg, Constitutional Law of Canada (4th ed. 1997), at p. 1070: Between 1905, when Lochner v. New York was decided, and 1937, when the case was overruled, the Supreme Court of the United States protected the liberties of the owners of factories and mines against the efforts of Congress and the state Legislatures to limit hours of work, to require the payment of minimum wages, to impose health and safety standards and to protect union activity. As Oliver Wendell Holmes pointed out in his brilliant dissenting opinions, the Court used the Constitution to enforce a laissez-faire economic theory that had been rejected by the elected legislators. The Court had taken sides in a political conflict that was suitable for resolution only by elected legislators. In 1937, after an exasperated President Roosevelt had proposed his court-packing plan, the Court changed its mind and reversed these decisions. Since then, the Court has been extremely reluctant to review social and economic regulation, despite its inevitable interferences with the property and contract rights that the Constitution of the United States expressly guarantees. 49 The experience surrounding the Lochner case might have cast a shadow over the recognition of substantive due process rights in Canadian jurisprudence. Curr v. The Queen, [1972] S.C.R. 889, asked whether the Bill of Rights s. 1(a) guarantee against deprivation of security of the person except through due process of law protected against a compulsory breath test. In holding that it did not, Laskin J., at p. 902, suggested "extreme caution" in importing substance into the due process guarantees of the Bill of Rights: The very large words of s. 1(a), tempered by a phrase ("except by due process of law") whose original English meaning has been overlaid by American constitutional imperatives, signal extreme caution to me when asked to apply them in negation of substantive legislation validly enacted by a Parliament in which the major role is played by elected representatives of the people. Laskin J. stated that to read substantive protections into these due process rights would require "compelling reasons" relating to "objective and
2003	Unifund Assurance Co. v. Insurance Corp. of British Columbia	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2073/index.do	Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40	Binnie J.	majority	Ontario	Constitutional law Insurance	C	distinguished	International Shoe Co. v. State of Washington, 326 U.S. 310 (1945)	SC	Us	74 In Broken Hill, for example, Dixon J. went on to say, "If a connection exists, it is for the legislature to decide how far it should go in the exercise of its powers" (p. 375). We would say, after Morguard, Hunt and Tolofson, that, within our federal structure, it is not only the view of the enacting legislature that must be considered, but the collective interest of the federation as a whole in order and fairness. The same caveat should be placed at the door of the United States' "minimum contacts" doctrine, endorsed by its Supreme Court in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). In that country, as well, state laws are given generous application to disputes with limited connections to the enacting jurisdiction (see, e.g., Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981)) to the point where Professor Laurence Tribe has commented: There is much to be said for the view that the current state of the Supreme Court's personal jurisdiction and choice-of-law doctrines is precisely backwards. It is easy for a state to apply its law (which is by definition outcome-determinative) to a case, but relatively difficult for it to obtain jurisdiction over a dispute, even though jurisdiction is never directly outcome-determinative. Jurisdictional issues are unpredictable and endlessly litigated; choice-of-law matters are largely unregulated. (L. H. Tribe, American Constitutional Law (3rd ed. 2000), vol. 1, at p. 1292)
2003	Unifund Assurance Co. v. Insurance Corp. of British Columbia	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2073/index.do	Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40	Binnie J.	majority	Ontario	Constitutional law Insurance	C	distinguished	Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981)	SC	Us	74 In Broken Hill, for example, Dixon J. went on to say, "If a connection exists, it is for the legislature to decide how far it should go in the exercise of its powers" (p. 375). We would say, after Morguard, Hunt and Tolofson, that, within our federal structure, it is not only the view of the enacting legislature that must be considered, but the collective interest of the federation as a whole in order and fairness. The same caveat should be placed at the door of the United States' "minimum contacts" doctrine, endorsed by its Supreme Court in International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). In that country, as well, state laws are given generous application to disputes with limited connections to the enacting jurisdiction (see, e.g., Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981)) to the point where Professor Laurence Tribe has commented: There is much to be said for the view that the current state of the Supreme Court's personal jurisdiction and choice-of-law doctrines is precisely backwards. It is easy for a state to apply its law (which is by definition outcome-determinative) to a case, but relatively difficult for it to obtain jurisdiction over a dispute, even though jurisdiction is never directly outcome-determinative. Jurisdictional issues are unpredictable and endlessly litigated; choice-of-law matters are largely unregulated. (L. H. Tribe, American Constitutional Law (3rd ed. 2000), vol. 1, at p. 1292)
2003	Unifund Assurance Co. v. Insurance Corp. of British Columbia	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2073/index.do	Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40	Binnie J.	majority	Ontario	Constitutional law Insurance	C	referred to	Pennoyer v. Neff, 95 U.S. 714 (1877)	SC	Us	61 A similar concern for state comity, or reciprocal respect, was internalized within the federal structure of the United States as early as Pennoyer v. Neff, 95 U.S. 714 (1877), at p. 722: . . . no State can exercise direct jurisdiction and authority over persons or property without its territory. . . . The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.
2003	Unifund Assurance Co. v. Insurance Corp. of British Columbia	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2073/index.do	Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40	Binnie J.	majority	Ontario	Constitutional law Insurance	C	referred to	Union Steamship Co. of Australia Proprietary Ltd. v. King (1988), 166 C.L.R. 1 (Aust. H.C.)	SC	Australia	73 Adoption of the principles of order and fairness as a mechanism to regulate extraterritoriality concerns differentiates Canada somewhat from Australia (where s. 2 of the Constitution specifically confers extraterritorial jurisdiction on the several states, which, in some circumstances, can include the off-shore: Union Steamship Co. of Australia Proprietary Ltd. v. King (1988), 166 C.L.R. 1 (Aust. H.C.), at p. 12) and the United States, where the jurisprudence is governed by the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Article IV of the Constitution.
2003	Unifund Assurance Co. v. Insurance Corp. of British Columbia	7/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2073/index.do	Unifund Assurance Co. v. Insurance Corp. of British Columbia, [2003] 2 S.C.R. 63, 2003 SCC 40	Binnie J.	majority	Ontario	Constitutional law Insurance	C	referred to	United States Constitution, art. IV, Fourteenth Amendment.	constitution	US	73 Adoption of the principles of order and fairness as a mechanism to regulate extraterritoriality concerns differentiates Canada somewhat from Australia (where s. 2 of the Constitution specifically confers extraterritorial jurisdiction on the several states, which, in some circumstances, can include the off-shore: Union Steamship Co. of Australia Proprietary Ltd. v. King (1988), 166 C.L.R. 1 (Aust. H.C.), at p. 12) and the United States, where the jurisprudence is governed by the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Article IV of the Constitution.

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2003	R. v. Asante-Mensah	7/11/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2071/index.do	R. v. Asante-Mensah, [2003] 2 S.C.R. 3, 2003 SCC 38	BINNIE J.	unanimous	Ontario	Property law	C	referred to	Holgate-Mohammed v. Duke, [1984] A.C. 437	SC	UK (HL)	33 A good starting point is the description of an arrest at common law provided by Lord Diplock in Holgate-Mohammed v. Duke, [1984] A.C. 437 (H.L.), at p. 441: The word "arrest" . . . is a term of art. First, it should be noted that arrest is a continuing act; it starts with the arrester taking a person into his custody, (sc. by action or words restraining him from moving anywhere beyond the arrester's control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate's judicial act. [Emphasis added.] See also Murray v. Ministry of Defence, [1988] 1 W.L.R. 692 (H.L.), at p. 699.
2003	R. v. Asante-Mensah	7/11/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2071/index.do	R. v. Asante-Mensah, [2003] 2 S.C.R. 3, 2003 SCC 38	BINNIE J.	unanimous	Ontario	Property law	C	referred to	Murray v. Ministry of Defence, [1988] 1 W.L.R. 692	SC	UK (HL)	33 A good starting point is the description of an arrest at common law provided by Lord Diplock in Holgate-Mohammed v. Duke, [1984] A.C. 437 (H.L.), at p. 441: The word "arrest" . . . is a term of art. First, it should be noted that arrest is a continuing act; it starts with the arrester taking a person into his custody, (sc. by action or words restraining him from moving anywhere beyond the arrester's control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate's judicial act. [Emphasis added.] See also Murray v. Ministry of Defence, [1988] 1 W.L.R. 692 (H.L.), at p. 699.
2003	R. v. Asante-Mensah	7/11/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2071/index.do	R. v. Asante-Mensah, [2003] 2 S.C.R. 3, 2003 SCC 38	BINNIE J.	unanimous	Ontario	Property law	C	referred to	Hussien v. Chong Fook Kam, [1970] A.C. 942	SC	UK (PC)	43 Distinctions between the concepts of "arrest" and "custody" are made for some purposes in the Criminal Code : see, e.g., Law Reform Commission of Canada, Working Paper 41, Arrest (1985), at p. 30. The appellant now concedes that he was properly convicted of escaping lawful custody, but his idea seems to be that once he is "touched", as in a children's game, he is free either to submit or to go his own way. If he leaves, he may be charged with escaping lawful custody, but he says the inspector has no authority to use any degree of force to preserve that lawful custody. This cannot be so. Arrest implies confrontation and confrontation creates a potential for the use of force by one party or the other. In Hussien v. Chong Fook Kam, [1970] A.C. 942 (P.C.), Lord Devlin commented, at p. 947: An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. [Emphasis added.]
2003	R. v. Asante-Mensah	7/11/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2071/index.do	R. v. Asante-Mensah, [2003] 2 S.C.R. 3, 2003 SCC 38	BINNIE J.	unanimous	Ontario	Property law	C	referred to	Spicer v. Holt, [1977] A.C. 987	SC	UK (HL)	46 Arrest may also be effected by words and a restraint on liberty which is accompanied by submission. This is how Whitfield was interpreted in Latimer, supra, where the accused, a Saskatchewan farmer, was detained by police on suspicion of terminating the life of his handicapped daughter. The police, for their own reasons, intended to stop short of arresting him and no "words of arrest" were spoken. No force was used. However, the issue, for purposes of s. 9 of the Charter ("arbitrary detention"), was defined by the Court as what the person arrested understood. It was concluded that he submitted to go with the police because he understood that he was under compulsion to do so. There was, in the words of Lamer C.J., a de facto arrest (para. 25). Latimer considered himself deprived of "his liberty to go where he pleases": Spicer v. Holt, [1977] A.C. 987 (H.L.), at p. 1000.
2003	Bell Canada v. Canadian Telephone Employees Association	6/26/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2068/index.do	Bell Canada v. Canadian Telephone Employees Association, [2003] 1 S.C.R. 884, 2003 SCC 36	McLachlin CHIEF JUSTICE AND BASTARACHE J.	unanimous	Federal Court of Appeal	Administrative law	C	referred to	Liteky v. United States, 510 U.S. 540 (1994)	SC	US	38 The objection that the guideline power unduly fetters the Tribunal overlooks the fact that guidelines are a form of law. It also mistakenly conflates impartiality with complete freedom to decide a case in any manner that one wishes. Being fettered by law does not render a tribunal partial, because impartiality does not consist in the absence of all constraints or influences. Rather, it consists in being influenced only by relevant considerations, such as the evidence before the Tribunal and the applicable laws. As Scalia J. pointed out in Liteky v. United States, 510 U.S. 540 (1994), at p. 550, the words "bias" and "partiality" "connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess" (emphasis in the original). Similarly, as Cory J. emphasized in R. v. S. (R.D.), [1997] 3 S.C.R. 484, at para. 119, not all predispositions amount to "bias". Predispositions that simply reflect applicable law do not undermine impartiality. On the contrary, they help to preserve it. Hence, the fact that the Tribunal must apply all relevant law, including guidelines formulated by the Commission, does not on its own raise a reasonable apprehension of bias.
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Deschamps J.	dissenting	Quebec	Priorities and hypothecs	R		Civil Code (Germany), art. 1280.	statute	Germany	111 Gonthier J. finds support for his analysis in the French, German, Swiss and Canadian rules in this matter. However, all those rules require a writing as a prerequisite for granting a pledge of an instrument like the one that concerns us here: see, in particular, P. Simler and P. Delebecque, Droit civil: Les sûretés — La publicité foncière (2nd ed. 1995), No. 537, at pp. 440-41, and art. 900 of the Swiss Civil Code: [TRANSLATION] "Claims which are not incorporated in an instrument or result only from a recognition of debt are pledged in writing and in addition, in the latter case, by handing over the instrument."
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Deschamps J.	dissenting	Quebec	Priorities and hypothecs	R		Civil Code (Switzerland), art. 900.	statute	Switzerland	111 Gonthier J. finds support for his analysis in the French, German, Swiss and Canadian rules in this matter. However, all those rules require a writing as a prerequisite for granting a pledge of an instrument like the one that concerns us here: see, in particular, P. Simler and P. Delebecque, Droit civil: Les sûretés — La publicité foncière (2nd ed. 1995), No. 537, at pp. 440-41, and art. 900 of the Swiss Civil Code: [TRANSLATION] "Claims which are not incorporated in an instrument or result only from a recognition of debt are pledged in writing and in addition, in the latter case, by handing over the instrument."
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Deschamps J.	dissenting	Quebec	Priorities and hypothecs	R		Code civil (France), arts. 1690, 2075 [am. L.n. 80-525, July 12, 1980], 2076.	statute	France	105 In fact, the legal basis of the analysis presented by Gonthier J. corresponds to an assignment of claim under the C.C.L.C. By that analysis, there is constructive delivery, and it may even take place where there is no instrument (para. 16) when the assignment is accepted or where a copy of the deed of assignment is given to the debtor. That is the solution adopted by the C.C.L.C., and in French law. It is not what the Quebec legislature adopted in 1991. Article 2702 C.C.Q. may present a problem in terms of the interpretation of the word "title", but it is clear that a title must actually be handed over in order for the pledge to be granted. Handing over is a concrete act and not a virtual transaction. Any solution that omits the requirement for a title is therefore, quite simply, contrary to the fundamental concept adopted by the C.C.Q. 111 Gonthier J. finds support for his analysis in the French, German, Swiss and Canadian rules in this matter. However, all those rules require a writing as a prerequisite for granting a pledge of an instrument like the one that concerns us here: see, in particular, P. Simler and P. Delebecque, Droit civil: Les sûretés — La publicité foncière (2nd ed. 1995), No. 537, at pp. 440-41, and art. 900 of the Swiss Civil Code: [TRANSLATION] "Claims which are not incorporated in an instrument or result only from a recognition of debt are pledged in writing and in addition, in the latter case, by handing over the instrument."
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Deschamps J.	dissenting	Quebec	Priorities and hypothecs	R		Uniform Commercial Code [1999 rev.], ss. 9-104, 9-314.	lower-level statute	US	92 The reform of the Civil Code began with the enactment of the Act respecting the revision of the Civil Code, S.Q. 1955, c. 47, nearly 50 years ago. Members of the legal profession in Quebec who specialized in commercial law had long regarded the American and Canadian models as a source of inspiration for Quebec: Y. Caron, "L'article 9 du code uniforme de commerce peut-il être exporté? Point de vue d'un juriste québécois", in J. S. Ziegel and W. F. Foster, eds., Aspects of Comparative Commercial Law: Sales, Consumer Credit, and Secured Transactions (1969), at p. 374. The American model was based on the concept of a single security interest, which applied to any transaction that created a right in a property to guarantee the performance of an obligation. Its scope is very broad. Its rules are set out in s. 9 of the Uniform Commercial Code (1999 rev.) ("UCC"), which has been adopted in most American states; the first official version dates from 1951: J. J. White and R. S. Summers, Handbook of the Law under the Uniform Commercial Code (2nd ed. 1980), at pp. 1-6; W. A. Schnader, "A Short History of the Preparation and Enactment of the Uniform Commercial Code" (1967), 22 U. Miami L. Rev. 1, at p. 8. In Canada, all of the common law provinces now have personal property security legislation based on the same concept. Given the context, which was a North American one, and the somewhat ill-assorted arrangements described earlier, a set of rules based on a single security interest may have been attractive to the legal profession in Quebec. 114 Rather, a comparison with the 1999 amendment to the UCC militates in favour of the interpretation I am suggesting. The version of the UCC that provided the model for the legal professionals who were involved in the reform would not have recognized the transaction that concerns us as a pledge. Bank accounts now fall under the UCC as the result of the recent amendment, which also added a new method of perfection, "control": J. J. White and R. S. Summers, Uniform Commercial Code (4th ed. 2000), at pp. 80 and 98. First, the C.C.Q. has not been amended: we still have only handing over. Second, when the question was put to the National Assembly, that approach was rejected

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2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Gonthier J.	majority	Quebec	Priorities and hypothecs	R		Civil Code (Germany), art. 1280.	statute	Germany	21 Before 1983, it was thought that the coexistence of those two articles required, in the case of claims not represented by a bearer instrument, that the creditor obtain physical possession of the non-negotiable instrument (to satisfy art. 2076 C.C.) and that the pledge was served on the debtor (to satisfy art. 2075 C.C.). Although that requirement continues to apply where physical delivery of the title is possible, the Cour de cassation held, in a decision dated May 10, 1983, that where the pledge relates to a claim for which delivery is physically impossible, it is sufficient, to put the creditor in possession, to serve notice of the pledge on the debtor of the claim. Physical delivery of a non-negotiable instrument is therefore not necessary in such cases: Soc. suisse d'assur. Winterthur v. Soc. anon. Réaltrade, Cass. civ. 1re, May 10, 1983, D.1984.433, note Légier. It is therefore generally acknowledged that French law, which currently recognizes pledges of claims not represented by a negotiable instrument, is moving toward an approach that relies on service of notice as the only requirement for granting a pledge and to allow it to be set up against third persons: see M. Cabrillac and C. Mouly, Droit des sûretés (5th ed. 1999), No. 686, at pp. 546-47; see also Malaurie and Aynès, supra, No. 524, at p. 201; P. Simler and P. Delebecque, Droit civil: Les sûretés — La publicité foncière (2nd ed. 1995), No. 537, at pp. 440-41. That approach is consistent with the one taken by German law (see art. 1280 of the German Civil Code) and Swiss law (see art. 900 of the Swiss Civil Code), which currently consider service of notice on the debtor of the claim to be sufficient to publish the pledge
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Gonthier J.	majority	Quebec	Priorities and hypothecs	R		Civil Code (Switzerland), art. 900.	statute	Switzerland	21 Before 1983, it was thought that the coexistence of those two articles required, in the case of claims not represented by a bearer instrument, that the creditor obtain physical possession of the non-negotiable instrument (to satisfy art. 2076 C.C.) and that the pledge was served on the debtor (to satisfy art. 2075 C.C.). Although that requirement continues to apply where physical delivery of the title is possible, the Cour de cassation held, in a decision dated May 10, 1983, that where the pledge relates to a claim for which delivery is physically impossible, it is sufficient, to put the creditor in possession, to serve notice of the pledge on the debtor of the claim. Physical delivery of a non-negotiable instrument is therefore not necessary in such cases: Soc. suisse d'assur. Winterthur v. Soc. anon. Réaltrade, Cass. civ. 1re, May 10, 1983, D.1984.433, note Légier. It is therefore generally acknowledged that French law, which currently recognizes pledges of claims not represented by a negotiable instrument, is moving toward an approach that relies on service of notice as the only requirement for granting a pledge and to allow it to be set up against third persons: see M. Cabrillac and C. Mouly, Droit des sûretés (5th ed. 1999), No. 686, at pp. 546-47; see also Malaurie and Aynès, supra, No. 524, at p. 201; P. Simler and P. Delebecque, Droit civil: Les sûretés — La publicité foncière (2nd ed. 1995), No. 537, at pp. 440-41. That approach is consistent with the one taken by German law (see art. 1280 of the German Civil Code) and Swiss law (see art. 900 of the Swiss Civil Code), which currently consider service of notice on the debtor of the claim to be sufficient to publish the pledge
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Gonthier J.	majority	Quebec	Priorities and hypothecs	R		Code civil (France), arts. 1690, 2075 [am. L.n. 80-525, July 12, 1980], 2076.	statute	France	20 The approach I prefer is also consistent with the law that applies to a pledge of claims in the civil law countries. For example, French civil law has long recognized pledges of claims not represented by a negotiable instrument: see, inter alia, H., L. and J. Mazeaud and F. Chabas, Leçons de droit civil, t. III, vol. 1, Sûretés: Publicité foncière (7th ed. 1999), by Y. Picod, No. 65, at p. 145; P. Malaurie and L. Aynès, Cours de droit civil, t. IX, Les sûretés: La publicité foncière (7th ed. 1995), by L. Aynès, Nos. 518-25, at pp. 197-202. The terms by which that kind of pledge operates have changed in recent decades. First, art. 2076 of the French Civil Code ("C.C."), which has never been amended and which applies to all pledges, requires, as do arts. 2702 and 2703 C.C.Q., that the creditor be put in possession; it provides: [TRANSLATION] In all cases the privilege only subsists over the pledge where such pledge has been placed and has continued in the possession of the creditor, or of a third person agreed on between the parties. Second, after it was last amended on July 12, 1980, art. 2075 C.C. reads as follows: [TRANSLATION] Where the pledge is granted on incorporeal movables such as movable claims, the authentic act or act under private seal, duly registered, shall be served on the debtor of the claim given in pledge, or accepted by the debtor in an authentic act. This article refers to the formalities in art. 1690 C.C. which, like art. 1641 C.C.Q., deals with assignment of claims. 21 Before 1983, it was thought that the coexistence of those two articles required, in the case of claims not represented by a bearer instrument, that the creditor obtain physical possession of the non-negotiable instrument (to satisfy art. 2076 C.C.) and that the pledge was served on the debtor (to satisfy art. 2075 C.C.). Although that requirement continues to apply where physical delivery of the title is possible, the Cour de cassation held, in a decision dated May 10, 1983, that where the pledge relates to a claim for which delivery is physically impossible, it is sufficient, to put the creditor in possession, to serve notice of the pledge on the debtor of the claim. Physical delivery of a non-negotiable instrument is therefore not necessary in such cases: Soc. suisse d'assur. Winterthur v. Soc. anon. Réaltrade, Cass. civ. 1re, May 10, 1983, D.1984.433, note Légier. It is therefore generally acknowledged that French law, which currently recognizes pledges of claims not represented by a negotiable instrument, is moving toward an approach that relies on service of notice as the only requirement for granting a pledge and to allow it to be set up against third persons: see M. Cabrillac and C. Mouly, Droit des sûretés (5th ed. 1999), No. 686, at pp. 546-47; see also Malaurie and Aynès, supra, No. 524, at p. 201; P. Simler and P.
2003	Caisse populaire Desjardins de Val-Brillant v. Blouin	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2063/index.do	Caisse populaire Desjardins de Val-Brillant v. Blouin, [2003] 1 S.C.R. 666, 2003 SCC 31	Gonthier J.	majority	Quebec	Priorities and hypothecs	R		Uniform Commercial Code [1999 rev.], ss. 9-104, 9-314.	lower-level statute	US	23 This technique is, of course, different from the pledge as it is envisioned by the Civil Code of Québec, which has more in common with the perfection by possession provided for by s. 22 of the Personal Property Security Act, a technique which is available for only certain types of collateral, not including intangibles. However, in the last two years a type of security interest in claims has emerged in the United States that has a great deal in common with a pledge of claims as it is found in the civil law countries referred to earlier. Since July 2001, all of the American states have adopted a revised version of Article 9 of the Uniform Commercial Code (1999 rev.), which governs real security interests, the earlier version of which had been used as a model for both Canadian legislation on the subject and for the draft produced by the Civil Code Revision Office (see Report on the Québec Civil Code (1978), vol. II, t. 1, Commentaries, at p. 347). The new version introduces the concept of publication by control of certain forms of security interests relating to claims that were formerly regarded as general intangibles, for instance claims relating to money held in bank accounts. Section 9-314 provides that a "security interest in . . . deposit accounts . . . may be perfected by control of the collateral under Section 9-104 . . . .", para. (a) of which provides: (a) A secured party has control of a deposit account if: (1) the secured party is the bank with which the deposit account is maintained; (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor; or (3) the secured party becomes the bank's customer with respect to the deposit account. [Emphasis added.] The three situations listed in para. (a) are clearly equivalent to the concept of "control" or "effective control", in that they describe situations in which the creditor holds the claim in that manner. It is worth noting that subpara. (2) describes a situation that is virtually identical to the one agreed to by the parties in this case.

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2003	R. v. Buhay	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2062/index.do	R. v. Buhay, [2003] 1 S.C.R. 631, 2003 SCC 30	ARBOUR J.	unanimous	Manitoba	Constitutional law Criminal law	C	referred to	Coolidge v. New Hampshire, 403 U.S. 443 (1971)	SC	US	37 The Crown also contends that the seizure was justified under the "plain view" doctrine, because the actions of the security guards put the contraband in plain view of the police. This argument must fail. It is not sufficient to argue that the evidence was in plain view at the time of the seizure. Indeed, it will nearly always be the case that police see the object when they seize it (see Coolidge v. New Hampshire, 403 U.S. 443 (1971); R. v. Spindloe (2001), 154 C.C.C. (3d) 8 (Sask. C.A.), at para. 36). It stretches the meaning of "plain view" to argue that an item placed in a duffel bag inside a locked locker is somehow in plain view of the police. The "plain view" doctrine requires, perhaps as a central feature, that the police officers have a prior justification for the intrusion into the place where the "plain view" seizure occurred (see, e.g., Law, supra, at para. 27; Spindloe, supra; R. v. Belliveau (1986), 75 N.B.R. (2d) 18 (C.A.); R. v. Nielsen (1988), 43 C.C.C. (3d) 548 (Sask. C.A.); R. v. Kouyas (1994), 136 N.S.R. (2d) 195 (C.A.), aff'd [1996] 1 S.C.R. 70; R. v. Fitt (1995), 96 C.C.C. (3d) 341 (N.S.C.A.), aff'd [1996] 1 S.C.R. 70; Texas v. Brown, 460 U.S. 730 (1983), at p. 741; Coolidge, supra). The police did not come upon the marijuana during the course of a routine patrol or by the ordinary use of their senses. The police had no prior authorization to enter into the appellant's locker. While, in the circumstances of this case, they could lawfully enter the bus station, they could not lawfully enter the locker itself without a warrant. It follows the contraband was clearly not in plain view of the police so as to justify the legality of the seizure within the "plain view" doctrine
2003	R. v. Buhay	6/5/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2062/index.do	R. v. Buhay, [2003] 1 S.C.R. 631, 2003 SCC 30	ARBOUR J.	unanimous	Manitoba	Constitutional law Criminal law	C	referred to	Texas v. Brown, 460 U.S. 730 (1983)	SC	US	37 The Crown also contends that the seizure was justified under the "plain view" doctrine, because the actions of the security guards put the contraband in plain view of the police. This argument must fail. It is not sufficient to argue that the evidence was in plain view at the time of the seizure. Indeed, it will nearly always be the case that police see the object when they seize it (see Coolidge v. New Hampshire, 403 U.S. 443 (1971); R. v. Spindloe (2001), 154 C.C.C. (3d) 8 (Sask. C.A.), at para. 36). It stretches the meaning of "plain view" to argue that an item placed in a duffel bag inside a locked locker is somehow in plain view of the police. The "plain view" doctrine requires, perhaps as a central feature, that the police officers have a prior justification for the intrusion into the place where the "plain view" seizure occurred (see, e.g., Law, supra, at para. 27; Spindloe, supra; R. v. Belliveau (1986), 75 N.B.R. (2d) 18 (C.A.); R. v. Nielsen (1988), 43 C.C.C. (3d) 548 (Sask. C.A.); R. v. Kouyas (1994), 136 N.S.R. (2d) 195 (C.A.), aff'd [1996] 1 S.C.R. 70; R. v. Fitt (1995), 96 C.C.C. (3d) 341 (N.S.C.A.), aff'd [1996] 1 S.C.R. 70; Texas v. Brown, 460 U.S. 730 (1983), at p. 741; Coolidge, supra). The police did not come upon the marijuana during the course of a routine patrol or by the ordinary use of their senses. The police had no prior authorization to enter into the appellant's locker. While, in the circumstances of this case, they could lawfully enter the bus station, they could not lawfully enter the locker itself without a warrant. It follows the contraband was clearly not in plain view of the police so as to justify the legality of the seizure within the "plain view" doctrine
2003	C.U.P.E. v. Ontario (Minister of Labour)	5/16/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2061/index.do	C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539, 2003 SCC 29	Bastarache J.	dissenting	Ontario	Administrative law Labour law	C	D	Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997	SC	UK (HL)	8 It is true that some enabling statutes distinguish between the agency's factual and legal determinations. Such statutes may contemplate an appeal from the agency's legal determinations while protecting, with a privative clause, findings of fact. See e.g. Telecommunications Act, S.C. 1993, c. 38, s. 64(1) . Yet, where there is no basis for dividing a decision into component questions — here the privative clause in s. 7 of the HLDAA expressly shields the entire appointment —, the single appropriate standard of review, and the deference it dictates, apply to all aspects of the decision. There is no basis for the view that an expert decision maker given due deference with regard to a discretionary appointment power is due less deference because the power is circumscribed by legislation, the suggestion being that there is a statutory interpretation aspect to his or her decision. The authorities that Binnie J. cites for the self-evident proposition that a discretion is never untrammelled and that "there is always a perspective within which a statute is intended to operate" (Roncarelli v. Duplessis, [1959] S.C.R. 121, at p. 140; Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997 (H.L.)) do not indicate that each administrative action necessarily involves a distinct and identifiable exercise of statutory interpretation. 40 Second, as the respondents note, it is of course the case that the Minister's discretion to appoint is not unfettered and must be exercised within the scope of the Act: Baker, supra; Padfield, supra; Roncarelli, supra. My conclusions here do not authorize the Minister to decide to appoint only members of his own political caucus, hospital CEOs, or union business agents. These extreme examples are not, however, the facts before us in this appeal. 43 I agree with Binnie J. that neither concerns about institutional independence (the ad hoc tribunals' lack of security of tenure) nor institutional impartiality (appointment of persons from the class of retired judges) render the Minister's exercise of his appointment power patently unreasonable. The statutory scheme requires that the tribunals be ad hoc, constituted to resolve a particular dispute. Retired judges as a class cannot reasonably be seen as so partial that finding them to be "qualified to act" took the Minister outside the bounds of his statutory discretion: Baker, supra; Padfield, supra; Roncarelli, supra
2003	C.U.P.E. v. Ontario (Minister of Labour)	5/16/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2061/index.do	C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539, 2003 SCC 29	Binnie J.	majority	Ontario	Administrative law Labour law	C	applied	Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997	SC	UK (HL)	94 In this case, the "perspective within which a statute is intended to operate" is that of a legislative measure that seeks to achieve industrial peace by substituting compulsory arbitration for the right to strike or lockout. The "perspective" is another way of describing the policy and objects of the statute. In the language of Lord Reid in Padfield v. Minister of Agriculture, Fisheries and Food, [1968] A.C. 997 (H.L.), at p. 1030: . . . if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court. [Emphasis added.] Lord Reid added that "the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court" (p. 1030). See also: Air Canada v. British Columbia (Attorney General), [1986] 2 S.C.R. 539; Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, at para. 56; Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41; G. Pépin and Y. Ouellette, Principes de contentieux administratif (2nd ed. 1982), at p. 264; D. J. M. Brown and J. M. Evans, Judicial Review of Administrative Action in Canada (loose-leaf), at para. 13:1221. 106 The appropriate approach to statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87, frequently cited with approval in this Court, e.g., Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, at paras. 21 and 23; R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33). This contextual approach accords with the previously mentioned dictum of Rand J. in Roncarelli, supra, that "there is always a perspective within which a statute is intended [by the legislature] to operate" (p. 140), and Lord Reid's caution in Padfield, supra, that the particular wording of a ministerial power is to be read in light of "the policy and objects of the Act" (p. 1030).
2003	C.U.P.E. v. Ontario (Minister of Labour)	5/16/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2061/index.do	C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539, 2003 SCC 29	Binnie J.	majority	Ontario	Administrative law Labour law	C	referred to	Council of Civil Service Unions v. Minister for the Civil Service, [1985] A.C. 374	SC	UK (HL)	128 The issue here is consultation. The unions say that when the Minister changed an entrenched appointments process, his decision was of an administrative nature and affected the vital interest of union members, namely the earning of their livelihood. Their interest was not remote, but directly engaged by the selection of those to be put in power over the terms of their collective agreement. They consider the situation to be comparable to the facts in Council of Civil Service Unions v. Minister for the Civil Service, [1985] A.C. 374 (H.L.).
2003	C.U.P.E. v. Ontario (Minister of Labour)	5/16/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2061/index.do	C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 S.C.R. 539, 2003 SCC 29	Binnie J.	majority	Ontario	Administrative law Labour law	C	referred to	In re Preston, [1985] A.C. 835	SC	UK (HL)	145 Mr. Samuelson undoubtedly felt betrayed by the turn of events and attempted to make the best of a difficult situation. The evidence in support of the various agreements and "understandings" he alleges is not clear and it is certainly not unqualified or unambiguous. To bind the exercise of the Minister's discretion the evidence of the promise or undertaking by the Minister or on his behalf must generally be such as, in a private law context, would be sufficiently certain and precise as to give rise to a claim for breach of contract or estoppel by representation: In re Preston, [1985] A.C. 835 (H.L.), at p. 866, per Lord Templeman.

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2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	considered	The "Eleftheria", [1969] 1 Lloyd's Rep. 237	lower--level court	UK	1 BASTARACHE J. — The appellant submits that the appropriate test on a motion for a stay of proceedings to uphold a forum selection clause in a bill of lading is the "strong cause" test, as set out by Brandon J. in The "Eleftheria", [1969] 1 Lloyd's Rep. 237 (Adm. Div.). The respondents, however, contend that the Federal Court of Appeal was correct in applying the tripartite test for interlocutory injunctions established in American Cyanamid Co. v. Ethicon Ltd., [1975] 1 All E.R. 504 (H.L.). In my view, there is no legal or policy justification for setting aside the "strong cause" test in the context of a stay of proceedings to uphold a forum selection clause in a bill of lading. The dispute in this case arises under or in connection with the bill of lading. Its broad, unambiguous and unqualified forum selection clause was clearly intended to cover the dispute that gave rise to this appeal. 7 The appellant sought a stay of proceedings before the Federal Court, pursuant to s. 50 of the Federal Court Act , arguing that the courts of Antwerp were the proper jurisdiction to deal with any disputes arising from the bill of lading. The prothonotary held that the appellant had moved for a stay within reasonable time given the implementation of new court rules and had therefore not attorned to its jurisdiction. The prothonotary accepted and applied the "strong cause" test as set out in the The "Eleftheria" characterizing its finding in the following way, at paras. 4-5: . . . I accept that ECU-Line prefers to litigate in a familiar jurisdiction and does not bring up the Antwerp jurisdiction merely to seek procedural advantage. Other factors favouring the upholding of the jurisdiction clause include reasonable connections with Belgium, Belgian and French witnesses, that any time bar which might preclude the plaintiffs from bringing their case in Antwerp has been waived, that no security has been posted and that enforcement of a Belgian judgment against the carrier, a Belgian company, should present no particular difficulties. I accept, from the Plaintiffs' point of view, that there will be Canadian and American witnesses, including from the American east-coast freight forwarder through whom the Plaintiff, Polyfibron Technologies Inc., arranged the carriage. Certainly the Tribunal of Commerce in [Antwerp], which would decide the case under the jurisdiction clause, conducts its proceedings in Flemish and decides cases on the basis of documents and statements, a procedure precluding witnesses and cross-examination. There may also be considerably more delay in most instances than in the Federal Court and all the more so in the case of an appeal. There are also some lesser factors which favour litigation in Vancouver. The prothonotary concluded, at para. 5, that the factors raised by the respondents, while "substantial", were "just short [in this instance] of the strong case" which, by The "Eleftheria", the respondents had to present in order to override the forum selection clause. 10 The court concluded that the prothonotary was obliged to take into account all the circumstances of the case in determining whether the respondent had demonstrated a "strong cause" in favour of denying a stay, pursuant to the test set out in The "Eleftheria", an inquiry that did not preclude him from concluding that the bill of lading ended in Montréal and that its forum selection clause did not apply thereafter. The court added that in any event the appellant would have the opportunity to raise its arguments regarding the existence of the bill of lading and its forum selection clause before a trial judge. 13 The Court of Appeal concluded that The "Eleftheria" did not govern the case, stating, at para. 27:
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	American Cyanamid Co. v. Ethicon Ltd., [1975] 1 All E.R. 504	SC	UK (HL)	1 BASTARACHE J. — The appellant submits that the appropriate test on a motion for a stay of proceedings to uphold a forum selection clause in a bill of lading is the "strong cause" test, as set out by Brandon J. in The "Eleftheria", [1969] 1 Lloyd's Rep. 237 (Adm. Div.). The respondents, however, contend that the Federal Court of Appeal was correct in applying the tripartite test for interlocutory injunctions established in American Cyanamid Co. v. Ethicon Ltd., [1975] 1 All E.R. 504 (H.L.). In my view, there is no legal or policy justification for setting aside the "strong cause" test in the context of a stay of proceedings to uphold a forum selection clause in a bill of lading. The dispute in this case arises under or in connection with the bill of lading. Its broad, unambiguous and unqualified forum selection clause was clearly intended to cover the dispute that gave rise to this appeal. 14 The Court of Appeal emphasized The "Eleftheria" was decided in 1969 and the House of Lords had since decided American Cyanamid, supra, thereby relaxing the requirements for an interlocutory injunction to a tripartite test: first, a preliminary and tentative assessment of the merits of the case must show there is a serious issue to be tried; second, consideration must be given to whether the party seeking the interlocutory injunction would suffer irreparable harm unless the injunction is granted; and third, there must be a determination as to which party would suffer the greater harm as a result of the granting or refusing of an interlocutory injunction. 15 The Court of Appeal quoted with approval Beetz J., writing for a unanimous Supreme Court, in Manitoba (Attorney General) v. Metropolitan Stores Ltd., [1987] 1 S.C.R. 110, at p. 127: A stay of proceedings and an interlocutory injunction are remedies of the same nature. In the absence of a different test prescribed by statute, they have sufficient characteristics in common to be governed by the same rules and the courts have rightly tended to apply to the granting of interlocutory stay the principles which they follow with respect to interlocutory injunctions . . . . The Court of Appeal reasoned that although the prothonotary had not referred to either American Cyanamid or Metropolitan Stores, it was likely what he had in mind when he concluded, at para. 8: An interim injunction, obtained on an interlocutory application, which requires a testing of the waters by looking at the strength of the case, the harm being caused and the balance of convenience, is analogous to denial of a stay of the basis of a strong case that the jurisdiction clause is just not applicable. The Court of Appeal concluded that given the evolution of English and Canadian jurisprudence, the proper test to apply in stay applications is the

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2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Trendtex Trading Corp. v. Credit Suisse, [1982] A.C. 679	SC	UK (HL)	24 As recently as 1998, Décary J.A., for a unanimous Federal Court of Appeal in Jian Sheng, confirmed at para. 10 the appropriateness of the "strong cause" test in Canada, a case in which the issue was whether the forum selection clause in a bill of lading was void for uncertainty: Where, in admiralty matters before this Court, a defendant applies for a stay pursuant to section 50 of the Federal Court Act . . . on the basis of a jurisdiction clause found in a bill of lading, the defendant has the burden of persuading the Court that the conditions of application of the clause have been met. Once the Court is satisfied that the clause applies, the burden of proof then shifts to the plaintiff to show sufficiently strong reasons to support the conclusion that it would not be reasonable or just in the circumstances to keep the plaintiff to the terms of the contract . . . . These "strong reasons" have been summarized in the often-quoted reasons of Brandon J. (as he then was) in The "Eleftheria" . . . . In Jian Sheng, the forum selection clause contained in the bill of lading required the defendant to show it was the carrier and what was its principal place of business. Jian Sheng does not, as the Court of Appeal held in the case at bar, undermine in any way the "strong cause" test. Indeed, the tripartite test adopted by the Court of Appeal in this case constitutes a significant and unjustified departure from the jurisprudence not only of the Federal Court, but also of provincial courts, and those of other jurisdictions. See for instance: The "Seapearl" v. Seven Seas Dry Cargo Shipping Corp., [1983] 2 F.C. 161 (C.A.), per Pratte J.A., at pp. 176-77, and per Lalande D.J., at p. 180; Anraj Fish Products Industries Ltd. v. Hyundai Merchant Marine Co. (2000), 262 N.R. 270 (F.C.A.), at para. 5; Sarabia v. "Oceanic Mindoro" (The) (1996), 26 B.C.L.R. (3d) 143 (C.A.), at paras. 37-38, leave to appeal refused, [1997] 2 S.C.R. xiv; Maritime Telegraph and Telephone Co. v. Pre Print Inc. (1996), 131 D.L.R. (4th) 471 (N.S.C.A.), at p. 483; Morrison v. Society of Lloyd's (2000), 224 N.B.R. (2d) 1 (C.A.), at para. 14, leaves to appeal refused, [2000] 2 S.C.R. viii and xi; Trendtex Trading Corp. v. Credit Suisse, [1982] A.C. 679 (H.L.); The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), at p. 15; Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186 (C.A.), at p. 190.
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)	SC	US	24 As recently as 1998, Décary J.A., for a unanimous Federal Court of Appeal in Jian Sheng, confirmed at para. 10 the appropriateness of the "strong cause" test in Canada, a case in which the issue was whether the forum selection clause in a bill of lading was void for uncertainty: Where, in admiralty matters before this Court, a defendant applies for a stay pursuant to section 50 of the Federal Court Act . . . on the basis of a jurisdiction clause found in a bill of lading, the defendant has the burden of persuading the Court that the conditions of application of the clause have been met. Once the Court is satisfied that the clause applies, the burden of proof then shifts to the plaintiff to show sufficiently strong reasons to support the conclusion that it would not be reasonable or just in the circumstances to keep the plaintiff to the terms of the contract . . . . These "strong reasons" have been summarized in the often-quoted reasons of Brandon J. (as he then was) in The "Eleftheria" . . . . In Jian Sheng, the forum selection clause contained in the bill of lading required the defendant to show it was the carrier and what was its principal place of business. Jian Sheng does not, as the Court of Appeal held in the case at bar, undermine in any way the "strong cause" test. Indeed, the tripartite test adopted by the Court of Appeal in this case constitutes a significant and unjustified departure from the jurisprudence not only of the Federal Court, but also of provincial courts, and those of other jurisdictions. See for instance: The "Seapearl" v. Seven Seas Dry Cargo Shipping Corp., [1983] 2 F.C. 161 (C.A.), per Pratte J.A., at pp. 176-77, and per Lalande D.J., at p. 180; Anraj Fish Products Industries Ltd. v. Hyundai Merchant Marine Co. (2000), 262 N.R. 270 (F.C.A.), at para. 5; Sarabia v. "Oceanic Mindoro" (The) (1996), 26 B.C.L.R. (3d) 143 (C.A.), at paras. 37-38, leave to appeal refused, [1997] 2 S.C.R. xiv; Maritime Telegraph and Telephone Co. v. Pre Print Inc. (1996), 131 D.L.R. (4th) 471 (N.S.C.A.), at p. 483; Morrison v. Society of Lloyd's (2000), 224 N.B.R. (2d) 1 (C.A.), at para. 14, leaves to appeal refused, [2000] 2 S.C.R. viii and xi; Trendtex Trading Corp. v. Credit Suisse, [1982] A.C. 679 (H.L.); The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), at p. 15; Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186 (C.A.), at p. 190.
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186	lower-level court	New Zealand	24 As recently as 1998, Décary J.A., for a unanimous Federal Court of Appeal in Jian Sheng, confirmed at para. 10 the appropriateness of the "strong cause" test in Canada, a case in which the issue was whether the forum selection clause in a bill of lading was void for uncertainty: Where, in admiralty matters before this Court, a defendant applies for a stay pursuant to section 50 of the Federal Court Act . . . on the basis of a jurisdiction clause found in a bill of lading, the defendant has the burden of persuading the Court that the conditions of application of the clause have been met. Once the Court is satisfied that the clause applies, the burden of proof then shifts to the plaintiff to show sufficiently strong reasons to support the conclusion that it would not be reasonable or just in the circumstances to keep the plaintiff to the terms of the contract . . . . These "strong reasons" have been summarized in the often-quoted reasons of Brandon J. (as he then was) in The "Eleftheria" . . . . In Jian Sheng, the forum selection clause contained in the bill of lading required the defendant to show it was the carrier and what was its principal place of business. Jian Sheng does not, as the Court of Appeal held in the case at bar, undermine in any way the "strong cause" test. Indeed, the tripartite test adopted by the Court of Appeal in this case constitutes a significant and unjustified departure from the jurisprudence not only of the Federal Court, but also of provincial courts, and those of other jurisdictions. See for instance: The "Seapearl" v. Seven Seas Dry Cargo Shipping Corp., [1983] 2 F.C. 161 (C.A.), per Pratte J.A., at pp. 176-77, and per Lalande D.J., at p. 180; Anraj Fish Products Industries Ltd. v. Hyundai Merchant Marine Co. (2000), 262 N.R. 270 (F.C.A.), at para. 5; Sarabia v. "Oceanic Mindoro" (The) (1996), 26 B.C.L.R. (3d) 143 (C.A.), at paras. 37-38, leave to appeal refused, [1997] 2 S.C.R. xiv; Maritime Telegraph and Telephone Co. v. Pre Print Inc. (1996), 131 D.L.R. (4th) 471 (N.S.C.A.), at p. 483; Morrison v. Society of Lloyd's (2000), 224 N.B.R. (2d) 1 (C.A.), at para. 14, leaves to appeal refused, [2000] 2 S.C.R. viii and xi; Trendtex Trading Corp. v. Credit Suisse, [1982] A.C. 679 (H.L.); The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), at p. 15; Advanced Cardiovascular Systems Inc. v. Universal Specialties Ltd., [1997] 1 N.Z.L.R. 186 (C.A.), at p. 190.
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991)	SC	US	28 The respondents submit we ought to accord little weight to the forum selection clause in the bill of lading because bills of lading are, as a general rule, contracts of adhesion, devised unilaterally by the appellant. This submission is without merit despite the fact that bills of lading are often issued on pre-printed forms. See Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991), at pp. 593-94.
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528 (1995)	SC	US	29 Bills of lading are typically entered into by sophisticated parties familiar with the negotiation of maritime shipping transactions who should, in normal circumstances, be held to their bargain. See Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528 (1995). The parties in this appeal are corporations with significant experience in international maritime commerce. The respondents were aware of industry practices and could have reasonably expected that the bill of lading would contain a forum selection clause. A forum selection clause could very well have been negotiated with the appellant, in light of the respondent John S. James Co.'s insistence that S.L.M.N. Shipping transport the cargo solely by sea. There is no evidence that this bill of lading is the result of grossly uneven bargaining power that would invalidate the forum selection clause contained therein.
2003	Z.I. Pompey Industrie v. ECU-Line N.V.	5/1/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2058/index.do	Z.I. Pompey Industrie v. ECU-Line N.V., [2003] 1 S.C.R. 450, 2003 SCC 27	BASTARACHE J.	unanimous	Federal Court of Appeal	International law	C	referred to	Mackender v. Feldia A.G., [1966] 3 All E.R. 847	lower-level court	UK	31 Issues respecting an alleged fundamental breach of contract or deviation therefrom should generally be determined under the law and by the court chosen by the parties in the bill of lading. The "strong cause" test, once it is determined that the bill of lading otherwise binds the parties (for instance, that the bill of lading as it relates to jurisdiction does not offend public policy, was not the product of fraud or of grossly uneven bargaining positions), constitutes an inquiry into questions such as the convenience of the parties, fairness between the parties and the interests of justice, not of the substantive legal issues underlying the dispute. See Mackender v. Feldia A.G., [1966] 3 All E.R. 847 (C.A.), per Lord Denning, at pp. 849-50, and per Lord Diplock, at p. 852. Put differently, a court, in the context of an application for a stay to uphold a forum selection clause in a bill of lading, must not delve into whether one party has deviated from, or fundamentally breached an otherwise validly formed contract. Such inquiries would render forum selection clauses illusory since most disputes will involve allegations which, if proved, will make the agreement terminable or voidable by the aggrieved party. Moreover, while the choice of forum for the determination of the existence of the agreement would be made without reference to the forum selection clause in the contract, if the agreement were found to remain intact, resort to the said clause would presumably be necessary to decide the appropriate forum in which to settle the rights of the parties under the agreement.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2003	R. v. Arradi	4/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2054/index.do	R. v. Arradi, [2003] 1 S.C.R. 280, 2003 SCC 23	ARBOUR J.	unanimous	Quebec	Criminal law	C	referred to	Balogh v. Crown Court at St. Albans, [1974] 3 All E.R. 283	lower-level court	UK	29 The courts are given the power to punish contempt of court "so as to maintain the dignity and authority of the judge and to ensure a fair trial" (B.C.G.E.U. v. British Columbia (Attorney General), [1988] 2 S.C.R. 214, at p. 238 (per Dickson C.J.), citing Balogh v. Crown Court at St. Albans, [1974] 3 All E.R. 283 (C.A.), at p. 288 (per Lord Denning)). Contempt may be dealt with by one of two procedures: the ordinary procedure, which provides the accused with the usual procedural guarantees of a criminal trial, or the summary procedure, which allows the judge to avoid the formalities of a criminal trial to convict a person of contempt of court, even instanter in some cases (B.C.G.E.U., supra, at p. 238; R. v. K. (B.), [1995] 4 S.C.R. 186, at paras. 8-9; Hébert v. Procureur général du Québec, [1966] Que. Q.B. 197, at p. 227). The summary procedure is also recognized by the Criminal Code : 10. (1) Where a court, judge, justice or provincial court judge summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal (a) from the conviction; or (b) against the punishment imposed. 36 However, the judge erred by combining the citation and conviction for contempt of court in a single proceeding. I do not believe that the judge was justified in convicting the appellant instanter and thereby depriving him of the procedural guarantees to which he was entitled. He was even less justified, in my view, in sentencing the appellant to prison on the spot. I do not believe that the circumstances were such that it was "urgent and imperative to act immediately": K. (B.), supra, at para. 9 (quoting Lord Denning in Balogh v. Crown Court at St. Albans, supra). This was not an exceptional situation in which foregoing the formalities required by natural justice was justified. I would again note that this is not an appeal from the conviction or against the sentence imposed for the contempt. The crucial question is therefore not, in my view, whether the appellant was given all the latitude needed to make his defence to the citation for contempt, or whether he had sufficient opportunity to make submissions in mitigation of sentence. What we need to examine, rather, are the consequences that the error had for the murder trial.
2003	R. v. Arradi	4/17/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2054/index.do	R. v. Arradi, [2003] 1 S.C.R. 280, 2003 SCC 23	ARBOUR J.	unanimous	Quebec	Criminal law	C	referred to	United States v. Wilson, 421 U.S. 309 (1975)	SC	US	33 In exercising its jurisdiction in respect of contempt of court, a court must adhere to the principle that "only '(t)he least possible power adequate to the end proposed' should be used" (K. (B.), supra, at para. 13, quoting Burger C.J. in United States v. Wilson, 421 U.S. 309 (1975), at p. 319). When the contempt is committed by an accused who is testifying, the judge's discretion as to how to proceed, which will depend on, inter alia, the nature of the conduct in question, should be guided by the need to maintain order and preserve the authority of the court, on the one hand, and not to compromise the impartiality of the judge and the judicial process, on the other. It is in the interests of justice that a jury know that an accused who chooses to testify is compelled by law, like any other witness, to answer the questions put to him or her, and that there are serious legal consequences for failing to comply with the law. To that end, there may be circumstances in which it would be appropriate to convict an accused of contempt of court instanter, in the presence of the jury. However, the judge must in all cases avoid giving the jury the impression that he or she is making a determination as to the credibility of the accused. It is essential that the judge not be perceived by the jury as having a negative opinion of the credibility, character or morality of the accused, or as having an unfavourable opinion of the accused in general. The contempt proceeding must not appear, or be perceived by the jury, to be a battle between the accused and the judge or some sort of revenge taken by the judge in response to the accused's behaviour. The judge must maintain an appearance of impartiality in all circumstances
2003	Martin v. American International Assurance Life Co.	3/21/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2047/index.do	Martin v. American International Assurance Life Co., [2003] 1 S.C.R. 158, 2003 SCC 16	McLachlin C.J.	unanimous	British Columbia	Insurance	C	referred to	Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934)	SC	US	14 It follows that to ascertain whether a given means of death is "accidental", we must consider whether the consequences were expected. We cannot usefully separate off the "means" from the rest of the causal chain and ask whether they were deliberate. Cardozo J. emphasized in his dissenting judgment in Landress v. Phoenix Mutual Life Insurance Co., 291 U.S. 491 (1934), at p. 501, that "[i]f there was no accident in the means, there was none in the result". The converse is equally true: if there was no accident in the result, there can be none in the means. As Cardozo J. went on to say, either "[t]here was an accident throughout, or there was no accident at all". Hence, to determine whether death occurred by accidental means, we must look to the chain of events as a whole, and we must consider whether the insured expected death to be a consequence of his actions and circumstances.
2003	Martin v. American International Assurance Life Co.	3/21/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2047/index.do	Martin v. American International Assurance Life Co., [2003] 1 S.C.R. 158, 2003 SCC 16	McLachlin C.J.	unanimous	British Columbia	Insurance	C	referred to	Thompson v. Prudential Insurance Co. of America, 66 S.E.2d 119 (1951)	lower-level court	US	25 The first type of case involves people who engage in activities that carry an inordinate risk of death, whether for the psychological gratification in living on the edge, like the player of Russian Roulette (Thompson v. Prudential Insurance Co. of America, 66 S.E.2d 119 (Ga. Ct. App. 1951)), or in order to impress others with their bravado, like the young man who deliberately lay along the centre line of the highway with traffic approaching (Allred v. Prudential Insurance Co. of America, 100 S.E.2d 226 (N.C. 1957)). It is often difficult to ascertain from such circumstances what the insured's own expectations were. However, as was stated in para. 21, where the insured's expectations are unclear, a court may consider whether a reasonable person in the position of the insured would have expected to die. Although death is not certain to result from such dangerous activities, it is certainly within the realm of what a reasonable person would expect. In most cases of this type, then, as the Court of Appeals of Georgia said of the Russian Roulette player in Thompson, supra, at pp. 123-24, "[s]uch reckless abandon and exposure to a known, and obvious danger cannot be said to have been accidental, nor can it be said that [the] death was effected by accidental means".
2003	Martin v. American International Assurance Life Co.	3/21/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2047/index.do	Martin v. American International Assurance Life Co., [2003] 1 S.C.R. 158, 2003 SCC 16	McLachlin C.J.	unanimous	British Columbia	Insurance	C	referred to	Allred v. Prudential Insurance Co. of America, 100 S.E.2d 226 (1957)	lower-level court	US	25 The first type of case involves people who engage in activities that carry an inordinate risk of death, whether for the psychological gratification in living on the edge, like the player of Russian Roulette (Thompson v. Prudential Insurance Co. of America, 66 S.E.2d 119 (Ga. Ct. App. 1951)), or in order to impress others with their bravado, like the young man who deliberately lay along the centre line of the highway with traffic approaching (Allred v. Prudential Insurance Co. of America, 100 S.E.2d 226 (N.C. 1957)). It is often difficult to ascertain from such circumstances what the insured's own expectations were. However, as was stated in para. 21, where the insured's expectations are unclear, a court may consider whether a reasonable person in the position of the insured would have expected to die. Although death is not certain to result from such dangerous activities, it is certainly within the realm of what a reasonable person would expect. In most cases of this type, then, as the Court of Appeals of Georgia said of the Russian Roulette player in Thompson, supra, at pp. 123-24, "[s]uch reckless abandon and exposure to a known, and obvious danger cannot be said to have been accidental, nor can it be said that [the] death was effected by accidental means".
2003	Goudie v. Ottawa (City)	3/20/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2045/index.do	Goudie v. Ottawa (City), [2003] 1 S.C.R. 141, 2003 SCC 14	BINNIE J.	unanimous	Ontario	Civil procedure Labour law	C	referred to	Adler v. Dickson, [1954] 1 W.L.R. 1482	SC	UK (HL)	31 The appellant's dilemma is illustrated by the great "snail in the bottle" case of Donoghue v. Stevenson, [1932] A.C. 562 (H.L.), which, as every law student knows, laid the basis for the modern law of negligence. After the House of Lords had decided that a soft drinks manufacturer could indeed be tortiously liable for shock "and severe gastro-enteritis" suffered by a consumer who allegedly found a decomposed snail in her bottle of ginger beer, and therefore allowed the case to proceed to trial, it was held by the trial court that in fact there was no snail in the bottle after all. (See reference by Jenkins L.J. in Adler v. Dickson, [1954] 1 W.L.R. 1482 (C.A.), at p. 1483.) In Donoghue, supra, the defendant brought a preliminary motion to test a proposition of law, the answer to which, in the words of Ontario clause 21.01(1)(a), "may dispose of all or part of the action". The equivalent to what was tried here would have occurred if the soft drinks manufacturer, instead of arguing the legal point, had attempted to use the preliminary motion to establish that there was no snail in the bottle. Such a genuine issue of fact there, as here, had to be sent to trial.
2003	Markevich v. Canada	3/6/2003	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2039/index.do	Markevich v. Canada, [2003] 1 S.C.R. 94, 2003 SCC 9	Major J.	majority	Federal Court of Appeal	Action State Taxation	C	referred to	Letang v. Cooper, [1964] 2 All E.R. 929	lower-level court	UK	27 A "cause of action" is only a set of facts that provides the basis for an action in court: see Letang v. Cooper, [1964] 2 All E.R. 929 (C.A.), at p. 934; Domco Industries Ltd. v. Mannington Mills, Inc. (1990), 29 C.P.R. (3d) 481 (F.C.A.), per Iacobucci C.J. (as he then was), at p. 496; and Black's Law Dictionary, supra, at p. 221. In this case, s. 222 of the ITA provides that unpaid taxes constitute a debt recoverable by means of a court action, subject to the stay of collection action prescribed by s. 225.1 . As a result, as Rothstein J.A. notes at para. 37, the cause of action here involves "the existence of a tax debt and the expiry of the delay period entitling the Minister to take collection action".
2002	Chamberlain v. Surrey School District No. 36	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do	Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710, 2002 SCC 86	Gonthier J.	dissenting	British Columbia	Administrative law Education law	C	D	Meyer v. Nebraska, 262 U.S. 390 (1923)	SC	US	110 The Canadian approach is also loosely analogous to the situation in the United States, where the notions of parental rights and the integrity of the family unit have been granted constitutional status as a result of judicial interpretation of the First and Fourteenth Constitutional Amendments: see Meyer v. Nebraska, 262 U.S. 390 (1923), Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Wisconsin v. Yoder, 406 U.S. 205 (1972), amongst numerous others. In Prince v. Massachusetts, 321 U.S. 158 (1944), at p. 166, Rutledge J., speaking for the court, stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."
2002	Chamberlain v. Surrey School District No. 36	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do	Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710, 2002 SCC 86	Gonthier J.	dissenting	British Columbia	Administrative law Education law	C	D	Pierce v. Society of Sisters, 268 U.S. 510 (1925)	SC	US	110 The Canadian approach is also loosely analogous to the situation in the United States, where the notions of parental rights and the integrity of the family unit have been granted constitutional status as a result of judicial interpretation of the First and Fourteenth Constitutional Amendments: see Meyer v. Nebraska, 262 U.S. 390 (1923), Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Wisconsin v. Yoder, 406 U.S. 205 (1972), amongst numerous others. In Prince v. Massachusetts, 321 U.S. 158 (1944), at p. 166, Rutledge J., speaking for the court, stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

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2002	Chamberlain v. Surrey School District No. 36	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do	Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710, 2002 SCC 86	Gonthier J.	dissenting	British Columbia	Administrative law Education law	C	D	Wisconsin v. Yoder, 406 U.S. 205 (1972)	SC	US	110 The Canadian approach is also loosely analogous to the situation in the United States, where the notions of parental rights and the integrity of the family unit have been granted constitutional status as a result of judicial interpretation of the First and Fourteenth Constitutional Amendments: see Meyer v. Nebraska, 262 U.S. 390 (1923), Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Wisconsin v. Yoder, 406 U.S. 205 (1972), amongst numerous others. In Prince v. Massachusetts, 321 U.S. 158 (1944), at p. 166, Rutledge J., speaking for the court, stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 152 I note finally that judicial review as to constitutionality is about what is essential, constitutionally mandated, rather than what may or may not be desirable as a matter of educational policy or personal preference. This case is not about whether or not this Court thinks that it would be preferable, as a pedagogical question, that the Three Books be approved. On this point, I note a relevant comment, within the majority reasons of Burger C.J. in the U.S. Supreme Court case of Wisconsin v. Yoder, supra, that: "courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education" (p. 235). Moreover, in my view, the standard of reasonableness simpliciter is normally associated with cases where there are a number of reasonable outcomes among which the decision maker is entitled to choose. Thus, courts should be wary of using this standard to effectively constrain the decision maker to a single specific outcome. This accords with the general approach to judicial review of administrative action adopted by this Court. In Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 S.C.R. 748, Iacobucci J., after describing this standard, wrote for a unanimous Court, at para. 80: [A] reviewer, and even one who has embarked upon review on a standard of reasonableness simpliciter, will often be tempted to find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's. Appellate courts must resist such temptations. . . . Judicial restraint is needed if a cohesive, rational, and, I believe, sensible system of judicial review is to be fashioned.
2002	Chamberlain v. Surrey School District No. 36	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do	Chamberlain v. Surrey School District No. 36, [2002] 4 S.C.R. 710, 2002 SCC 86	Gonthier J.	dissenting	British Columbia	Administrative law Education law	C	D	Prince v. Massachusetts, 321 U.S. 158 (1944)	SC	US	110 The Canadian approach is also loosely analogous to the situation in the United States, where the notions of parental rights and the integrity of the family unit have been granted constitutional status as a result of judicial interpretation of the First and Fourteenth Constitutional Amendments: see Meyer v. Nebraska, 262 U.S. 390 (1923), Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Wisconsin v. Yoder, 406 U.S. 205 (1972), amongst numerous others. In Prince v. Massachusetts, 321 U.S. 158 (1944), at p. 166, Rutledge J., speaking for the court, stated: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."
2002	Prud'homme v. Prud'homme	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2029/index.do	Prud'homme v. Prud'homme, [2002] 4 S.C.R. 663, 2002 SCC 85	L'HEUREUX-DUBÉ AND LEBEL JJ.	unanimous	Quebec	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	25 In Laurentide Motels, supra, this Court held that the extent to which public authorities are subject to the rules of the civil law in matters of liability was determined by the common law rule established by the House of Lords in Anns v. Merton London Borough Council, [1978] A.C. 728. That rule provides that only those decisions of public authorities that are within the "operational sphere", as opposed to the political sphere, are subject to the rules of private law, the private law in Quebec being composed of the rules found in the Civil Code.
2002	Prud'homme v. Prud'homme	12/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2029/index.do	Prud'homme v. Prud'homme, [2002] 4 S.C.R. 663, 2002 SCC 85	L'HEUREUX-DUBÉ AND LEBEL JJ.	unanimous	Quebec	Torts	C	referred to	Horrocks v. Lowe, [1975] A.C. 135	SC	UK (HL)	49 Elected municipal officials do not enjoy the parliamentary privilege enjoyed by members of the National Assembly of Quebec or of the federal Parliament (R. E. Brown, The Law of Defamation in Canada (2nd ed. (loose-leaf)), vol. 2, at pp. 12-20 and 12-21; J. Hétu, Y. Duplessis and D. Pakenham, Droit municipal: principes généraux et contentieux (1998), at p. 177). The English and Canadian courts, however, have held that words spoken at a meeting of a municipal council are protected by qualified privilege (J. P. S. McLaren, "The Defamation Action and Municipal Politics" (1980), 29 U.N.B.L.J. 123, at pp. 134-35). Accordingly, the fact that words spoken at a meeting are defamatory does not, in itself, mean that a municipal councillor will be liable therefor. In order to succeed in his or her action, the plaintiff must prove malicious intent or intent to harm on the part of the councillor (Brown, supra, at p. 13-4). The reason for that qualified privilege was eloquently stated by Diplock L.J. in Horrocks v. Lowe, [1975] A.C. 135 (H.L.), at p. 152: My Lords, what is said by members of a local council at meetings of the council or of any of its committees is spoken on a privileged occasion. The reason for the privilege is that those who represent the local government electors should be able to speak freely and frankly, boldly and bluntly, on any matter which they believe affects the interests or welfare of the inhabitants. They may be swayed by strong political prejudice, they may be obstinate and pig-headed, stupid and obtuse; but they were chosen by the electors to speak their minds on matters of local concern and so long as they do so honestly they run no risk of liability for defamation of those who are the subjects of their criticism. See also Shaw v. Morgan (1888), 15 R. 865 (Ct. of Sess.), at p. 869; Ward v. McBride (1911), 24 O.L.R. 555 (Div. Ct.), at p. 568; Edwards v. Gattmann (1928), 40 B.C.R. 122 (S.C.); Savidant v. Day (1933), 5 M.P.R. 554 (P.E.I.S.C.), at p. 559, aff'd [1933] 4 D.L.R. 456 (P.E.I.S.C. en banc); Peckham v. Mount Pearl (City) (1994), 122 Nfld. & P.E.I.R. 142 (Nfld. S.C.); Johnson v. Jolliffe (1981), 26 B.C.L.R. 176 (S.C.); Brown, supra, at pp. 13-162 to 13-165. There have also been a number of judgments of the Quebec courts recognizing the common law qualified privilege of elected municipal officials: Lamy v. Pagé (1910), 16 R. de J. 456 (Sup. Ct.); Belley v. Labrecque (1910), 20 Que. K.B. 79; Montreal Light, Heat & Power Co. v. Clearihue (1911), 20 Que. K.B. 529; Pichette v. Giroux (1914), 20 R. de J. 595 (Ct. Rev.); Joannette v. Jasmin (1914), 21 R.L. 78 (Ct. Rev.); Houde, supra; Anjou 80 v. Simard, [1987] R.R.A. 805 (Sup. Ct.); Revelin v. Boutin, [1991] R.R.A. 507 (C.Q.); Rouillard v. Malacort, [1993] R.R.A. 486 (C.Q.); 129675 Canada Inc. v. Caron, [1996] R.R.A. 1175
2002	Gosselin v. Québec (Attorney General)	12/19/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2027/index.do	Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429, 2002 SCC 84	McLachlin C.J.	majority	Quebec	Constitutional law	C	referred to	Cleburne v. Cleburne Living Centre, Inc., 473 U.S. 432 (1985)	SC	US	24 To determine whether a distinction made on an enumerated or analogous ground is discriminatory, we must examine its context. As Binnie J. stated in Granovsky, supra, at para. 59, citing U.S. Supreme Court Marshall J.'s partial dissent in Cleburne v. Cleburne Living Centre, Inc., 473 U.S. 432 (1985): "[a] sign that says 'men only' looks very different on a bathroom door than a courthouse door". In each case, we must ask whether the distinction, viewed in context, treats the subject as less worthy, less imbued with human dignity, on the basis of an enumerated or analogous ground.
2002	Nova Scotia (Attorney General) v. Walsh	12/19/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2026/index.do	Nova Scotia (Attorney General) v. Walsh, [2002] 4 S.C.R. 325, 2002 SCC 83	L'Heureux-Dubé J.	dissenting	Nova Scotia	Constitutional law Family law	C	D	Gammans v. Ekins, [1950] 2 All E.R. 140	lower-level court	UK	96 Such notions creep into the case law as well. In Gammans v. Ekins, [1950] 2 All E.R. 140 (C.A.), the defendant resisted an order of possession by a landlord of property leased to a woman with whom the defendant had a close relationship lasting some 20 years. The relevant legislation required proof that the defendant was a member of the tenant's "family" in order to make out any defence. In rejecting the defence, Asquith L.J. made the following comments (at pp. 141-42): If . . . the relationship involves sexual relations, it seems to me anomalous that a person can acquire a "status of irremovability" by having lived in sin, even if the liaison has been, not a mere casual encounter, but one protracted in time and conclusive in character. . . . To say of two people masquerading, as these two were, as husband and wife . . . that they were members of the same family, seems to me an abuse of the English language . . . . Comments like these would have appeared perfectly acceptable to a society that regarded children born out of wedlock as bastards, for instance. In a society that associated unmarried cohabitation with sin or immorality, the recognition of these relationships as ones deserving respect and consideration would have been seen as absurd: see further Statistics Canada, Report on the Demographic Situation in Canada 1996: Current Demographic Analysis (1997), prepared by J. Dumas and A. Bélanger, at pp. 123-24, for their review of the historical treatment of unmarried heterosexual cohabitants.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	Spar Aerospace Ltd. v. American Mobile Satellite Corp.	12/6/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2021/index.do	Spar Aerospace Ltd. v. American Mobile Satellite Corp., [2002] 4 S.C.R. 205, 2002 SCC 78	LEBEL J.	unanimous	Quebec	International law	C	referred to	Hilton v. Guyot, 159 U.S. 113 (1895)	SC	US	19 The notion of comity has retained its vitality in the jurisprudence of Canadian courts. This Court has adopted the following definition of the concept: . . . the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws. (Hilton v. Guyot, 159 U.S. 113 (1895), at p. 164) (See Spencer v. The Queen, [1985] 2 S.C.R. 278, at p. 283, per Estey J.; Morguard Investments Ltd. v. De Savoye, [1990] 3 S.C.R. 1077, at p. 1096, per La Forest J.; and Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90, at para. 69, per Binnie J.)
2002	Spar Aerospace Ltd. v. American Mobile Satellite Corp.	12/6/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2021/index.do	Spar Aerospace Ltd. v. American Mobile Satellite Corp., [2002] 4 S.C.R. 205, 2002 SCC 78	LEBEL J.	unanimous	Quebec	International law	C	referred to	Spiliada Maritime Corp. v. Cansulex Ltd., [1987] 1 A.C. 460	SC	UK (HL)	70 These two features of the forum non conveniens doctrine set out in art. 3135 are consistent with the common law requirements set out by the House of Lords in the seminal case, Spiliada Maritime Corp. v. Cansulex Ltd., [1987] 1 A.C. 460, at p. 476, as well as this Court in Amchem, supra, at pp. 919-921, and Holt Cargo, supra, at para. 89. In Holt Cargo, this Court interpreted s. 50 of the Federal Court Act, R.S.C. 1985, c. F-7 , which essentially includes the same two requirements. It reads as follows: 50. (1) The Court may, in its discretion, stay proceedings in any cause or matter, (a) on the ground that the claim is being proceeded with in another court or jurisdiction; or (b) where for any other reason it is in the interest of justice that the proceedings be stayed. In the case at bar, I agree with the respondent's submission that the motions judge did not err in finding that no other jurisdiction was clearly more appropriate than Quebec and that no exceptional exercise of this power was warranted.
2002	Spar Aerospace Ltd. v. American Mobile Satellite Corp.	12/6/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2021/index.do	Spar Aerospace Ltd. v. American Mobile Satellite Corp., [2002] 4 S.C.R. 205, 2002 SCC 78	LEBEL J.	unanimous	Quebec	International law	C	referred to	SNI Aérospatiale v. Lee Kui Jak, [1987] 3 All E.R. 510	SC	UK (PC)	77 In addition, it should be kept in mind that, when applying art. 3135, the motions or trial judge's discretion to decline to hear the action on the basis of forum non conveniens is only to be exercised exceptionally. This exceptional character is reflected in the wording of art. 3135 and is also emphasized in the case law. In particular, in Amchem, supra, at p. 931, Sopinka J. noted that the first step of the test for an anti-suit injunction set out in SNI Aérospatiale v. Lee Kui Jak, [1987] 3 All E.R. 510 (P.C.), which involves asking whether the domestic forum is the natural forum, should be modified when a stay of proceedings is requested on the ground of forum non conveniens: Under this test [the test for forum non conveniens] the court must determine whether there is another forum that is clearly more appropriate. The result of this change in stay applications is that where there is no one forum that is the most appropriate, the domestic forum wins out by default and refuses a stay, provided it is an appropriate forum. [Emphasis added.]
2002	Wewaykum Indian Band v. Canada	12/6/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2022/index.do	Wewaykum Indian Band v. Canada, [2002] 4 S.C.R. 245, 2002 SCC 79	BINNIE J.	unanimous	Federal Court of Appeal	Aboriginal law Action	C	referred to	Parmenter v. The Queen, [1956-60] Ex. C.R. 66	lower-level court	UK	126 The B.C. Statute of Limitations prior to the 1975 amendments applied to bar actions in the Federal Court by virtue of s. 38(1) of the Federal Court Act , S.C. 1970-71-72, c. 1 (reproduced in R.S.C. 1970 (2nd Supp.), c. 10), which took effect on June 1, 1971, and prior to that s. 31 of the Exchequer Court Act, R.S.C. 1952, c. 98. See Zakrzewski v. The King, [1944] 4 D.L.R. 281 (Ex. Ct.), and Parmenter v. The Queen, [1956-60] Ex. C.R. 66.
2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Olin Mathieson Chemical Corp. v. Biorex Laboratories Ltd., [1970] R.P.C. 157	lower-level court	UK	60 The doctrine of "sound prediction" was given serious shape and substance by Graham J. in Olin Mathieson Chemical Corp. v. Biorex Laboratories Ltd., [1970] R.P.C. 157 (Ch. D.). In that case the proposition was framed as follows, at p. 182: If it is really possible, according to the evidence, to make a sound prediction about a certain area, then prima facie it would be reasonable that the patentee should have a claim accordingly . . . . 61 The doctrine was explicitly received into our law in Monsanto, supra. In that case, the Court was confronted with a patent that included claims to numerous chemical compounds to inhibit premature vulcanization of rubber, but only three of the claimed compounds had actually been prepared and tested before the date the application was filed. The examiner rejected the claims to the untested compounds, holding that "broad product claims must be adequately supported by a sufficient number of [tested] examples" (p. 1111). The rejection was upheld by the Patent Appeal Board and the Federal Court, but this Court reversed on the basis that the "architecture of chemical compounds" was no longer a mystery but, within limits, soundly predictable. Pigeon J. thus wrote, at pp. 1118-19: Although the report of the Board is quite lengthy, in the end with respect to claim 9 all it says after stating the principle with which I agree, is that a claim has to be restricted to the area of sound prediction and "we are not satisfied that three specific examples are adequate". As to why three is not enough nothing is said. In my view this is to give no reason at all in a matter which is not of speculation but of exact science. We are no longer in the days when the architecture of chemical compounds was a mystery. By means of modern techniques, chemists are now able to map out in detail the exact disposition of every atom in very complex molecules. It, therefore, becomes possible to ascertain, as was done in Olin Mathieson, the exact position of a given radical and also to relate this position to a specific activity. It thus becomes possible to predict the utility of a substance including such radical. [Emphasis added.] 62 Pigeon J. found persuasive a line of British patent cases including the decisions of the House of Lords in May & Baker, supra, and Mullard Radio Valve Co. v. Philco Radio and Television Corp. (1936), 53 R.P.C. 323, as well as the Chancery Division judgment in Olin Mathieson, supra. Pigeon J. adopted a number of propositions stated by Graham J. in Olin Mathieson, a case dealing with claims to certain chemical derivatives for pharmaceutical use as tranquillizers, in their entirety, at pp. 1116-17:
2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Beecham Group Ltd. v. Bristol Laboratories International S.A., [1978] R.P.C. 521	lower-level court	UK	64 Thurlow C.J. was not laying down as a matter of law that pharmacological utility cannot be predicted because, as he said, predictability is "essentially a question of fact". It will depend on the evidence. In Beecham Group Ltd. v. Bristol Laboratories International S.A., [1978] R.P.C. 521 (H.L.), for example, claims in respect of a semi-synthetic penicillin were invalidated as being little more than an announcement of a research project (p. 570). In that case, on the facts, Lord Diplock stated at p. 579:

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2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Ernest Scragg & Sons Ltd. v. Leesona Corp., [1964] Ex. C.R. 649	lower-level court	UK	54 Canadian case law dealing with inventorship has to be read keeping the particular factual context in mind. In Christiani v. Rice, [1930] S.C.R. 443, this Court held, per Rinfret J. (as he then was), at p. 454: . . . for the purpose of section 7 [now s. 27], "it is not enough for a man to say that an idea floated through his brain; he must at least have reduced it to a definite and practical shape before he can be said to have invented a process". [Emphasis added.] The claimed invention in that case was a process for manufacturing porous cement. The utility of porous cement was not in dispute. The question was how to make it, and who was the first to invent the process. In this case, Dr. Horwitz taught everyone how to make AZT. The question was what could usefully be done with it. In Ernest Scragg & Sons Ltd. v. Leesona Corp., [1964] Ex. C.R. 649, Thorson P. held that if the invention related to an apparatus or process, it was sufficient if the apparatus had actually been built or the process used. The invention in that case was for "Thermoplastic Yarns and Methods of Processing Them" (p. 659). AZT had been compounded and used in 1964, but not by Glaxo/Wellcome, and not in relation to HIV/AIDS. The invention claimed here related entirely to the new and hitherto unexpected use. Glaxo/Wellcome also cites Koehring Canada Ltd. v. Owens-Illinois Inc. (1980), 52 C.P.R. (2d) 1 (F.C.A.) (leave to appeal refused, [1980] 2 S.C.R. ix), which dealt with an invention to harvest and process trees in the middle of a forest. The utility was obvious. The invention lay in the machine and its operation. Glaxo/Wellcome also relied upon two Canadian appeals to the Privy Council for the proposition that "proof of utility is not required for there to be an invention" (factum, para. 45): Permutit Co. v. Borrowman, [1926] 4 D.L.R. 285 (P.C.), and C.G.E. Co. v. Fada Radio Ltd., [1930] 1 D.L.R. 449 (P.C.). In neither case was utility in doubt. Permutit dealt with a process for softening water and Fada Radio dealt with a radio tuning device. There may in such cases be some doubt about the commercial success of the invention, but utility in this context means useful for the purpose claimed, not commercial acceptance. 99 The distinction between conception and verification is consistent with the Canadian authorities, including Fox, supra, at p. 225; Kellogg Co. v. Kellogg, [1942] Ex. C.R. 87, at p. 97; Ernest Scragg & Sons Ltd., supra, at pp. 676-77; H. Fisher and R. S. Smart, Canadian Patent Law and Practice (1914), at pp. 27-29. The line is perhaps blurred in Gerrard Wire Tying Machines Co. of Canada v. Cary Manufacturing Co., [1926] Ex. C.R. 170, where the U.S. text Walker on Patents is quoted at p. 186: Nor is a patent to joint inventors invalidated by the fact that one of them only first perceived the crude form of the elements and the possibility of their adaptation to complete the result desired. In fact the conception of the entire device may be attributed to one, but if the other makes suggestions of practical value, which assist in working out the main idea and making it operative, or contributes an independent part of the entire invention which helps to create the whole, he is a joint inventor even though his contribution be of minor importance. To the extent this suggests that an individual who contributes to the inventive concept may be a co-inventor without being the prime originator, I agree
2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Burroughs Wellcome Co. v. Barr Laboratories Inc., 32 U.S.P.Q. 2d 1915 (1994)	lower-level court	US	26 On the co-inventorship issue, Wetston J. cited Burroughs Wellcome Co. v. Barr Laboratories Inc., 32 U.S.P.Q. 2d 1915 (Fed. Cir. 1994), where it was observed that Drs. Broder and Mitsuya of the NIH were not a mere "pair of hands". They exercised "considerable skill" and were "uniquely qualified". They were given little instruction by Glaxo/Wellcome. In fact, Glaxo/Wellcome did not have the expertise to be able to instruct the NIH researchers in this regard. Wetston J. concluded that although all the five named Glaxo/Wellcome inventors were properly included, the NIH researchers were highly skilled "collaborators" and co-inventors on the utility aspect and should not have been omitted from the application: "the utility as claimed was not established without the extensive and direct involvement of the NIH. . . . In my opinion, the work of the NIH was not ancillary to the invention and this invention would not have been complete without their investigation, skill and research" (paras. 224 and 226). Nevertheless, the failure to name co-inventors in this case was not "material" under s. 53(1) of the Patent Act , and the omission therefore did not render the patent invalid. 35 AZT has earned for the respondents hundreds of millions of dollars in worldwide sales since its usefulness was discovered for the treatment of HIV and AIDS. In the United States alone, it is estimated that AZT earned for the patent owner a profit of $592 million between 1987 and 1993: J. Yardley, "Industry Giant Owns Right to AIDS Drug? N.C. Trial to Decide", Atlanta Constitution, June 27, 1993, at p. A4, quoted in Case Comment, "Patent Law — Pharmaceuticals — Federal Circuit Upholds Patents for AIDS Treatment Drug — Burroughs Wellcome Co. v. Barr Laboratories, Inc., 40 F.3d 1223 (Fed. Cir. 1994)" (1995), 108 Harv. L. Rev. 2053, at note 17. 39 The public interest arguments were not advanced in the U.S. just by advocates of rights for AIDS patients. The NIH itself in 1991 granted a non-exclusive licence to Barr Laboratories to "exploit any patent rights" the NIH "might have" in Glaxo/Wellcome's AZT patents. See Case Comment, supra, at p. 2054. See also "Agency Wants to End AIDS Drug Monopoly", The New York Times, May 29, 1991, p. A24. However, the U.S. patent owner successfully defeated this challenge in Burroughs Wellcome v. Barr Laboratories, supra, and see Case Comment, supra. 40 Under United States law, the Court of Appeals for the Federal Circuit said, it was irrelevant that Glaxo/Wellcome had no evidence of AZT's effectiveness against the HIV/AIDS virus in humans and no reasonable basis for believing that the invention would work (Burroughs Wellcome v. Barr Laboratories, supra, at p. 1921) until it subsequently received the NIH results. It was sufficient that on February 6, 1985, Glaxo/Wellcome scientists had a concept that was "definite and permanent" which could be applied by a person skilled in the art "without extensive research or experimentation" (p. 1919). In order for there to be an invention in the United States, U.S. law requires "reduction to practice". "[C]onstructive reduction to practice" may occur when a patent application is filed in which an untested invention is adequately disclosed: Travis v. Baker, 137 F.2d 109 (C.C.P.A. 1943), at p. 111. This seems to have some affinity with our doctrine of "sound prediction" discussed below. However, given the differences in our respective patent laws,
2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Travis v. Baker, 137 F.2d 109 (1943)	lower-level court	US	40 Under United States law, the Court of Appeals for the Federal Circuit said, it was irrelevant that Glaxo/Wellcome had no evidence of AZT's effectiveness against the HIV/AIDS virus in humans and no reasonable basis for believing that the invention would work (Burroughs Wellcome v. Barr Laboratories, supra, at p. 1921) until it subsequently received the NIH results. It was sufficient that on February 6, 1985, Glaxo/Wellcome scientists had a concept that was "definite and permanent" which could be applied by a person skilled in the art "without extensive research or experimentation" (p. 1919). In order for there to be an invention in the United States, U.S. law requires "reduction to practice". "[C]onstructive reduction to practice" may occur when a patent application is filed in which an untested invention is adequately disclosed: Travis v. Baker, 137 F.2d 109 (C.C.P.A. 1943), at p. 111. This seems to have some affinity with our doctrine of "sound prediction" discussed below. However, given the differences in our respective patent laws, the outcome of the U.S. litigation on this patent is of limited interest here.
2002	Apotex Inc. v. Wellcome Foundation Ltd.	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2020/index.do	Apotex Inc. v. Wellcome Foundation Ltd., [2002] 4 S.C.R. 153, 2002 SCC 77	BINNIE J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	May & Baker Ltd. v. Boots Pure Drug Co. (1950), 67 R.P.C. 23	SC	UK (HL)	59 The doctrine of sound prediction seems to have had its genesis in a comment by Lord MacDermott in May & Baker Ltd. v. Boots Pure Drug Co. (1950), 67 R.P.C. 23 (H.L.), at p. 50 (where, however, he rejected its application on the facts). It was connected to the requirement that the claims be "fairly based" on the patent disclosure: In re I. G. Farbenindustrie A. G.'s Patents (1930), 47 R.P.C. 289 (Ch. D.), at pp. 322-23. The principle of "fair basis" was later explicitly incorporated into the British Patents Act, 1949 (U.K.), 1949, c. 87, ss. 4(3) and 32(1)(i). While these specific provisions were repealed in 1977, the "fair basis" doctrine seems still to be a force in British patent law; see Lord Hoffmann in Biogen Inc. v. Medeva PLC, [1997] R.P.C. 1 (H.L.).
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2002	Harvard College v. Canada (Commissioner of Patents)	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do	Harvard College v. Canada (Commissioner of Patents), [2002] 4 S.C.R. 45, 2002 SCC 76	BINNIE J.	dissenting	Federal Court of Appeal	Intellectual property	C	D	J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc., 122 S. Ct. 593 (2001)	SC	US	63 Thirdly, the Patent Act language reaches back (as stated) prior to Confederation. This particular argument suggests that a "negative inference", arising when the plant legislation was enacted in 1990, should somehow be read back to narrow a definition that had at that time been in effect more than a century. This would amount to a repeal by implication, and would necessarily require an inconsistency between the two pieces of legislation. There is no such inconsistency. Rights acquired under both Acts can live together. Similar arguments were rightly rejected by the United States Supreme Court in J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc., 122 S. Ct. 593 (2001).
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2002	Harvard College v. Canada (Commissioner of Patents)	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do	Harvard College v. Canada (Commissioner of Patents), [2002] 4 S.C.R. 45, 2002 SCC 76	BINNIE J.	dissenting	Federal Court of Appeal	Intellectual property	R		Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, art. 5(1), (2), 6.	statute	Eu	93 The European Community Directive on biotechnology (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological invention) names specific inventions (human cloning, modifying germ line, commercial use of human embryos, and causing suffering to animals without substantial medical benefit to humans or animals) as contrary to ordre public or morality. If Parliament thinks it wise to spell out such a policy in the Patent Act , it will pass appropriate amendments. More likely, as the government has already signalled, such measures will be put into special legislation equivalent to the proposed Assisted Human Reproduction Act. 182 The scenarios above demonstrate that the issue of patenting of human life forms is a complex one that cannot be readily dismissed by reference to the Charter . Once again, it is an issue that demands a comprehensive Parliamentary response. Illustrative in this regard is Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, which sets out several detailed exceptions to patentability pertaining to the human body. The first paragraph of article 5 of the Directive sets out the primary exception: The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions. The second paragraph allows for a patent on "[a]n element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene . . . even if the structure of that element is identical to that of a natural element". Paragraph 1 of article 6 sets out a general exception to patentability for inventions where their commercial exploitation would be contrary "to ordre public or morality". Paragraph 2 further specifies that processes for cloning human beings, processes for modifying the germ line genetic identity of human beings and uses of human embryos for industrial or commercial purposes are all considered unpatentable as being contrary to "ordre public or morality".
2002	Harvard College v. Canada (Commissioner of Patents)	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do	Harvard College v. Canada (Commissioner of Patents), [2002] 4 S.C.R. 45, 2002 SCC 76	Bastarache J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	R. v. Secretary of State for the Home Department, ex parte Al-Mehdawi, [1989] 1 All E.R. 777	lower-level court	UK	129 The Commissioner went on to note that in Pioneer Hi-Bred, supra, this Court deliberately chose not to decide whether the soybean resulting from artificial crossbreeding was a patentable invention under s. 2 of the Act. On this basis, the Commissioner concluded that neither he nor the examiner is bound by the decision of the Federal Court in that case: R. v. Secretary of State for the Home Department, ex parte Al-Mehdawi, [1989] 1 All E.R. 777 (C.A.). Nonetheless, he determined that the decision of the majority of the Federal Court of Appeal in Pioneer Hi-Bred could be of high persuasive influence.

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2002	Harvard College v. Canada (Commissioner of Patents)	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do	Harvard College v. Canada (Commissioner of Patents), [2002] 4 S.C.R. 45, 2002 SCC 76	Bastarache J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	Diamond v. Chakrabarty, 447 U.S. 303 (1980)	SC	US	131 Nadon J. conceded that there is no dispute that the oncomouse is new, useful and unobvious. The question is whether it is an "invention" to which the Patent Act applies. He reviewed the decision of the U.S. Supreme Court in Diamond v. Chakrabarty, 447 U.S. 303 (1980), a decision cited by Harvard in support of the grant of the patent. In Chakrabarty, a majority of five judges held that the proper question in patenting a bacterium used to degrade crude oil was whether the subject of the patent application was "human-made" or was something occurring naturally. On that basis they allowed the claim. The minority of four referred to the existence of the 1930 Plant Patent Act and the 1970 Plant Variety Protection Act and concluded that Congress had provided separate intellectual property protection for living things within these statutes, thus signalling a lack of intention to include living things within the scope of the U.S. Patent Act. Nadon J. expressed his preference for the minority view.
2002	Harvard College v. Canada (Commissioner of Patents)	12/5/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do	Harvard College v. Canada (Commissioner of Patents), [2002] 4 S.C.R. 45, 2002 SCC 76	Bastarache J.	majority	Federal Court of Appeal	Intellectual property	C	referred to	In re Bergy, Coats, and Malik, 195 U.S.P.Q. 344 (1977)	lower-level court	US	202 First, as noted in Abitibi, supra, at p. 89, micro-organisms are produced "en masse as chemical compounds are prepared, and are formed in such large numbers that any measurable quantity will possess uniform properties and characteristics". The same cannot be said for plants and animals. In re Bergy, Coats, and Malik, 195 U.S.P.Q. 344 (1977), the U.S. Court of Customs and Patent Appeals explained the distinction in terms of process, at p. 350: The nature and commercial uses of biologically pure cultures of microorganisms . . . are much more akin to inanimate chemical compositions such as reactants, reagents, and catalysts than they are to horses and honeybees or raspberries and roses. The difference in the end product was noted by Derzko, supra, at p. 161, in reference to the Plant Breeders' Rights Act : The rights do not extend to the actual plant. This is done because, unlike inert objects that are patentable, and unlike unicellular organisms that replicate into exact copies of each other, higher organisms such as plants start off from a cell and then grow and differentiate into a complete plant. The difficulty
2002	R. v. Neil	11/1/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2012/index.do	R. v. Neil, [2002] 3 S.C.R. 631, 2002 SCC 70	BINNIE J.	unanimous	Alberta	Criminal law Professional law	C	referred to	Spector v. Ageda, [1971] 3 All E.R. 417	lower-level court	UK	19 The aspects of the duty of loyalty relevant to this appeal do include issues of confidentiality in the Canada Trust matters, but engage more particularly three other dimensions: (i) the duty to avoid conflicting interests: Davey v. Woolley, Hames, Dale & Dingwall (1982), 35 O.R. (2d) 599 (C.A.), and Services environnementaux Laidlaw (Mercier) Ltée v. Québec (Procureur général), [1995] R.J.Q. 2393 (C.A.), including the lawyer's personal interest: Szarfer v. Chodos (1986), 54 O.R. (2d) 663 (H.C.), aff'd (1988), 66 O.R. (2d) 350 (C.A.); Moffat v. Wetstein (1996), 29 O.R. (3d) 371 (Gen. Div.); Stewart v. Canadian Broadcasting Corp., supra. (ii) a duty of commitment to the client's cause (sometimes referred to as "zealous representation") from the time counsel is retained, not just at trial, i.e. ensuring that a divided loyalty does not cause the lawyer to "soft peddle" his or her defence of a client out of concern for another client, as in R. v. Silvini (1991), 5 O.R. (3d) 545 (C.A.); R. v. Widdifield (1995), 25 O.R. (3d) 161 (C.A.); R. v. Graham, [1994] O.J. No. 145 (QL) (Prov. Div.); and, (iii) a duty of candour with the client on matters relevant to the retainer: R. v. Henry (1990), 61 C.C.C. (3d) 455, [1990] R.J.Q. 2455 (C.A.), at p. 465 C.C.C., per Gendreau J.A.; Spector v. Ageda, [1971] 3 All E.R. 417 (Ch. D.), at p. 430; the Canadian Bar Association, Code of Professional Conduct (1988), c. 5,
2002	R. v. Neil	11/1/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2012/index.do	R. v. Neil, [2002] 3 S.C.R. 631, 2002 SCC 70	BINNIE J.	unanimous	Alberta	Criminal law Professional law	C	referred to	Glasser v. United States, 315 U.S. 60 (1942)	SC	US	39 In R. v. Graff (1993), 80 C.C.C. (3d) 84, the Alberta Court of Appeal held that in a post-conviction situation, if an accused is to challenge a conviction or sentence on appeal, he or she must show more than a possibility of conflict of interest; while actual prejudice need not be shown, the appellant must demonstrate the conflict of interest and that the conflict adversely affected the lawyer's performance on behalf of the appellant. See also Silvini, supra, at p. 551, per Lacourcière J.A.; Widdifield, supra, at p. 173; R. v. Barbeau (1996), 110 C.C.C. (3d) 69 (Que. C.A.), at p. 81, per Rothman J.A. It is not necessary for the accused to demonstrate actual prejudice because "[t]he right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial": Glasser v. United States, 315 U.S. 60 (1942), at p. 76.
2002	R. v. Neil	11/1/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2012/index.do	R. v. Neil, [2002] 3 S.C.R. 631, 2002 SCC 70	BINNIE J.	unanimous	Alberta	Criminal law Professional law	C	referred to	Cuyler v. Sullivan, 446 U.S. 335 (1980)	SC	US	43 The Alberta Court of Appeal noted that the actions of the Venkatraman law firm are not state actions, and therefore do not as such attract Charter scrutiny. The appellant says that a lawyer is an "officer of the court" but this, I think, is an inadequate basis on which to base state responsibility. However, I would not want to shut the door entirely on the basis of lack of state action. At common law, the doctrine of abuse of process was rooted in objectionable conduct by private litigants, for example using the courts for an improper purpose. Although s. 7 of the Charter incorporates the abuse of process doctrine, it does not extinguish the common law doctrine under which the courts have an inherent and residual discretion to control their own processes and prevent their abuse: Cobb, supra, at para. 37. Even in Charter terms, there is much to be said for the view of Powell J. of the United States Supreme Court who observed in Cuyler v. Sullivan, 446 U.S. 335 (1980), that, if defence counsel is incompetent or otherwise violates his or her duties in such a way as to adversely affect the representation of an accused, "a serious risk of injustice infects the trial itself. . . . When a State obtains a criminal conviction through such a trial, it is the State that unconstitutionally deprives the defendant of his liberty" (p. 343). See also Mickens v. Taylor, 122 S. Ct. 1237 (2002), at p. 1245. We do not need to consider this argument in this case. It is difficult to see how the conduct of a law firm that is not actually engaged as defence counsel, as here, could have such a drastic impact on the constitutionality of the trial. Here there was no wrongful state action. Nor did the conduct of the Venkatraman law firm "infect" the appellant's trial with "a serious risk of injustice". Further, with respect to the
2002	R. v. Neil	11/1/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2012/index.do	R. v. Neil, [2002] 3 S.C.R. 631, 2002 SCC 70	BINNIE J.	unanimous	Alberta	Criminal law Professional law	C	referred to	Mickens v. Taylor, 122 S. Ct. 1237 (2002)	SC	US	43 The Alberta Court of Appeal noted that the actions of the Venkatraman law firm are not state actions, and therefore do not as such attract Charter scrutiny. The appellant says that a lawyer is an "officer of the court" but this, I think, is an inadequate basis on which to base state responsibility. However, I would not want to shut the door entirely on the basis of lack of state action. At common law, the doctrine of abuse of process was rooted in objectionable conduct by private litigants, for example using the courts for an improper purpose. Although s. 7 of the Charter incorporates the abuse of process doctrine, it does not extinguish the common law doctrine under which the courts have an inherent and residual discretion to control their own processes and prevent their abuse: Cobb, supra, at para. 37. Even in Charter terms, there is much to be said for the view of Powell J. of the United States Supreme Court who observed in Cuyler v. Sullivan, 446 U.S. 335 (1980), that, if defence counsel is incompetent or otherwise violates his or her duties in such a way as to adversely affect the representation of an accused, "a serious risk of injustice infects the trial itself. . . . When a State obtains a criminal conviction through such a trial, it is the State that unconstitutionally deprives the defendant of his liberty" (p. 343). See also Mickens v. Taylor, 122 S. Ct. 1237 (2002), at p. 1245. We do not need to consider this argument in this case. It is difficult to see how the conduct of a law firm that is not actually engaged as defence counsel, as here, could have such a drastic impact on the constitutionality of the trial. Here there was no wrongful state action. Nor did the conduct of the Venkatraman law firm "infect" the appellant's trial with "a serious risk of injustice". Further, with respect to the
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'Heureux-Dubé J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412	lower-level court	Australia	119 The rationale for maintaining the common law privilege appears to be the same in Australia as in the United Kingdom. It is designed to protect individuals from being compelled to convict themselves by their own testimony, and from being subjected to the abuses of the state that were prevalent prior to the creation of the privilege: see, on this point, the judgment of Kirby P. in Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412 (C.A.), at p. 421. As with the United Kingdom, the goals of seeking out and obtaining the truth play a secondary role to those of preventing abuse and testimonial compulsion in Australian law. It is for this reason that the rules of evidence in Australia typically sacrifice access to the truth in order to protect putative witnesses from these apparent harms.

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2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	R. v. Hertfordshire County Council, ex parte Green Environmental Industries Ltd., [2000] 1 All E.R. 773	SC	UK (HL)	112 In the United Kingdom, the state of the law that existed in Canada prior to 1893 is the current state of the law, subject to some modifications. A witness in the United Kingdom is afforded the full right of silence granted by virtue of the common law privilege against self-incrimination. The privilege is best summed up in a passage of Goddard L.J., in Blunt v. Park Lane Hotel, Ltd., [1942] 2 K.B. 253 (C.A.), at p. 257: . . . the rule is that no one is bound to answer any question if the answer thereto would, in the opinion of the judge, have a tendency to expose the deponent to any criminal charge, penalty, or forfeiture which the judge regards as reasonably likely to be preferred or sued for. In England, the privilege against self-incrimination is set out in a series of rules, including the rule that an accused cannot be compelled to testify at his or her own hearing, the voluntary confessions rule, and the prohibition on questioning suspects without providing a caution: see R. v. Hertfordshire County Council, ex parte Green Environmental Industries Ltd., [2000] 1 All E.R. 773 (H.L.), at pp. 777-78, per Lord Hoffmann. The other rule falling under this rubric is the one conferring a right of silence on any witness. As Lord Hoffmann observes in Hertfordshire County Council, at p. 778, these rules are [illegible]
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	R. v. Martin, [1998] 2 Cr. App. R. 385	lower-level court	UK	115 One such provision was dealt with in R. v. Martin, [1998] 2 Cr. App. R. 385 (C.A.). In that case, the two appellants were charged with several offences relating to the fraudulent evasion of duties on alcohol. In order to explain his activities, one of the appellants spoke of his involvement with some sort of business described as "Anthony Martin International". Two years prior to the criminal hearing, the appellant had been forced to swear an affidavit as a result of an ex parte restraint order granted by another court. The affidavit purported to be a full disclosure of the appellant's income and its sources. The appellant neglected to mention "Anthony Martin International" in this affidavit. When the Crown attempted to cross-examine the appellant two years later respecting the absence of any reference to "Anthony Martin International" in the affidavit, appellant's counsel objected. The Court of Appeal was asked to decide whether the Crown could cross-examine the appellant respecting his statements contained in the affidavit.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	R. v. Guariglia, [2000] VSC 13	lower-level court	Australia	120 These policy concerns are attenuated to a degree where the state has created rules for the admission of the evidence with protections against subsequent use. In the case of R. v. Guariglia, [2000] VSC 13, for instance, the accused refused to answer questions in a murder trial on the grounds that these answers might expose him to perjury. The answers to these questions would apparently have contradicted those the accused gave at his own murder trial. The accused was convicted of contempt for refusing to answer these questions. Speaking about the right to silence, the court states that the witness has an obligation to testify to the whole truth, and concludes (at para. 28) that, if the law were otherwise, the tribunal of fact may be left with the uncontradicted and unchallenged evidence of a witness against whom it would not be entitled to draw an adverse inference as to credit by reason of the reliance upon the privilege. The court concludes that the witness was required to testify, and finds him guilty of contempt.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	New Jersey v. Portash, 440 U.S. 450 (1979)	Sc	US	126 In New Jersey v. Portash, 440 U.S. 450 (1979), the U.S. Supreme Court dealt directly with the question of whether witness testimony given under the protection of a use immunity agreement could be used to impeach that witness's credibility at a subsequent proceeding. The respondent Portash was compelled to testify before a grand jury. Portash claimed privilege, but was compelled to testify pursuant to a statute then in force in New Jersey. This same law provided that the testimony "shall not be used against such public employee in a subsequent criminal proceeding" (New Jersey Public Employees Immunity Statute, N.J. Stat. Ann. 52A:81-17.2a2 (West 1976)). Portash was later indicted on several counts.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	C	D	Photo Production Ltd. v. Securicor Transport Ltd., [1980] 1 All E.R. 556	SC	UK (HL)	134 My colleague appears to support an arrangement whereby one who tells two different stories at two different proceedings merely risks being brought on perjury charges. This is similar to the Diplock model of contract as primary obligations, the breach of which gives rise either to a remedy of specific performance, or a secondary obligation of damages: see Photo Production Ltd. v. Securicor Transport Ltd., [1980] 1 All E.R. 556 (H.L.), at p. 566. While I acknowledge that perjury is a secondary consequence to telling two different stories before a court of law, it does not follow that it ought to be the only consequence. A perjury conviction can be too small a price to pay once the primary obligation to tell the truth has been apparently breached. Section 5 of the CEA and s. 13 of the Charter allow for the use of the prior testimony to impeach the credibility of the witness. That, coupled with the potential for a perjury conviction, is an appropriate consequence for breaching the primary obligation to tell the truth at the first proceeding. It also happens to be the consequence mandated by Kuldip, supra. In short, it is one thing to countenance making a deal with the devil. It is quite another to sell him one's soul.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	R		Evidence Act 1908 (New Zealand), No. 56, s. 4.	statute	New Zealand	122 New Zealand has also maintained the common law privilege against self-incrimination. With respect to witnesses who testify in any civil proceeding, this privilege is codified in s. 4 of the Evidence Act 1908, No. 56. The authors of a leading New Zealand evidence textbook point to a number of statutory provisions that serve to modify the common law rule by, for instance, providing that the witness must testify in exchange for some sort of subsequent use immunity: see Cross on Evidence (6th N.Z. ed. 1997), at pp. 283-85. The authors also point to the fear of compelling witnesses to testify against themselves as the basic rationale for the maintenance of the common law privilege (p. 279). The authors also acknowledge that such a rationale can serve to militate against the discovery of crimes, such discovery being in the public interest.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	R		Evidence Act 1958 (Victoria), No. 6246, s. 29.	lower-level statute	Australia	118 In Tasmania, for example, s. 128 of the Evidence Act 2001, No. 76 of 2001, affirms the common law rule, but provides for protection whenever the witness chooses or is required to testify. A witness who testifies is granted a certificate from the trial judge immunizing him or her from subsequent prosecution (except in the case of perjury). Queensland has simply codified the common law rule entitling the witness to remain silent on the ground that any answer may tend to incriminate him: see s. 10 of the Evidence Act 1977, 26 Eliz. II No. 47. At the other end of the spectrum lies Victoria, where s. 29 of the Evidence Act 1958, No. 6246, provides that the witness cannot object to answering any question on the ground that such answers may incriminate him. This prohibition only applies to evidence that is "relevant and material" to the issues before the court in the first proceeding.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	R		Evidence Act 1977 (Queensland), 26 Eliz. II No. 47, s. 10 [am. Qld. E.P. s. 7].	statute	uk	118 In Tasmania, for example, s. 128 of the Evidence Act 2001, No. 76 of 2001, affirms the common law rule, but provides for protection whenever the witness chooses or is required to testify. A witness who testifies is granted a certificate from the trial judge immunizing him or her from subsequent prosecution (except in the case of perjury). Queensland has simply codified the common law rule entitling the witness to remain silent on the ground that any answer may tend to incriminate him: see s. 10 of the Evidence Act 1977, 26 Eliz. II No. 47. At the other end of the spectrum lies Victoria, where s. 29 of the Evidence Act 1958, No. 6246, provides that the witness cannot object to answering any question on the ground that such answers may incriminate him. This prohibition only applies to evidence that is "relevant and material" to the issues before the court in the first proceeding.

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2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	L'HEUREUX-DUBÉ J.	dissenting	Quebec	SubjectsConstitutional law Evidence	R		United States Constitution, Fifth Amendment.	constitution	US	123 The United States has gone further than the previous three jurisdictions by constitutionalizing the privilege against self-incrimination. The constitutional privilege appears in state constitutions as well as in the well-known Fifth Amendment, which provides that "[n]o person shall . . . be compelled . . . to be a witness against himself". The rationale for the Fifth Amendment privilege continues to be a great mystery. Various rationales for the Fifth Amendment have been put forward from time to time, including the prevention of state abuse, the protection of privacy, and the fear of making findings of guilt based on unreliable, coerced testimony: see McCormick on Evidence (5th ed. 1999), vol. 1, at pp. 454-58. The authors of McCormick on Evidence note, however, that there do exist critics of the privilege. These critics argue that the privilege unjustifiably denies the state access to important sources of reliable information. This, say some critics, places too high a price for the values the Fifth Amendment apparently serves to protect. 124 The privilege operates in favour of both an accused and a non-accused witness. With respect to the latter, the witness is required to claim the privilege. Typically, the claim is not made as a blanket claim, but comes in the form of specific objections to specific questions. When a witness objects, it is up to the trial judge to assess whether the testimony could be incriminatory. The test for determining whether the evidence is incriminatory is taken from the case of Hoffman v. United States, 341 U.S. 479 (1951). The U.S. Supreme Court held, in that case, that the witness is entitled to object, except in cases where it is "perfectly clear" that the witness is mistaken respecting the incriminatory effect of the evidence and where the testimony "cannot possibly have such tendency to incriminate" (p. 488 (emphasis in original)). This formulation basically renders all testimony subject to the privilege except that which only gives rise to a fanciful possibility of incrimination. 125 In order to obtain access to the witness's testimony at the first proceeding, several states have attempted to avoid the strictures of the Fifth Amendment by enacting what are known as "use immunity" statutes: see McCormick on Evidence, supra, at p. 513. These statutes compel the witness to testify in exchange for promises not to use the testimony at later proceedings. The tendency in these statutes is to wait for the witness to claim their privilege before granting a use immunity. The trial judge will grant this immunity after the witness claims the privilege, and after the prosecution seeks a grant of immunity. Because of the existence of the Fifth Amendment, it is necessary that the statutory use immunity protect witnesses to the same extent as they would be had they been permitted to invoke their constitutional right to silence. A statutory immunity that offers anything less would violate the Fifth Amendment. 127 At the trial, the trial judge ruled that the prosecution was permitted to use the testimony to impeach Portash's credibility. An appeal was allowed, and the case sent to the Supreme Court. The majority in the Supreme Court held that the Fifth Amendment privilege protects against any use of compelled testimony in subsequent proceedings. To use the compelled testimony for any purpose would violate the Fifth Amendment. Essentially, if Portash had been held to be entitled to claim a right to silence, no evidence would have existed either to incriminate him or to impeach his credibility. Allowing the prosecution under statute to use the testimony to impeach the witness would diminish the absolute protection afforded by the Fifth Amendment. In short, the prosecution was held not to be permitted to use the evidence as a means of impeaching the witness.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	Arbour J.	majority	Quebec	SubjectsConstitutional law Evidence	R		United States Constitution, Fifth Amendment.	constitution	US	21 Section 13 reflects a long-standing form of statutory protection against compulsory self-incrimination in Canadian law, and is best understood by reference to s. 5 of the Canada Evidence Act . Like the statutory protection, the constitutional one represents what Fish J.A. called a quid pro quo: when a witness who is compelled to give evidence in a court proceeding is exposed to the risk of self-incrimination, the state offers protection against the subsequent use of that evidence against the witness in exchange for his or her full and frank testimony. If the evidence proffered is less than full and frank, the witness is subject to prosecution for perjury or for the related offence of giving contradictory testimony. In the United States, a different arrangement is in place: faced with the prospect of self-incrimination, the witness can claim the Fifth Amendment, and refuse to provide the incriminating answer. The state then has to dispense with his evidence altogether. As the United States Supreme Court stated in Malloy v. Hogan, 378 U.S. 1 (1964), at pp. 7-8: "[T]he American system of criminal prosecution is accusatorial, not inquisitorial, and . . . the Fifth Amendment privilege is its essential mainstay. . . . Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." See generally McCormick on Evidence (5th ed. 1999), vol. 1, at pp. 450-518. 39 The role of the trial judge in other jurisdictions is quite clear. For instance, in the United Kingdom and Australia, where the common law privilege still exists, the trial judge has the duty to ensure that the privilege is not unduly invoked; a determination must be made as to the potentially incriminating nature of the testimony that is requested. The test is whether, in the circumstances, there is a real and appreciable danger that the evidence sought could be used in future criminal investigations or prosecutions against the witness. See Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412 (C.A.) at pp. 420-23, for a convenient statement of the applicable common law procedure, quoted with approval in Den Norske Bank A.S.A. v. Antonatos, [1999] Q.B. 271 (C.A.), at pp. 285-87. Similarly, in the United States, the witness is not the final arbiter of whether the Fifth Amendment is properly invoked. That duty falls to the trial judge. As stated by the District of Columbia Court of Appeals in Carter v. United States, 684 A.2d 331 (1996), at p. 338: "[I]f the trial judge concludes the proposed testimony would be incriminating and thereby poses the risk of possible future prosecution of the witness, this ends that inquiry and a claim of the privilege should be sustained." As noted by the authors of McCormick on Evidence, supra, at p. 472: "A theoretical risk of liability is, then, sufficient." In turn, the proposed testimony will be deemed incriminating if it is "evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result": Hoffman v. United States, 341 U.S. 479 (1951), at p. 486-87. 39 The considerable discretion of the trial judge where the common law privilege or the Fifth Amendment is concerned is justified because, in both cases, the consequence of claiming the privilege is the complete silence of the witness. The stakes are high when a witness refuses to testify: the trial process and the search for truth are hindered and, in some cases, the defendant is deprived of potentially exculpatory evidence. The trial judge thus has the duty to ensure that the privilege is not unduly asserted. However, once the privilege is upheld, the parties must do without the testimony of the witness. In my view, those concerns are not present in the Canadian regime where the witness's right to silence has been abolished by the various Evidence Acts. Every witness must testify and, subject to any other privilege or exclusionary rule, must answer all questions. In exchange, witnesses are protected by s. 13 of the Charter and, in addition, may seek the protection of the Evidence Act. There is hence little need to monitor the incriminatory nature of the testimony at the time it is given since the witness must answer all questions in any event. Indeed, common law or U.S.-style judicial discretion would be of no consequence. Rather, in Canada, the judicial assessment of the incriminatory nature of the witness's testimony is made at the subsequent proceeding, where the prior testimony is sought to be introduced into evidence. This was emphasized by this Court in Dubois, supra, at p. 362, by reference to the protection offered by s. 5(2) : "This limited form of protection against self-incrimination clearly has no application to the
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	Arbour J.	majority	Quebec	SubjectsConstitutional law Evidence	C	referred to	Malloy v. Hogan, 378 U.S. 1 (1964)	SC	US	21 Section 13 reflects a long-standing form of statutory protection against compulsory self-incrimination in Canadian law, and is best understood by reference to s. 5 of the Canada Evidence Act . Like the statutory protection, the constitutional one represents what Fish J.A. called a quid pro quo: when a witness who is compelled to give evidence in a court proceeding is exposed to the risk of self-incrimination, the state offers protection against the subsequent use of that evidence against the witness in exchange for his or her full and frank testimony. If the evidence proffered is less than full and frank, the witness is subject to prosecution for perjury or for the related offence of giving contradictory testimony. In the United States, a different arrangement is in place: faced with the prospect of self-incrimination, the witness can claim the Fifth Amendment, and refuse to provide the incriminating answer. The state then has to dispense with his evidence altogether. As the United States Supreme Court stated in Malloy v. Hogan, 378 U.S. 1 (1964), at pp. 7-8: "[T]he American system of criminal prosecution is accusatorial, not inquisitorial, and . . . the Fifth Amendment privilege is its essential mainstay. . . . Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." See generally McCormick on Evidence (5th ed. 1999), vol. 1, at pp. 450-518.

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2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	Arbour J.	majority	Quebec	SubjectsConstitutional law Evidence	C	referred to	Den Norske Bank A.S.A. v. Antonatos, [1999] Q.B. 271	lower-level court	UK	39 The role of the trial judge in other jurisdictions is quite clear. For instance, in the United Kingdom and Australia, where the common law privilege still exists, the trial judge has the duty to ensure that the privilege is not unduly invoked; a determination must be made as to the potentially incriminating nature of the testimony that is requested. The test is whether, in the circumstances, there is a real and appreciable danger that the evidence sought could be used in future criminal investigations or prosecutions against the witness. See Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412 (C.A.) at pp. 420-23, for a convenient statement of the applicable common law procedure, quoted with approval in Den Norske Bank A.S.A. v. Antonatos, [1999] Q.B. 271 (C.A.), at pp. 285-87. Similarly, in the United States, the witness is not the final arbiter of whether the Fifth Amendment is properly invoked. That duty falls to the trial judge. As stated by the District of Columbia Court of Appeals in Carter v. United States, 684 A.2d 331 (1996), at p. 338: "[I]f the trial judge concludes the proposed testimony would be incriminating and thereby poses the risk of possible future prosecution of the witness, this ends that inquiry and a claim of the privilege should be sustained." As noted by the authors of McCormick on Evidence, supra, at p. 472: "A theoretical risk of liability is, then, sufficient." In turn, the proposed testimony will be deemed incriminating if it is "evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result": Hoffman v. United States, 341 U.S. 479 (1951), at p. 486-87.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	Arbour J.	majority	Quebec	SubjectsConstitutional law Evidence	C	referred to	Carter v. United States, 684 A.2d 331 (1996)	lower-level court	US	39 The role of the trial judge in other jurisdictions is quite clear. For instance, in the United Kingdom and Australia, where the common law privilege still exists, the trial judge has the duty to ensure that the privilege is not unduly invoked; a determination must be made as to the potentially incriminating nature of the testimony that is requested. The test is whether, in the circumstances, there is a real and appreciable danger that the evidence sought could be used in future criminal investigations or prosecutions against the witness. See Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412 (C.A.) at pp. 420-23, for a convenient statement of the applicable common law procedure, quoted with approval in Den Norske Bank A.S.A. v. Antonatos, [1999] Q.B. 271 (C.A.), at pp. 285-87. Similarly, in the United States, the witness is not the final arbiter of whether the Fifth Amendment is properly invoked. That duty falls to the trial judge. As stated by the District of Columbia Court of Appeals in Carter v. United States, 684 A.2d 331 (1996), at p. 338: "[I]f the trial judge concludes the proposed testimony would be incriminating and thereby poses the risk of possible future prosecution of the witness, this ends that inquiry and a claim of the privilege should be sustained." As noted by the authors of McCormick on Evidence, supra, at p. 472: "A theoretical risk of liability is, then, sufficient." In turn, the proposed testimony will be deemed incriminating if it is "evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result": Hoffman v. United States, 341 U.S. 479 (1951), at p. 486-87.
2002	R. v. Noël	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2009/index.do	R. v. Noël, [2002] 3 S.C.R. 433, 2002 SCC 67	Arbour J.	majority	Quebec	SubjectsConstitutional law Evidence	C	referred to	Hoffman v. United States, 341 U.S. 479 (1951)	SC	US	39 The role of the trial judge in other jurisdictions is quite clear. For instance, in the United Kingdom and Australia, where the common law privilege still exists, the trial judge has the duty to ensure that the privilege is not unduly invoked; a determination must be made as to the potentially incriminating nature of the testimony that is requested. The test is whether, in the circumstances, there is a real and appreciable danger that the evidence sought could be used in future criminal investigations or prosecutions against the witness. See Accident Insurance Mutual Holdings Ltd. v. McFadden (1993), 31 N.S.W.L.R. 412 (C.A.) at pp. 420-23, for a convenient statement of the applicable common law procedure, quoted with approval in Den Norske Bank A.S.A. v. Antonatos, [1999] Q.B. 271 (C.A.), at pp. 285-87. Similarly, in the United States, the witness is not the final arbiter of whether the Fifth Amendment is properly invoked. That duty falls to the trial judge. As stated by the District of Columbia Court of Appeals in Carter v. United States, 684 A.2d 331 (1996), at p. 338: "[I]f the trial judge concludes the proposed testimony would be incriminating and thereby poses the risk of possible future prosecution of the witness, this ends that inquiry and a claim of the privilege should be sustained." As noted by the authors of McCormick on Evidence, supra, at p. 472: "A theoretical risk of liability is, then, sufficient." In turn, the proposed testimony will be deemed incriminating if it is "evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result": Hoffman v. United States, 341 U.S. 479 (1951), at p. 486-87.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	C	D	Richardson v. Ramirez, 418 U.S. 24 (1974)	SC	US	126 A majority of the states which deprive inmates of the right to vote do so for the entirety of their sentence, including parole: 32 states prohibit felons from voting while they are on parole and 28 of those 32 also exclude felony probationers. Other states allow a convicted felon to vote once incarceration ends. Some states only remove the vote if the criminal has committed certain crimes. A felon automatically regains the right to vote in most states upon completion of his or her sentence. In a small number of states, a felon must apply for a pardon to be permitted to vote. As mentioned above, some states remove the vote from convicted felons even after they have completed their sentences and paroles. This practice was upheld as constitutional by the U.S. Supreme Court in Richardson v. Ramirez, 418 U.S. 24 (1974).
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	C	D	X. v. Netherlands, Application No. 6573/74, December 19, 1974, D.R. 1, p. 87	international	ECHR	127 Looking now to Europe, Art. 3 of the First Protocol to the ECHR (Eur. T.S. No. 9) guarantees ". . . free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". Article 3 has been considered on three occasions by the European Human Rights Commission ("the Commission"): X. v. Netherlands, Application No. 6573/74, December 19, 1974, D.R. 1, p. 87; H. v. Netherlands, Application No. 9914/82, July 4, 1983, D.R. 33, p. 242; and Holland v. Ireland, Application No. 24827/94, April 14, 1998, D.R. 93-A, p. 15.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	C	D	H. v. Netherlands, Application No. 9914/82, July 4, 1983, D.R. 33, p. 242	international	ECHR	127 Looking now to Europe, Art. 3 of the First Protocol to the ECHR (Eur. T.S. No. 9) guarantees ". . . free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". Article 3 has been considered on three occasions by the European Human Rights Commission ("the Commission"): X. v. Netherlands, Application No. 6573/74, December 19, 1974, D.R. 1, p. 87; H. v. Netherlands, Application No. 9914/82, July 4, 1983, D.R. 33, p. 242; and Holland v. Ireland, Application No. 24827/94, April 14, 1998, D.R. 93-A, p. 15. 128 In H. v. Netherlands, supra, the Commission established that Art. 3 of the First Protocol to the ECHR recognizes the principle of universal suffrage, but it also noted that the right to vote is not absolute and noted that "a large number of State Parties to the Convention have adopted legislation whereby the right to vote of a prisoner serving a term of imprisonment of a specific duration is suspended in certain cases, even beyond the duration of the sentence" (p. 245). The general principle which supported the ability of the legislator to restrict the right to vote in respect of convicted persons was addressed as follows, at p. 246: Such restrictions can be explained by the notion of dishonour that certain convictions carry with them for a specific period, which may be taken into consideration by legislation in respect of the exercise of political rights. Although, at first glance, it may seem inflexible that a prison sentence of more than one year should always result in the suspension of the exercise of the right to vote for three years, the Commission does not feel that such a measure goes beyond the restrictions justifiable in the context of Article 3 of the Protocol. More recently, in Holland, supra, the Commission, at pp. 26-27, made a reference to: . . . its constant case-law to the effect that, although Article 3 of Protocol No. 1 implies a recognition of the principle of universal suffrage (including the right to vote in elections for the legislature), this right is neither absolute nor without limitations but subject to such restrictions which are not arbitrary and which do not affect the expression of the opinion of the people in the choice of the legislature. . . . In that same case, the Commission noted that it did not consider the disenfranchisement of prisoners for the duration of their incarceration to affect the

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2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	C	D	Eur. Court. H. R., Mathieu-Mohin and Clerfayt case, judgment of 2 March 1987, Series A No. 113	international	ECHR	129 The European Court of Human Rights addressed the issue in the Mathieu-Mohin and Clerfayt case, judgment of 2 March 1987, Series A No. 113. Therein, the court found, at para. 51, that Art. 3 of the First Protocol conferred the right to vote and to stand for election, despite the wording of the Article, which, on its face, seems not to confer such rights. The court went on to state in para. 52 of its judgment, however, that: The rights in question are not absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations . . . . In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 . . . . They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate . . . . In particular, such conditions must not thwart "the free expression of the opinion of the people in the choice of the legislature". 132 When the Human Rights Act 1998 came into force in the United Kingdom in October 2000, the guarantee found in Art. 3 of Protocol No. 1 to the ECHR became part of U.K. law. Three prisoners recently challenged the ban on prisoners' voting as contained in the Representation of the People Act 1983, as being incompatible with the Human Rights Act 1998: Pearson, supra. In that case, the court construed the question before it as whether s. 3(1) of the Representation of the People Act 1983 satisfied the standard outlined by the European Court of Human Rights in Mathieu-Mohin, supra. The analysis undertaken therein by Lord Justice Kennedy is informative, and very much in line with my disposal of the case at bar. In fact, Lord Justice Kennedy devoted much of his analysis to the Canadian experience, and he specifically approved of the reasoning of Linden J.A. in the Federal Court of Appeal in the case at bar, with which I substantially agree. Lord Justice Kennedy found that the balancing that was undertaken in the Canadian constitutional context was highly informative for the balancing which had to be undertaken
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		European Assembly Elections Act 1978 (U.K.), 1978, c. 10, Sch. 1, s. 2(1).	statute	UK	131 Australia, New Zealand and the United Kingdom all disenfranchise at least some of the inmate population. In Australia, prisoners vote in two of seven states. In federal elections, inmates serving sentences of five years or more are disqualified from voting. In New Zealand, prisoners serving sentences for three years or more, preventative detention or life imprisonment are not qualified to vote. In the United Kingdom, prisoners are completely disenfranchised for Parliamentary elections, elections to the European Assembly, and local government elections: s. 3(1) of the Representation of the People Act 1983 (U.K.), 1983, c. 2 (as amended in 1985 and 2000), and s. 2(1) of Schedule 1 to the European Assembly Elections Act 1978 (U.K.), 1978, c. 10. The only exceptions are for remand prisoners, persons imprisoned for contempt of court and persons detained for default in complying with their sentence.
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2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Armenia	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Bulgaria	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
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2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Estonia	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Hungary	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
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2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Romania	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		general reference to law		Russia	130 European countries demonstrate a broad range of practices. Seventeen European countries have no form of electoral ban for incarcerated offenders: Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Latvia, Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland and the Ukraine. In Greece, prisoners serving life sentences or indefinite sentences are disqualified; otherwise the matter is left to the discretion of the court. In some other European countries, electoral disqualification depends on the crime committed or the length of the sentence: Austria, Malta and San Marino ban all prisoners serving more than one year from voting; Belgium disqualifies all offenders serving sentences of four months or more; Italy disenfranchises based on the crime committed and/or the sentence length; Norway removes the vote for prisoners sentenced for specific offences; and in France and Germany, the disqualification of a prisoner is dependent upon the sentence handed down by the court specifically providing for disenfranchisement (in France, certain crimes are identified which carry automatic forfeiture of political rights; in Germany, prisoners convicted of offences which target the integrity of the German state or its democratic order lose the vote). Armenia, Bulgaria, the Czech Republic, Estonia, Hungary, Luxembourg, Romania and Russia all have complete bans for sentenced offenders.
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		Human Rights Act 1998 (U.K.), 1998, c. 42.	statute	UK	108 Most basically, what the commentary regarding "dialogue" and deference goes to in this case is keeping in mind the importance of what was discussed above regarding the existence of competing social or political philosophies when embarking upon flexible and contextual s. 1 Charter analysis. In the specific factual context of the case at bar, I think that this challenge was well summarized by Lord Justice Kennedy in a recent case from the United Kingdom regarding prisoner disenfranchisement in the context of the U.K.'s incorporation in the Human Rights Act 1998 (U.K.), 1998, c. 42, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights ("ECHR")), 213 U.N.T.S. 221. In Pearson v. Secretary of State for the Home Department, [2001] E.W.J. No. 1566 (QL) (Div. Ct.), Lord Justice Kennedy stated, at para. 23: As Parliament has the responsibility for deciding what shall be the consequences of conviction by laying down the powers and duties of a sentencing tribunal or other body it necessarily follows that lines have to be drawn, and that on subsequent examination a case can be made in favour of the line being drawn somewhere else, but in deference to the legislature courts should not easily be persuaded to condemn what has been done, especially where it has been done in primary legislation after careful evaluation and against a background of increasing public concern about crime. 132 When the Human Rights Act 1998 came into force in the United Kingdom in October 2000, the guarantee found in Art. 3 of Protocol No. 1 to the ECHR became part of U.K. law. Three prisoners recently challenged the ban on prisoners' voting as contained in the Representation of the People Act 1983, as being incompatible with the Human Rights Act 1998: Pearson, supra. In that case, the court construed the question before it as whether s. 3(1) of the Representation of the People Act 1983 satisfied the standard outlined by the European Court of Human Rights in Mathieu-Mohin, supra. The analysis undertaken therein by Lord Justice Kennedy is informative, and very much in line with my disposal of the case at bar. In fact, Lord Justice Kennedy devoted much of his analysis to the Canadian experience, and he specifically approved of the reasoning of Linden J.A. in the Federal Court of Appeal in the case at bar, with which I substantially agree. Lord Justice Kennedy found that the balancing that was undertaken in the Canadian constitutional context was highly informative for the balancing which had to be undertaken under Art. 3 of Protocol No. 1 to the ECHR, as incorporated in the Human Rights Act 1998. Lord Justice Kennedy stated, at para. 50, that: . . . there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was done recently in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. I find this informative, especially in light of the fact that the line chosen by Parliament in Canada in s. 51(e) of the Act is far more moderate than the line
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		Representation of the People Act 1983 (U.K.), 1983, c. 2, s. 3(1) [am. 1985, c. 50, Sch. 4, s. 1; am. 2000, c. 2, s. 2].	statute	UK	132 When the Human Rights Act 1998 came into force in the United Kingdom in October 2000, the guarantee found in Art. 3 of Protocol No. 1 to the ECHR became part of U.K. law. Three prisoners recently challenged the ban on prisoners' voting as contained in the Representation of the People Act 1983, as being incompatible with the Human Rights Act 1998: Pearson, supra. In that case, the court construed the question before it as whether s. 3(1) of the Representation of the People Act 1983 satisfied the standard outlined by the European Court of Human Rights in Mathieu-Mohin, supra. The analysis undertaken therein by Lord Justice Kennedy is informative, and very much in line with my disposal of the case at bar. In fact, Lord Justice Kennedy devoted much of his analysis to the Canadian experience, and he specifically approved of the reasoning of Linden J.A. in the Federal Court of Appeal in the case at bar, with which I substantially agree. Lord Justice Kennedy found that the balancing that was undertaken in the Canadian constitutional context was highly informative for the balancing which had to be undertaken under Art. 3 of Protocol No. 1 to the ECHR, as incorporated in the Human Rights Act 1998. Lord Justice Kennedy stated, at para. 50, that: . . . there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was done recently in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. I find this informative, especially in light of the fact that the line chosen by Parliament in Canada in s. 51(e) of the Act is far more moderate than the line
2002	Sauvé v. Canada (Chief Electoral Officer)	10/31/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2010/index.do	Sauvé v. Canada (Chief Electoral Officer), [2002] 3 S.C.R. 519, 2002 SCC 68	Gonthier	dissenting	Federal Court of Appeal	Constitutional law Elections	R		United States Constitution, Article 1, Fourteenth Amendment, Fifteenth Amendment, Seventeenth Amendment, Nineteenth Amendment, Twenty-Fourth Amendment, Twenty-Sixth Amendment.	constitution	US	124 Turning to the United States, the U.S. Constitution does not explicitly protect the vote. In fact, § 2 of the Fourteenth Amendment makes tangential reference to the ability of the States to disenfranchise persons ". . . for participation in rebellion, or other crime". That having been said, the Fifteenth Amendment provides that the vote cannot be denied "on account of race, color, or previous conditions of servitude". Other constraints on the legislature's ability to control the franchise include the Nineteenth Amendment, which disallows denial of the vote "on account of sex"; the Twenty-Fourth Amendment, which disallows denial "by reason of failure to pay any poll tax or other tax"; and the Twenty-Sixth Amendment, which disallows denial "on account of age" greater than 18 years. 125 In the United States, it is the states that have control of disenfranchising inmates for both state and federal elections: U.S. Constitution, Art. 1, § 2, cl. 1 (for the House of Representatives); Seventeenth Amendment, § 1 (for the Senate). A general overview yields the conclusion that nearly all states (48 of 50 plus the District of Columbia) disqualify inmates incarcerated for felony offences for both state and federal elections, while some disenfranchise offenders permanently. Only two states do not disqualify at all: Maine and Vermont. In November 2000, the Massachusetts electorate voted in favour of a State constitutional amendment limiting prisoners' voting rights. 126 A majority of the states which deprive inmates of the right to vote do so for the entirety of their sentence, including parole: 32 states prohibit felons from voting while they are on parole and 28 of those 32 also exclude felony probationers. Other states allow a convicted felon to vote once incarceration ends. Some states only remove the vote if the criminal has committed certain crimes. A felon automatically regains the right to vote in most states upon completion of his or her sentence. In a small number of states, a felon must apply for a pardon to be permitted to vote. As mentioned above, some states remove the vote from convicted felons even after they have completed their sentences and paroles. This practice was

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2002	R. v. Hall	10/10/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2006/index.do	R. v. Hall, [2002] 3 S.C.R. 309, 2002 SCC 64	Iacobucci J.	dissenting	Ontario	Constitutional law Criminal law	C	D	S v. Dlamini, 1999 (4) SA 623		South Africa	115 Aside from this lack of an empirical foundation for the section, our attention was not drawn to any provision similar to s. 515(10)(c) in comparable legal systems. The only enactment in the same vein as s. 515(10)(c) is the South African provision allowing for bail to be denied "where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security". This provision was challenged in S v. Dlamini, 1999 (4) SA 623 (CC), as being contrary to the constitutional right to be released from detention if the interests of justice permit, subject to reasonable conditions. The Constitutional Court of South Africa upheld the provision under the analogue to s. 1 (at p. 659-60): It would be irresponsible to ignore the harsh reality of the society in which the Constitution is to operate. Crime is a serious national concern, and a worrying feature for some time has been public eruptions of violence related to court proceedings. In the present context we are not so much concerned with violent public reaction to unpopular verdicts or sentences, but with such reactions to unpopular grants of bail. There is widespread misunderstanding regarding the purpose and effect of bail. . . . The ugly fact remains, however, that public peace and security are at times endangered by the release of persons charged with offences that incite public outrage. . . . Experience has shown that organised community violence, be it instigated by quasi-political motives or by territorial battles for control of communities for commercial purposes, does subside while ringleaders are in custody. Their arrest and detention on serious charges does instil confidence in the criminal justice system and does tend to settle disquiet, whether the arrestees are warlords or druglords. It is obvious that in Canada no comparable social conditions exist, either currently or in the foreseeable future, which would justify s. 515(10)(c) under s. 1 . Moreover, the provision in question in Dlamini is more narrowly drawn than the provision under appeal here, and indeed seems more akin to the "public safety" ground under s. 515(10)(b). As a result, in my opinion, the respondent has failed to identify a sufficiently pressing and substantial
2002	Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink	9/12/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2002/index.do	Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink, [2002] 3 S.C.R. 209, 2002 SCC 61	LeBel J.	dissenting in part	Alberta	Constitutional law Criminal law	C	D	Sparham-Souter v. Town and Country Developments (Essex) Ltd., [1976] Q.B. 858	lower-level court	UK	78 In the parties' argument on the validity of s. 488.1, much was made of the asserted rigidity of the time limits and the impossibility of the lawyer or the client obtaining relief if the motion is not brought in the 14-day period. My colleague seems to agree that this concern is overrated. Although s. 488.1 does not grant in so many words the power to extend the time limit, the trend of jurisprudential developments in respect of time limits and limitation periods has been to acknowledge the existence of a broad judicial power to grant relief or extend time limits. Under the most stringent tests, a showing of inability or impossibility to act within the stated time has been found sufficient to grant an extension or other appropriate relief. Considerations of fairness in the process remain determinative (Novak v. Bond, [1999] 1 S.C.R. 808, at para. 66, McLachlin J. (as she then was); M. (K.) v. M. (H.), [1992] 3 S.C.R. 6; Murphy v. Welsh, [1993] 2 S.C.R. 1069; Peixeiro v. Haberman, [1997] 3 S.C.R. 549, at para. 41; Sparham-Souter v. Town and Country Developments (Essex) Ltd., [1976] Q.B. 858 (C.A.), at p. 867; Construction Gilles Paquette Ltée v. Entreprises Végo Ltée, [1997] 2 S.C.R. 299).
2002	Schreiber v. Canada (Attorney General)	9/12/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2003/index.do	Schreiber v. Canada (Attorney General), [2002] 3 S.C.R. 269, 2002 SCC 62	LEBEL J.	unanimous	Ontario	International law Statutes	C	referred to	R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [1999] 2 W.L.R. 827	SC	UK (HL)	37 In addition, the interpretation advanced by the United States would deprive the victims of the worst breaches of basic rights of any possibility of redress in national courts. Given the recent trends in the development of international humanitarian law enlarging this possibility in cases of international crime, as evidenced in the case before the House of Lords, R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [1999] 2 W.L.R. 827, such a result would jeopardize at least in Canada a potentially important progress in the protection of the rights of the person.
2002	Somersall v. Friedman	8/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2000/index.do	Somersall v. Friedman, [2002] 3 S.C.R. 109, 2002 SCC 59	Binnie J.	dissenting	Ontario	Insurance	C	D	DeLuca v. Motor Vehicle Accident Indemnification Corp., 215 N.E.2d 482 (1966)	lower-level court	US	132 The respondents rely on the American cases of Transnational Insurance Co. v. Simmons, 507 P.2d 693 (Ariz. Ct. App. 1973), and DeLuca v. Motor Vehicle Accident Indemnification Corp., 215 N.E.2d 482 (N.Y. 1966) for the proposition that under comparable uninsured motorist coverage in at least some of the United States, failure by the insured to protect his or her rights against a tortfeasor affords no defence in a direct action against the insurance company. My colleague, Iacobucci J., suggests that we adopt the majority view (para. 34) reached in various U.S. jurisdictions. I have not undertaken a nose count of the American courts, but their decisions, like ours, are tied to the particular text of their respective policies. In neither the Transnational Insurance nor DeLuca cases did the insurance policies at issue contain explicit reference to subrogation rights. In Allstate Insurance Co. v. Skeeters, 846 F.2d 932 (4th Cir. 1988), on the other hand, where the insurance policy in issue made direct reference to the subrogation interest of the insurer, it was held that a settlement agreement entered into by the insured without the agreement of the insurer defeated the latter's subrogation interest and thereby provided the insurance company with a complete defence to the claims under the policy. None of these cases is on all fours with SEF 44 and I think we must interpret the Ontario insurance provision in accordance with our own canons of interpretation.
2002	Somersall v. Friedman	8/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2000/index.do	Somersall v. Friedman, [2002] 3 S.C.R. 109, 2002 SCC 59	Binnie J.	dissenting	Ontario	Insurance	C	D	Hobbs v. Marlowe, [1978] A.C. 16	SC	UK (HL)	108 Subrogation has deep roots in the law of insurance, reaching back, it seems, to Roman times: John Edwards & Co. v. Motor Union Insurance Co., [1922] 2 K.B. 249, at p. 252. It is now sometimes attributed to general common law principles: Hobbs v. Marlowe, [1978] A.C. 16 (H.L.), per Lord Diplock, at p. 39, but, more usually to doctrines of equity: Ledingham, supra, at pp. 336-37; Colonial Furniture Co. (Ottawa) Ltd. v. Saul Tanner Realty Ltd. (2001), 52 O.R. (3d) 539 (C.A.), at para. 19; Napier v. Hunter, [1993] A.C. 713 (H.L.). One of the leading judgments regarding its scope is that of Brett L.J. in Castellain v. Preston (1883), 11 Q.B.D. 380 (C.A.), whose words (at pp. 388-89) were approved and applied by Idington J. of this Court in Guardian Assurance, supra, at p. 571: Now it seems to me that in order to carry out the fundamental rule of insurance law, this doctrine of subrogation must be carried to the extent which I am now about to endeavour to express, namely, that as between the underwriter and the assured the underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be, or has been exercised or has accrued, and whether such right could or could not be enforced by the insurer in the name of the assured by the exercise or acquiring of which right or condition the loss against which the assured is insured, can be, or has been diminished. [Emphasis added.] Brett L.J., in the original, added the following: That seems to me to put this doctrine of subrogation in the largest possible form, and if in that form, large as it is, it is short of fulfilling that which is the fundamental condition, I must have omitted to state something which ought to have been stated. But it will be observed that I use the words "of every

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2002	Somersall v. Friedman	8/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2000/index.do	Somersall v. Friedman, [2002] 3 S.C.R. 109, 2002 SCC 59	Binnie J.	dissenting	Ontario	Insurance	C	D	Transnational Insurance Co. v. Simmons, 507 P.2d 693 (1973)	lower-level court	US	132 The respondents rely on the American cases of Transnational Insurance Co. v. Simmons, 507 P.2d 693 (Ariz. Ct. App. 1973), and DeLuca v. Motor Vehicle Accident Indemnification Corp., 215 N.E.2d 482 (N.Y. 1966) for the proposition that under comparable uninsured motorist coverage in at least some of the United States, failure by the insured to protect his or her rights against a tortfeasor affords no defence in a direct action against the insurance company. My colleague, Iacobucci J., suggests that we adopt the majority view (para. 34) reached in various U.S. jurisdictions. I have not undertaken a nose count of the American courts, but their decisions, like ours, are tied to the particular text of their respective policies. In neither the Transnational Insurance nor DeLuca cases did the insurance policies at issue contain explicit reference to subrogation rights. In Allstate Insurance Co. v. Skeeters, 846 F.2d 932 (4th Cir. 1988), on the other hand, where the insurance policy in issue made direct reference to the subrogation interest of the insurer, it was held that a settlement agreement entered into by the insured without the agreement of the insurer defeated the latter's subrogation interest and thereby provided the insurance company with a complete defence to the claims under the policy. None of these cases is on all fours with SEF 44 and I think we must interpret the Ontario insurance provision in accordance with our own canons of interpretation.
2002	Somersall v. Friedman	8/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2000/index.do	Somersall v. Friedman, [2002] 3 S.C.R. 109, 2002 SCC 59	Iacobucci J.	majority	Ontario	Insurance	C	considered	DeLuca v. Motor Vehicle Accident Indemnification Corp., 215 N.E.2d 482 (1966)	lower-level court	US	35 While the various U.S. states are not completely unanimous in finding that only fault and damages need be proven by the insured in order to show legal entitlement to recover, this has been the finding of the clear majority of state courts to have considered the issue. See, e.g., State Farm Mutual Automobile Insurance Co. v. Griffin, 286 So.2d 302 (Ala. Civ. App. 1973); Rhault v. Tsagarakos, 361 F. Supp. 202 (D. Vt. 1973); DeLuca v. Motor Vehicle Accident Indemnification Corp., 215 N.E.2d 482 (N.Y. 1966); Wheeless v. St. Paul Fire and Marine Insurance Co., 181 S.E.2d 144 (N.C. Ct. App. 1971); see generally Ytreberg, supra, at § 8[b]. Furthermore, in many of the states that have departed from this view, the uninsured motorist statute explicitly required judgment to be obtained against the tortfeasor prior to any action being brought against the insurer. See, e.g., Glover v. Tennessee Farmers Mutual Insurance Co., 468 S.W.2d 727 (Tenn. 1971); Conteh v. Allstate Insurance Co., 782 A.2d 748 (D.C. 2001); see generally Ytreberg, supra, at § 9. Surely the drafters of the SEF 44 were well aware of the prior, generally accepted meaning of this phrase, and would have taken pains to alter it if they meant to require that more than the substantive elements of fault and damages be proved. 36 I note, in particular, that the courts in DeLuca, supra, and Wheeless, supra, looked explicitly to the relevant point in time in order to determine what was necessary to be made out in order to ground a direct action against the insurer. In Wheeless, the court noted that "[s]uit may be instituted when the insurer becomes obligated to pay. An insurer becomes obligated to pay under an uninsured motorist clause of a policy at the time the insured sustains damages under circumstances entitling him to recover from the owner or operator of an uninsured automobile" (pp. 146-47). In DeLuca, the court also looked to the point in time at which the insurer became obliged to pay, although it is notable that the New York regime in place
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2002	R. v. Shearing	7/18/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1999/index.do	R. v. Shearing, [2002] 3 S.C.R. 33, 2002 SCC 58	Binnie J.	majority	British Columbia	Criminal law	C	referred to	Director of Public Prosecutions v. Boardman, [1975] A.C. 421	SC	UK (HL)	57 The jury might reasonably think that abuse of power to obtain sexual gratification at the expense of adolescent girls who were to a greater or lesser extent in his charge over a period of 25 years shows a sexually manipulative personality with a spiritualist twist that goes beyond "general" disposition or "mere" propensity ("bad personhood") which would foster a "forbidden type of reasoning" from bad personhood to guilt: Director of Public Prosecutions v. Boardman, [1975] A.C. 421 (H.L.), at p. 453. The distinctive spiritualist colouration is a strong unifying factor. So is the age of the majority of complainants when initiated, and the insistence on confidentiality even though the appellant's conduct in the non-G cases was ostensibly cult-sanctioned, and therefore nothing to be ashamed of. More understandably, the G complainants were also told to keep silent.
2002	Babcock v. Canada (Attorney General)	7/11/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1998/index.do	Babcock v. Canada (Attorney General), [2002] 3 S.C.R. 3, 2002 SCC 57	McLachlin C.J.	unanimous	British Columbia	Constitutional law Evidence	C	referred to	Makanjuola v. Commissioner of Police of the Metropolis, [1992] 3 All E.R. 617	lower-level court	UK	32 This is consistent with the fact that waiver does not apply at common law. A claim for confidentiality at common law cannot be contested on the ground that the government has waived its right to claim confidentiality. As Bingham L.J. observed in Makanjuola v. Commissioner of Police of the Metropolis, [1992] 3 All E.R. 617 (C.A.), at p. 623, "[p]ublic interest immunity is not a trump card vouchsafed to certain privileged players to play when and as they wish". Consequently, "public interest immunity cannot in any ordinary sense be waived" (p. 623). Issues of production pursuant to s. 39 of the Canada Evidence Act fall to be resolved by the Clerk or minister responsible for balancing the public interests. If a certificate is not properly filed, and documents are released, the Crown is precluded from claiming s. 39 protection. However, by releasing some documents, the Crown has not waived its right to invoke s. 39 over other documents.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	L'Heureux-Dubé J.	dissenting	Ontario	Criminal law	C	D	R. v. Andrews (1985), 82 Cr. App. R. 148	lower-level court	UK	4 I respectfully disagree, however, with the heavy emphasis Major J. places on dispersal as an element in establishing reasonable apprehension of taint. Whether or not a verdict can be corrected post-discharge is a highly fact-specific analysis and one which, in every case, will depend on the totality of the circumstances, including the probable reason for the initial mistake and the length of time which has elapsed between the original verdict and the moment the error is brought to the trial judge's attention: see R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.), at p. 154. Often, it will not be practical to use an essentially bright-line test of dispersal to determine whether a jury verdict can be corrected; as Lamer J. pointed out in Head, supra, at p. 700 (quoting Wigmore on Evidence (McNaughton rev. 1961), vol. 8, at para. 2355): It has occasionally been said that this correction must be claimed before the jury are discharged, but this seems unsound because such errors are seldom ascertained until after the jury have separated and conversed out of court, and if the error is satisfactorily established, there can hardly be any fixed time to limit its correction.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	L'Heureux-Dubé J.	dissenting	Ontario	Criminal law	C	D	State v. Williquette, 526 N.W.2d 144 (1995)	lower-level court	US	5 Given that the general rule prohibiting post-discharge jurisdiction serves to protect the interests of justice, it is axiomatic that an exception to that rule must serve the interests of justice in a way that adherence to the rule could not. Where it is carefully established that an error was made in recording the jury's true verdict, the interests of justice will rarely be served by prohibiting the trial judge from altering the verdict as entered. Such a rigid adherence to procedural niceties, in my view, would undermine, rather than strengthen, the public's confidence in our jury system by impeding the ascertainment of truth and justice. As the court in State v. Williquette, 526 N.W.2d 144 (Wis. 1995), concluded, at p. 151: It is not difficult, however, to imagine a scenario where an incorrect verdict transcription could result in a serious injustice. The public policy considerations of promoting a jury's freedom of deliberation, the stability and finality of judgments and protecting jurors against annoyance and embarrassment are indeed noble and must be taken into account; however, these considerations may not completely trump the ascertainment of the "truth" as actually found by the jury. In the instance of an erroneously entered guilty verdict, it would be a serious injustice to allow an innocent person to remain in prison simply because members of the jury had separated or mingled with the public. There is no guarantee that the Attorney General would forego the holding of a new trial, given the limited inquiry concerning the verdict, and no certainty that a new trial would produce the same result. Even if bail were granted, the innocent

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2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Cefia (1979), 21 S.A.S.R. 171	SC	UK (SC)	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999).
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Andrews (1985), 82 Cr. App. R. 148	lower-level court	uk	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999). 61 The appropriate post-discharge inquiry into an alleged error is "reasonable apprehension of bias". In determining whether this apprehension exists, the trial judge should examine the circumstances of the individual case. This contextual approach has a basis in the English case of Andrews, supra, at p. 154: [T]he judge has a discretion whether to allow the alteration [to the verdict] to be made. In exercising that discretion he will, it goes without saying, take into account all the circumstances of the case; in particular the important considerations will be the length of time which has elapsed between the original verdict and the moment when the jury express their wish to alter it, the probable reason for the initial mistake, the necessity to ensure that justice is done not only to the defendant but also to the prosecution. The fact that the defendant has been discharged from custody is one of the factors but is not necessarily fatal to the judge's discretion to alter the verdict to one of guilty. As stated in R. v. S. (R.D.), [1997] 3 S.C.R. 484, at para. 11, the precise phrasing of the test is not crucial, if the substance is plain. It is interchangeably expressed as a "reasonable apprehension", "real likelihood" or "real danger" of bias, a "reasonable suspicion" of prejudice or taint, and so forth. Whatever the exact formulation of the test, the essence of the inquiry is the same; namely, the test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude": Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. 62 The list of factors in Andrews does not purport to be exhaustive. All circumstances relevant to determining reasonable apprehension of bias in an individual case should be considered. By way of illustration, a trial judge may wish to consider whether the jury was exposed to an immediate and strong reaction to the recorded verdict by the public (as in Follen, supra) and/or the media.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Follen, [1994] Crim. L.R. 225	lower-level court	UK	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999). 59 In addition, there may be circumstances where it would be inappropriate for the trial judge to correct the verdict, even though the jury has not yet dispersed or separated. For instance, a discharged jury which has not yet left the jury box could be influenced or tainted by the strong reactions of the accused or the public gallery to the initially announced verdict (see Follen, supra). Therefore, as other factors impinge on whether the recorded verdict should be corrected, it seems that dispersal cannot be the sole determinative test for the trial judge's remedial jurisdiction to correct the verdict. 62 The list of factors in Andrews does not purport to be exhaustive. All circumstances relevant to determining reasonable apprehension of bias in an individual case should be considered. By way of illustration, a trial judge may wish to consider whether the jury was exposed to an immediate and strong reaction to the recorded verdict by the public (or in Follen, supra) and/or the media.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Loumoli, [1995] 2 N.Z.L.R. 656	lower-level court	New Zealand	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999).
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Maloney, [1996] 2 Cr. App. R. 303	lower-level court	UK	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999).

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2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	R. v. Z.A., Eng. C.A., March 8, 1999, unreported	lower-level court	UK	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999)
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2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	State v. Brandenburg, 120 A.2d 59 (1956)	lower-level court	Us	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999). 58 Some courts have taken a rigid stand on dispersal, and concluded that even the briefest exit from the courtroom eliminates any possibility of changing the verdict: Brandenburg, supra; People v. Rushin, 194 N.W.2d 718 (Mich. Ct. App. 1971). For instance, in Green, supra, the jury was reassembled 58 seconds after their discharge; it was held to be too late for the trial judge to correct the verdict. This appears to me to be too narrow and rigid an approach to defining the circumstances under which the remedial jurisdiction to correct the verdict exists. If the "discharge" rule in Head is to be varied, it would make no sense to replace that inflexible test with one of equal rigidity. 82 Third, and perhaps most telling, the nature and the scope of the jury's dispersal in this case was extensive. This was not a case where the jurors had momentarily separated, or where the jury had not strayed outside of or far from the courtroom, as in Aylott, supra, Brandenburg, supra, Edwards, supra, and Webber, supra. Instead, by the time the court had discovered the error, the entire jury had left the courtroom, and some had left the courthouse. The jurors were free until the next day to mingle with members of the public. Two jurors were found in the courthouse parking lot. The other ten had left the vicinity of the courthouse, and gone home or elsewhere. Only eight of these jurors were contacted directly, when the court officer telephoned them at home later that day. The whereabouts of two of the jurors that day remains unknown, because the court officer making the phone calls could not reach them. The jury was not together as a cohesive unit until the next day when, in the absence of the accused, they confirmed the guilty verdict. The combined circumstances indicate that the nature of the dispersal in this case was wide and uncontrolled. The relatively extensive degree of separation of the jurors in this case is evidence capable of establishing a reasonable
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2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	Commonwealth v. Brown, 323 N.E.2d 902 (1975)	lower-level court	Us	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999)

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2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	State v. Green, 995 S.W.2d 591 (1999)	lower-level court	Us	51 There is a wealth of authority supporting the adoption of a more refined and flexible analysis of this sort of problem, similar to the contextual approach suggested by Lamer J. The law in the United Kingdom has evolved to permit the clarification of a verdict in rare circumstances, after the jury has been discharged: R. v. Vodden (1853), Dears. 229, 169 E.R. 706; R. v. Cefia (1979), 21 S.A.S.R. 171 (S.C.); R. v. Andrews (1985), 82 Cr. App. R. 148 (C.A.); R. v. Follen, [1994] Crim. L.R. 225 (C.A.); R. v. Loumoli, [1995] 2 N.Z.L.R. 656 (C.A.); R. v. Maloney, [1996] 2 Cr. App. R. 303 (C.A.); R. v. Aylott, [1996] 2 Cr. App. R. 169 (C.A.); R. v. Z.A., Eng. C.A., March 8, 1999, unreported. Although American case law diverges widely on this issue, several courts have held that in certain situations verdicts can be revisited after the trial judge tells the jury that it is discharged: People v. Powell, 221 P.2d 117 (Cal. Dist. Ct. App. 1950); State v. Brandenburg, 120 A.2d 59 (N.J. County Ct. 1956); State v. Fornea, 140 So.2d 381 (La. 1962); Commonwealth v. Brown, 323 N.E.2d 902 (Mass. 1975); State v. Edwards, 552 P.2d 1095 (Wash. Ct. App. 1976); Webber v. State, 652 S.W.2d 781 (Tex. Crim. App. 1983); Burchett v. Commonwealth, 734 S.W.2d 818 (Ky. Ct. App. 1987); People v. McNeeley, 575 N.E.2d 926 (Ill. App. Ct. 1991); State v. Myers, 459 S.E.2d 304 (S.C. 1995); Montanez v. People, 966 P.2d 1035 (Colo. 1998); State v. Green, 995 S.W.2d 591 (Tenn. Crim. App. 1999). 57 In the courts that permit post-discharge alteration of a verdict, the most common rule is to preclude clarification and correction of the verdict once the jurors have dispersed. The case law expresses its concern with dispersal in various ways, focussing at some times on whether the jurors have "separat[ed] from the presence and control of the trial court" and at others on the "opportunity for outside contact or influence": Green, supra, at pp. 609 and 612. 58 Some courts have taken a rigid stand on dispersal, and concluded that even the briefest exit from the courtroom eliminates any possibility of changing the verdict: Brandenburg, supra; People v. Rushin, 194 N.W.2d 718 (Mich. Ct. App. 1971). For instance, in Green, supra, the jury was reassembled 58 seconds after their discharge; it was held to be too late for the trial judge to correct the verdict. This appears to me to be too narrow and rigid an approach to defining the circumstances under which the remedial jurisdiction to correct the verdict exists. If the "discharge" rule in Head is to be varied, it would make no sense to replace that inflexible test with one of equal rigidity.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	United States v. Dotson, 817 F.2d 1127 (1987), am. 821 F.2d 1034 (1987)	lower-level court	Us	54 It is only where the error does not engage the deliberations of the jury that the exceptional jurisdiction may be exercised. It is unwise to characterize these types of errors as "clerical errors" or "accidental slips", given the vague meaning of these terms. "Clerical errors" or "accidental slips", as those terms are commonly understood, are administrative and may be corrected by the judge without recalling the jury: United States v. Dotson, 817 F.2d 1127 (5th Cir. 1987), modified upon rehearing 821 F.2d 1034 (5th Cir. 1987); Bricmont v. Mathieu (1987), 7 Q.A.C. 199, and Chandler v. Alberta Association of Architects, [1989] 2 S.C.R. 848. These slips would be minor, such as correcting dates and duties of a similar nature. However, the error in the present appeal and similar cases necessitates a recall of the jury in order to confirm the true and unanimous verdict and the discrepancy with the announced and recorded verdict. Therefore, rather than use the label "clerical error", it is preferable to say that the exceptional post-discharge jurisdiction can only be exercised where the correction of the error, although it requires the presence of the jury, does not require the jury to reconsider its verdict or complete its deliberations with a view to handing down additional verdicts: Head, supra, per Lamer J., at pp. 702-3.
2002	R. v. Burke	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1996/index.do	R. v. Burke, [2002] 2 S.C.R. 857, 2002 SCC 55	Major J.	majority	Ontario	Criminal law	C	referred to	People v. Rushin, 194 N.W.2d 718 (1971)	lower-level court	Us	58 Some courts have taken a rigid stand on dispersal, and concluded that even the briefest exit from the courtroom eliminates any possibility of changing the verdict: Brandenburg, supra; People v. Rushin, 194 N.W.2d 718 (Mich. Ct. App. 1971). For instance, in Green, supra, the jury was reassembled 58 seconds after their discharge; it was held to be too late for the trial judge to correct the verdict. This appears to me to be too narrow and rigid an approach to defining the circumstances under which the remedial jurisdiction to correct the verdict exists. If the "discharge" rule in Head is to be varied, it would make no sense to replace that inflexible test with one of equal rigidity.
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	not followed	Pfennig v. R. (1995), 127 A.L.R. 99	SC	Australia	92 This view also seems to have taken hold in Australia where the High Court, relying in part on McLachlin J.'s judgment in B. (C.R.), made the following observations in Pfennig v. R. (1995), 127 A.L.R. 99, at p. 115: Thus, evidence of mere propensity, like evidence of a general criminal disposition having no identifiable hallmark, lacks cogency yet is prejudicial. On the other hand, evidence of a particular distinctive propensity demonstrated by acts constituting particular manifestations or exemplifications of it will have greater cogency, so long as it has some specific connection with or relation to the issues for decision in the subject case. That evidence, as has been said, will be admissible only if its probative value exceeds its prejudicial effect. [Emphasis added.] 95 The High Court of Australia has ruled that unless the similar fact evidence, taken together with the other evidence in the case, would be consistent with guilt and with no other conclusion, it ought to be rejected. In Pfennig, the lead judgment authored by Mason C.J., Deane and Dawson JJ., stated at p. 116: . . . that propensity evidence is circumstantial evidence and that, as such, it should not be used to draw an inference adverse to the accused unless it is the only reasonable inference in the circumstances. More than that, the evidence ought not to be admitted if the trial judge concludes that, viewed in the context of the prosecution case, there is a reasonable view of it which is consistent with innocence. 96 The test is a variant of the rule generally applicable to circumstantial evidence laid down in Hodge's Case (1838), 2 Lewin 227, 168 E.R. 1136, i.e., that the circumstances must be consistent with the conclusion of guilt and inconsistent with any other rational conclusion. The difference, of course, is that we are dealing here with admissibility, not adjudication. The conclusiveness test does not sit well with the balancing model set out in B. (C.R.). If the evidence were truly "conclusive", its probative value would ex hypothesi outweigh its prejudice: Pfennig, supra, at p. 138. 148 One of the difficulties, as McHugh J. pointed out in Pfennig, supra, at p. 147, is the absence of a common basis of measurement: "The probative value of the evidence goes to proof of an issue, the prejudicial effect to the fairness of the trial." The two variables do not operate on the same plane. 149 As probative value advances, prejudice does not necessarily recede. On the contrary, the two weighing pans on the scales of justice may rise and fall together. Nevertheless, probative value and prejudice pull in opposite directions on the admissibility issue and their conflicting demands must be resolved.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	referred to	Director of Public Prosecutions v. Boardman, [1975] A.C. 421	SC	UK (HL)	27 The contest over the admissibility of similar fact evidence is all about inferences, i.e., when do they arise? What are they intended to prove? By what process of reasoning do they prove it? How strong is the proof they provide? When are they so unfair as to be excluded on the grounds of judicial policy and the presumption of innocence? The answers to these questions have proven so controversial as to create what Lord Hailsham described as a "pitted battlefield": Director of Public Prosecutions v. Boardman, [1975] A.C. 421 (H.L.), at p. 445. 35 The dangers of propensity reasoning are well recognized. Not only can people change their ways but they are not robotic. While juries in fourteenth-century England were expected to determine facts based on their personal knowledge of the character of the participants, it is now said that to infer guilt from a knowledge of the mere character of the accused is a "forbidden type of reasoning": Boardman, supra, at p. 453, per Lord Hailsham. 60 One of the virtues of B. (C.R.) is its candid acknowledgment that "evidence of propensity, while generally inadmissible, may exceptionally be admitted" (p. 732) to help establish that the accused did or did not do the act in question (at pp. 731-32): While the language of some of the assertions of the exclusionary rule admittedly might be taken to suggest that mere disposition evidence can never be admissible, the preponderant view prevailing in Canada is the view taken by the majority in Boardman -- evidence of propensity, while generally inadmissible, may exceptionally be admitted where the probative value of the evidence in relation to an issue in question is so high that it displaces the heavy prejudice which will inevitably inure to the accused where evidence of prior immoral or illegal acts is presented to the jury. [Emphasis in original.] 94 Some authorities urge adoption of a further refinement that has been accepted in some common law jurisdictions in the balancing of prejudice against probative value, namely that similar fact evidence should only be admitted if its probative value is so great as to be virtually conclusive of guilt. As Lord Cross put it in Boardman, supra, at p. 457: The question must always be whether the similar fact evidence taken together with the other evidence would do no more than raise or strengthen a suspicion that the accused committed the offence with which he is charged or would point so strongly to his guilt that only an ultra-cautious jury . . . would acquit in face of it. 127 It should be repeated that the search for similarities is a question of degree (Boardman, supra, at p. 442, per Lord Wilberforce). Sexual activity may not show much diversity or distinctiveness. Not every dissimilarity is fatal, but for the reasons already mentioned, substantial dissimilarities may dilute probative strength and, by compounding the confusion and distraction, aggravate the prejudice. 150 In Director of Public Prosecutions v. P., [1991] 2 A.C. 447 (H.L.), at p. 460, Lord Mackay suggested that similar fact evidence should be admitted when its probative value is "sufficiently great to make it just to admit the evidence", notwithstanding its prejudicial value. Lord Wilberforce in Boardman, at p. 442, also referred to "the interests of justice". See also Pfennig, supra, at pp. 147-48. Justice is achieved when relevant evidence whose prejudice outweighs any probative value is excluded (R. v. Marquard, [1993] 4 S.C.R. 223, at p. 246) and where evidence whose probative value exceeds its prejudice (albeit an exceptional circumstance) is admitted. Justice includes society's interest in getting to the truth of the charges as well as the interest of both society and the accused in a fair process. A criminal justice system that has suffered some serious wrongful convictions in part because of misconceived notions of character and propensity should not (and does not) take lightly the dangers of misapplied propensity evidence.
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	referred to	R. v. Straffen, [1952] 2 Q.B. 911	lower-level court	UK	77 Thus in Arp, where the issue was identification, Cory J. cited at para. 43 R. v. Scopelliti (1981), 63 C.C.C. (2d) 481 (Ont. C.A.), where Martin J.A. observed that evidence of propensity on the issue of identification is not admissible "unless the propensity is so highly distinctive or unique as to constitute a signature" (p. 496). Martin J.A. made the propensity point again in his lecture on "Similar Fact Evidence" published in [1984] Spec. Lect. L.S.U.C. 1, at pp. 9-10, in speaking of the Moors Murderer case (R. v. Straffen, [1952] 2 Q.B. 911): Although evidence is not admissible to show a propensity to commit crimes, or even crimes of a particular class, evidence of a propensity to commit a particular crime in a peculiar and distinctive way was admissible and sufficient to identify [Straffen] as the killer of the deceased. [Emphasis in original.]
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	referred to	Director of Public Prosecutions v. Kilbourne, [1973] A.C. 729	SC	UK (HL)	84 This list is intended to be helpful rather than exhaustive. Not all factors will exist (or be necessary) in every case. A comparable approach is utilized in other common law jurisdictions, including England (see Director of Public Prosecutions v. Kilbourne, [1973] A.C. 729 (H.L.), at p. 758), and in the United States (see C. B. Mueller and L. C. Kirkpatrick, Federal Evidence (2nd ed. 1994 & Supp. 2001), vol. 2, at § 161; United States v. Enjady, 134 F.3d 1427 (10th Cir. 1998), certiorari denied, 525 U.S. 887 (1998)).
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	referred to	United States v. Enjady, 134 F.3d 1427 (1998), certiorari denied, 525 U.S. 887 (1998)	SC	US	84 This list is intended to be helpful rather than exhaustive. Not all factors will exist (or be necessary) in every case. A comparable approach is utilized in other common law jurisdictions, including England (see Director of Public Prosecutions v. Kilbourne, [1973] A.C. 729 (H.L.), at p. 758), and in the United States (see C. B. Mueller and L. C. Kirkpatrick, Federal Evidence (2nd ed. 1994 & Supp. 2001), vol. 2, at § 161; United States v. Enjady, 134 F.3d 1427 (10th Cir. 1998), certiorari denied, 525 U.S. 887 (1998)).
2002	R. v. Handy	6/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1997/index.do	R. v. Handy, [2002] 2 S.C.R. 908, 2002 SCC 56	BINNIE J.	unanimous	Ontario	Evidence	C	referred to	R. v. H., [1995] 2 A.C. 596	SC	UK (HL)	107 The trial judge held that he ought not to reach even a preliminary view of the likelihood of collusion. In this, he may have been influenced by the decision of the House of Lords in R. v. H., [1995] 2 A.C. 596, where it was held that for purposes of admissibility the proffered similar fact evidence ought to be accepted "as true" (p. 611) in all but very exceptional cases. The question of weight should, on this view, be left wholly to the jury.
2002	Lavigne v. Canada (Office of the Commissioner of Official Languages)	6/20/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1994/index.do?q=swedish	Lavigne v. Canada (Office of the Commissioner of Official Languages), [2002] 2 S.C.R. 773, 2002 SCC 53	GONTHIER J.	unanimous	Federal Court of Appeal	Access to information State	R		law in general		Sweden	39 An ombudsman is not counsel for the complainant. His or her duty is to examine both sides of the dispute, assess the harm that has been done and recommend ways of remedying it. The ombudsman's preferred methods are discussion and settlement by mutual agreement. As Dickson J. wrote in British Columbia Development Corp. v. Friedmann, [1984] 2 S.C.R. 447, the office of ombudsman and the grievance resolution procedure, which are neither legal nor political in a strict sense, are of Swedish origin, circa 1809. He described their genesis (at pp. 458-59): As originally conceived, the Swedish Ombudsman was to be the Parliament's overseer of the administration, but over time the character of the institution gradually changed. Eventually, the Ombudsman's main function came to be the investigation of complaints of maladministration on behalf of aggrieved citizens and the recommendation of corrective action to the governmental official or department involved.
2002	Bank of America Canada v. Mutual Trust Co.	4/26/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1983/index.do	Bank of America Canada v. Mutual Trust Co., [2002] 2 S.C.R. 601, 2002 SCC 43	MAJOR J.	unanimous	Ontario	Contract Courts	C	referred to	Westdeutsche Landesbank Girozentrale v. Islington London Borough Council, [1996] 2 All E.R. 961	SC	UK (HL)	43 The common law right in contract law to be awarded expectation damages is another such other right. As noted in Westdeutsche Landesbank Girozentrale v. Islington London Borough Council, [1996] 2 All E.R. 961 (H.L.), at p. 969, the power to award compound interest was not traditionally available at common law, although it is now. This is so because, as our jurisprudence demonstrates, the common law has been able to grow and adapt to changing conditions. In Friedmann Equity Developments Inc. v. Final Note Ltd., [2000] 1 S.C.R. 842, 2000 SCC 34, at para. 42, this Court outlined the following conditions where the rules of common law may be changed if necessary: (1) to keep the common law in step with the evolution of society, (2) to clarify a legal principle, or (3) to resolve an inconsistency. It agreed that the changes should be incremental, and their consequences capable of assessment.
2002	Bell ExpressVu Limited Partnership v. Rex	4/26/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1982/index.do	Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42	IACOBUCCI J.	unanimous	British Columbia	Appeal Communications law Statutes	C	referred to	Westminster Bank Ltd. v. Zang, [1966] A.C. 182	SC	UK (HL)	29 What, then, in law is an ambiguity? To answer, an ambiguity must be "real" (Marcotte, supra, at p. 115). The words of the provision must be "reasonably capable of more than one meaning" (Westminster Bank Ltd. v. Zang, [1966] A.C. 182 (H.L.), at p. 222, per Lord Reid). By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in CanadianOxy Chemicals Ltd. v. Canada (Attorney General), [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	Berry v. Pulley	4/25/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1980/index.do	Berry v. Pulley, [2002] 2 S.C.R. 493, 2002 SCC 40	IACOBUCCI J.	unanimous	Ontario	Labour law	C	referred to	Bonsor v. Musicians' Union, [1955] 3 All E.R. 518	SC	UK (HL)	36 In Bonsor v. Musicians' Union, [1955] 3 All E.R. 518 (H.L.), an expelled union member brought an action against the union in breach of contract. Lords Morton, Porter and Keith agreed that the reasoning in Taff Vale, supra, was applicable, and held that a trade union had the status to be sued in a breach of contract action brought by a member against the union for expelling the member in contravention of the union's rules. At p. 524, Lord Morton characterized the relationship between the member and the union as follows: When Mr. Bonsor applied to join the respondent union, and his application was accepted, a contract came into existence between Mr. Bonsor and the respondent union, whereby Mr. Bonsor agreed to abide by the rules of the respondent union, and the union impliedly agreed that Mr. Bonsor would not be excluded by the union or its officers otherwise than in accordance with the rules. . . . The respondent union broke this contract, by wrongfully expelling Mr. Bonsor and Mr. Bonsor sued the union as a legal entity. He did not sue either all the members of the union at the date of the writ other than himself, many of whom must have joined since the breach of contract, or all the members of the union including himself. Although Lord Morton recognized that the facts in the Taff Vale case differed from the case before him in that the former involved a tort action which was not brought by a member of the union, he held that these were not "vital differences" (at p. 523) and employed similar reasoning in coming to the conclusion that the union had the status to contract with Mr. Bonsor, and could therefore be sued for breaching that contract. 37 In the seminal Canadian case of Orchard, supra, a union member sued members of the union's executive board in tort for infringing his rights under the union constitution. In addressing the character of the rights and obligations relating to union membership, Rand J. (for the majority) looked to the Taff Vale and Bonsor decisions for the basis of his judgment; however he noted that those decisions were grounded in the fact that the English Trade Union Acts had granted significant rights to trade unions, and that there was no comparable legislation in Manitoba. Thus, with no basis upon which to follow these English decisions, Rand J. was unable to find that trade unions in Manitoba had legal status or personality. 38 In light of this statutory difference, Rand J. did not wholly adopt the reasoning of the House of Lords from Bonsor, supra, to the effect that there existed an enforceable contract between the union per se and each individual member. Instead he held at p. 445 that, although union membership was contractual in nature, the contract was between the members inter se:
2002	R. v. Hibbert	4/25/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1979/index.do	R. v. Hibbert, [2002] 2 S.C.R. 445, 2002 SCC 39	Bastarache J.	dissenting	British Columbia	Criminal law	C	D	R. v. Turnbull, [1976] 3 All E.R. 549	lower-level court	UK	79 The trial judge clearly discharged her obligation to highlight the inherent frailty of identification evidence and to explain the factors underlying its frailty: see Mezzo, supra, at p. 845, citing R. v. Turnbull, [1976] 3 All E.R. 549; see also Canning v. The Queen, [1986] 1 S.C.R. 991. In this respect, she provided the following general caution: I am going to give you a special warning about the evidence of eye witnesses. As you know, it is such a major issue here, the issue of identity. Every once in a while in our courts a person is convicted of an offence even though she or he is innocent, and when this does happen it is often because a mistake has been made by one or more eye witnesses. It is easy to see how this can happen. You no doubt have had experience yourself where you think you have recognized someone and then found out that the person you thought it was is not the person you thought it was. An eye witness can be very convincing when that witness honestly believes that the accused person is the person she or he saw. Observation and memory can be unreliable when it comes to identification of people because people make honest mistakes. So when considering the evidence of the eye witnesses, it might be helpful for you, and I urge you to use the following guidelines paying particular attention to each eye witness' opportunity to observe the person being described or identified. 91 The above principle, which eschews a formulaic approach to the trial judge's charge to the jury, was echoed in the specific context of the trial judge's instructions on identification evidence in R. v. Edwardson (1993), 77 B.C.L.R. (2d) 362, a decision of the British Columbia Court of Appeal, at paras. 39 to 41: As I have noted, there has been a reluctance on the part of this and other appellate courts to adopt a general rule such as that found in the Turnbull case. The reason for that is undoubtedly the fear that in some cases a special instruction on the inherent frailties of eyewitness identification will induce juries to reject accurate identifications and acquit where they should convict. But that concern can be met by casting the special instruction in language appropriate to the case. The precise point which has been made time and again is that there is no rigid formulation for such instruction. Each should be designed with specific reference to the evidence which either supports or casts doubt on the eyewitness identification. . . . In all cases the jury should be told that they ought not to resile from acting upon an eyewitness identification if, after taking into account the various weaknesses which have been pointed out to them by both the judge and counsel, and exercising the required caution, they are nonetheless satisfied beyond a reasonable doubt that it is an accurate identification. [Emphasis added.]
2002	Housen v. Nikolaisen	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1972/index.do	Housen v. Nikolaisen, [2002] 2 S.C.R. 235, 2002 SCC 33	Bastarache J.	dissenting	Saskatchewan	Appeal Municipal law Torts	C	D	Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485 (1984)	SC	US	107 In a negligence case, the trial judge is called on to decide whether the conduct of the defendant was reasonable under all the circumstances. While this determination involves questions of fact, it also requires the trial judge to assess what is reasonable. As stated above, in many cases, this will involve a policy-making or "law-setting" role which an appellate court is better situated to undertake (Kerans, supra, at pp. 5-10). For example, in this case, the degree of knowledge that the trial judge should have imputed to the reasonably prudent municipal councillor raised the policy consideration of the type of accident-reporting system that a small rural municipality with limited resources should be expected to maintain. This law-setting role was recognized by the United States Supreme Court in Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485 (1984), at note 17, within the context of an action for defamation: A finding of fact in some cases is inseparable from the principles through which it was deduced. At some point, the reasoning by which a fact is "found" crosses the line between application of those ordinary principles of logic and common experience which are ordinarily entrusted to the finder of fact into the realm of a legal rule upon which the reviewing court must exercise its own independent judgment. Where the line is drawn varies according to the nature of the substantive law at issue. Regarding certain largely factual questions in some areas of the law, the stakes -- in terms of impact on future cases and future conduct -- are too great to entrust them finally to the judgment of the trier of fact.

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2002	Housen v. Nikolaisen	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1972/index.do	Housen v. Nikolaisen, [2002] 2 S.C.R. 235, 2002 SCC 33	Iacobucci and Major JJ.	majority	Saskatchewan	Appeal Municipal law Torts	C	referred to	Anderson v. Bessemer City, 470 U.S. 564 (1985)	SC	US	13 In Anderson v. Bessemer City, 470 U.S. 564 (1985), at pp. 574-75, the United States Supreme Court also listed numerous reasons for deferring to the factual findings of the trial judge: The rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility. The trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise. Duplication of the trial judge's efforts in the court of appeals would very likely contribute only negligibly to the accuracy of fact determination at a huge cost in diversion of judicial resources. In addition, the parties to a case on appeal have already been forced to concentrate their energies and resources on persuading the trial judge that their account of the facts is the correct one; requiring them to persuade three more judges at the appellate level is requiring too much. As the Court has stated in a different context, the trial on the merits should be "the 'main event' . . . rather than a 'tryout on the road.'" . . . For these reasons, review of factual findings under the clearly-erroneous standard -- with its deference to the trier of fact -- is the rule, not the exception.
2002	Housen v. Nikolaisen	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1972/index.do	Housen v. Nikolaisen, [2002] 2 S.C.R. 235, 2002 SCC 33	Iacobucci and Major JJ.	majority	Saskatchewan	Appeal Municipal law Torts	C	referred to	Cork v. Kirby MacLean, Ltd., [1952] 2 All E.R. 402	lower-level court	UK	70 We agree with our colleague's statement at para. 159 that the trial judge's conclusions on the cause of the accident was a finding of fact: Cork v. Kirby MacLean, Ltd., [1952] 2 All E.R. 402 (C.A.), at p. 407, quoted with approval in Matthews v. MacLaren (1969), 4 D.L.R. (3d) 557 (Ont. H.C.), at p. 566. Thus, this finding should not be interfered with absent palpable and overriding error.
2002	R. v. Brown	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1971/index.do	R. v. Brown, [2002] 2 S.C.R. 185, 2002 SCC 32	Major J.	majority	Ontario	Criminal law	C	referred to	Chambers v. Mississippi, 410 U.S. 284 (1973)	SC	US	41 Finally, there is some potential that the confession to Robertson may be admissible as a declaration against penal interest. Although this exception to the hearsay rule has historically been reserved for cases where the declarant is deceased or otherwise unavailable, there is a suggestion in the Ontario Court of Appeal case of R. v. Williams (1985), 50 O.R. (2d) 321, that this requirement may be relaxed in some circumstances. In that case, Martin J.A. discussed the United States Supreme Court decision of Chambers v. Mississippi, 410 U.S. 284 (1973), where the court found that confessions made by a third party were admissible, notwithstanding that the third party declarant was available and, in fact, did testify at the accused's trial. Powell J. noted, at pp. 300-301, that the statements were made "under circumstances that provided considerable assurance of their reliability", and that, "whatever may be the parameters of the penal-interest rationale, each confession here was in a very real sense self-incriminatory and unquestionably against interest".
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Gonthier J.	dissenting	Quebec	Civil procedure Intellectual property	C	d	L. B. (Plastics) Ltd. v. Swish Products Ltd., [1979] R.P.C. 551	SC	UK (HL)	115 Moreover, the purpose of copyright is not to protect the ideas or opinions expressed by the creator, but rather the various means and forms by which those ideas are communicated (J. S. McKeown, Fox Canadian Law of Copyright and Industrial Designs (3rd ed. 2000), at p. 60; Cartwright v. Wharton (1912), 25 O.L.R. 357 (H.C.); Stevenson v. Crook, [1938] Ex. C.R. 299, at p. 307; L. B. (Plastics) Ltd. v. Swish Products Ltd., [1979] R.P.C. 551 (H.L.)). In other words, it is the formal expression of those ideas or opinions that is protected by copyright.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Mirage Editions, Inc. v. Albuquerque A.R.T. Co., 856 F.2d 1341 (1988)	lower-level court	US	55 The position taken by the Quebec Court of Appeal, nevertheless, echoes the debate in some U.S. courts about the proper allocation of compensation where a new way has been found to exploit the work in a market or market niche perhaps not anticipated by the creator of the underlying work, who thus may not have captured the highest price to be charged for the sale or use of that underlying work: see Mirage Editions, Inc. v. Albuquerque A.R.T. Co., 856 F.2d 1341 (9th Cir. 1988); A. B. Cohen, "When Does a Work Infringe the Derivative Works Right of a Copyright Owner?" (1999), 17 Cardozo Arts & Ent. L.J. 623, at p. 654. 72 The poster art industry in the United States has been actively litigating the broad statutory "derivative works" provision against owners of the material objects that embody the copyrighted work. In Mirage Editions, supra, for example, the copyrighted image was applied to a ceramic tile. The 9th Circuit Court of Appeals ruled that the ceramic was an infringing "new" derivative work, a conclusion expressly rejected by the 7th Circuit Court of Appeals in Lee v. A.R.T. Co., 125 F.3d 580 (1997), which concluded that the fixation did not infringe the copyright. Easterbrook J., for the 7th Circuit, reasoned that "[a]n alteration that includes (or consumes) a complete copy of the original lacks economic significance" (p. 581). He further found that there was no distinction between framing works of art, an acceptable practice under copyright law, and more permanent methods of display, such as re-fixing the art work on tile. The 9th Circuit has taken a different view: see Mirage Editions, supra. These cases and their progeny typically turn on conflicting interpretations of the words "recast, transformed, or adapted" in the U.S. statutory definition, but even under that more expansive U.S. definition of "derivative works" the 7th Circuit concluded that permanently mounting the artwork on tile did not "recast, transform, or adapt" the work. If these words appeared in our Act, there would presumably be a similar battle of statutory construction here, with the respondent saying the work was "recast, transformed, or adapted", and the appellants denying that characterization, but the conflict between the scope of the copyright holders' economic rights to control the end uses of his work and the purchasers' rights as owners of the material object is the same. In the absence of the "recast, transformed, or adapted" language (or equivalent) in our Act, however, the respondent is unable to rely on it as an additional basis of copyright liability. As Estey J. noted in Compo, supra, at p. 367: . . . United States court decisions, even where the factual situations are similar, must be scrutinized very carefully because of some fundamental differences in copyright concepts which have been adopted in the legislation of that country.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Crim., January 28, 1888, Bull. crim., No. 46, p. 68	Sc	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Crim., December 2, 1964, Bull. crim., No. 320, p. 672	Sc	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Crim., October 20, 1977, Bull. crim., No. 315, p. 801	Sc	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128	Sc	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Paris, March 18, 1987, D. 1988.Somm.209, note Colombet	lower-level court	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76	Sc	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Paris, April 27, 1945, Gaz. Pal. 1945.1.192	lower-level court	France	63 Under the civiliste tradition, and particularly in France, the right of reproduction was interpreted to include not only the right to make new copies of the work (reproduction stricto sensu) but also what is called by French jurists the "right of destination" (droit de destination). The right of destination gives the author or artist the right to control to a considerable extent the use that is made of authorized copies of his or her work: see generally A. Lucas and H.-J. Lucas, Traité de la propriété littéraire & artistique (1994), at p. 235; F. Pollaud-Dulian, Le droit de destination: le sort des exemplaires en droit d'auteur (1989). See also Crim., January 28, 1888, Bull. crim., No. 46, p. 68; Crim., December 2, 1964, Bull. crim., No. 320, p. 672; Crim., October 20, 1977, Bull. crim., No. 315, p. 801; Civ. 1st, May 5, 1976, Bull. civ., No. 161, p. 128; Paris, March 18, 1987, D. 1988.Somm.209, note Colombet; Civ. 1st, April 19, 1988, Bull. civ., No. 112, p. 76; Paris, April 27, 1945, Gaz. Pal. 1945.1.192.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Hovener/Poortvliet, HR January 19, 1979, NJ 412	SC	Netherlands	64 The "droit de destination" applies in other civiliste jurisdictions. Thus in Hovener/Poortvliet, HR January 19, 1979, NJ 412, brought to our attention by counsel for the respondent, the Netherlands Supreme Court found a violation of the droit d'auteur where a purchaser of an authorized art calendar cut out the pictures, stuck them to coasters, and resold them. This was regarded by the court as an altogether new and different "publication". In Frost v. Olive Series Publishing Co. (1908), 24 T.L.R. 649 (Ch. Div.), by contrast, the English court did not regard as an infringement the cutting out of pictures from books, pasting them on cards, and reselling. "[The recirculation of] objects already in existence is not reproduction in a material form": Laddie et al., supra, at p. 614.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	C. M. Paula Co. v. Logan, 355 F.Supp. 189 (1973)	lower-level court	US	66 Reference has already been made to the English "note card" case, Frost, supra. Comparable issues relating to the production or reproduction for the purposes of copyright law have also arisen in the United States, including cases of techniques similar to the ink transfer process used by the appellants in the present appeal. For example, in C. M. Paula Co. v. Logan, 355 F.Supp. 189 (N.D. Tex. 1973), the allegations of copyright infringement were directed at the defendant's transferral of various copyrighted designs from Paula Company greeting cards and note pads to ceramic plaques produced and sold by the defendant. The Paula Company described as follows the process employed by the defendant (at p. 190): [T]he process . . . involves the use of acrylic resin, emulsions, or similar compounds which act as a transfer medium to strip the printed indicia from the original surface on which it is printed, whereupon the image carrying film is applied to another article, such as the plaster base of a wall plaque. In effect, a decal picture is created.
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Peker v. Masters Collection, 96 F.Supp.2d 216 (2000)	lower-level court	US	68 Reference should also be made in this connection to Peker v. Masters Collection, 96 F.Supp.2d 216 (2000), where the New York District Court ruled that the mere transfer of the ink from one support to another represents only a re-displaying of the poster image -- similar to framing or lamination -- that does not amount to "reproduction" of the work. However, in that case, once mounted, the defendant employed specially trained "artists" to apply oil paint in brushstrokes to the image, attempting to match the colour and style of the original painting. The court held that this additional copying amounted to an unauthorized reproduction of the original work. (There was no attempt in our case to replicate brushstrokes.)
2002	Théberge v. Galerie d'Art du Petit Champlain inc.	3/28/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do	Théberge v. Galerie d'Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34	Binnie J.	majority	Quebec	Civil procedure Intellectual property	C	referred to	Lee v. A.R.T. Co., 125 F.3d 580 (1997)	lower-level court	US	72 The poster art industry in the United States has been actively litigating the broad statutory "derivative works" provision against owners of the material objects that embody the copyrighted work. In Mirage Editions, supra, for example, the copyrighted image was applied to a ceramic tile. The 9th Circuit Court of Appeals ruled that the ceramic was an infringing "new" derivative work, a conclusion expressly rejected by the 7th Circuit Court of Appeals in Lee v. A.R.T. Co., 125 F.3d 580 (1997), which concluded that the fixation did not infringe the copyright. Easterbrook J., for the 7th Circuit, reasoned that "[a]n alteration that includes (or consumes) a complete copy of the original lacks economic significance" (p. 581). He further found that there was no distinction between framing works of art, an acceptable practice under copyright law, and more permanent methods of display, such as re-fixing the art work on tile. The 9th Circuit has taken a different view: see Mirage Editions, supra. These cases and their progeny typically turn on conflicting interpretations of the words "recast, transformed, or adapted" in the U.S. statutory definition, but even under that more expansive U.S. definition of "derivative works" the 7th Circuit concluded that permanently mounting the artwork on tile did not "recast, transform, or adapt" the work. If these words appeared in our Act, there would presumably be a similar battle of statutory construction here, with the respondent saying the work was "recast, transformed, or adapted", and the appellants denying that characterization, but the conflict between the scope of the copyright holders' economic rights to control the end uses of his work and the purchasers' rights as owners of the material object is the same. In the absence of the "recast, transformed, or adapted" language (or equivalent) in our Act, however, the respondent is unable to rely on it as an additional basis of copyright liability. As Estey J. noted in Compo, supra, at p. 367: . . . United States court decisions, even where the factual situations are similar, must be scrutinized very carefully because of some fundamental
2002	R. v. Cinous	3/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1968/index.do	R. v. Cinous, [2002] 2 S.C.R. 3, 2002 SCC 29	Arbour J.	dissenting	Quebec	Criminal law	C	D	R. v. Lobell, [1957] 1 Q.B. 547	lower-level court	UK	146 This was described by G. Williams, Textbook of Criminal Law (2nd ed. 1983), at pp. 52-59, as the accused's evidential burden. At p. 53, Professor Williams indicated that imposing an evidential burden on the defendant who wishes to raise a specific defence was designed to simplify the task of the jury and most importantly, to "prevent the defendant submitting no case if the prosecution have led no evidence on that issue". Indeed, without an evidential burden on the accused, the Crown would have to "disprove, in the initial presentation of its case, the existence of every conceivable defence or extraneous factor that might affect a finding of guilt" (I. Weiser, "The Presumption of Innocence in Section 11 (d) of the Charter and Persuasive and Evidential Burdens" (1988-89), 31 Crim. L.Q. 318, at p. 344), or the accused would be entitled to a directed verdict of acquittal. In the case of R. v. Lobell, [1957] 1 Q.B. 547 (C.C.A.), Lord Goddard C.J. explained, at p. 551: It must, however, be understood that maintaining the rule that the onus always remains on the prosecution does not mean that the Crown must give evidence-in-chief to rebut a suggestion of self-defence before that issue is raised, or indeed need give any evidence on the subject at all. If an issue relating to self-defence is to be left to the jury there must be some evidence from which a jury would be entitled to find that issue in favour of the accused, and ordinarily no doubt such evidence would be given by the defence. But there is a difference between leading evidence which would enable a jury to find an issue in favour of a defendant and in putting the onus upon him
2002	R. v. Cinous	3/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1968/index.do	R. v. Cinous, [2002] 2 S.C.R. 3, 2002 SCC 29	Arbour J.	dissenting	Quebec	Criminal law	C	D	R. v. Porritt, [1961] 1 W.L.R. 1372	lower-level court	UK	150 Another consequence of the principle according to which an accused only has an evidential burden to raise a defence is that when the evidence puts a defence in issue, the trial judge has a duty to instruct the jury on that defence whether or not it was argued by the accused (Mancini, supra, at p. 7; Kwaku Mensah v. The King, [1946] A.C. 83 (P.C.); R. v. Porritt, [1961] 1 W.L.R. 1372 (C.C.A.); G. Williams, The Proof of Guilt (3rd ed. 1963), at p. 36; Wu, supra; Squire, supra, at p. 19; Mazza, supra, at p. 911). In fact, cases concerning the accused's evidential burden, and later cases respecting the "air of reality" test, often arose in a context where, while it was argued on appeal that an alternative defence was available on the evidence, this defence was not argued by the accused at trial (see Landry, supra; Mazza, supra; Leary v. The Queen, [1978] 1 S.C.R. 29; Squire, supra). In other cases, the trial judge had recognized his duty to put to the jury a defence not advanced by the accused; it was then argued on appeal that this defence should not have been put to the jury (see Olbey, supra).
2002	R. v. Sheppard	3/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1964/index.do	R. v. Sheppard, [2002] 1 S.C.R. 869, 2002 SCC 26	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Flannery v. Halifax Estate Agencies Ltd., [2000] 1 All E.R. 373	lower-level court	UK	16 In some common law jurisdictions, including England and Australia, the courts have adopted a general, albeit qualified, requirement in both civil and criminal cases to give reasons subject to significant exceptions: see generally H.L. Ho, "The judicial duty to give reasons" (2000), 20 Legal Stud. 42; Coleman v. Dunlop Ltd., [1998] P.I.Q.R. 398 (Eng. C.A.), at p. 403; and Flannery v. Halifax Estate Agencies Ltd., [2000] 1 All E.R. 373 (C.A.). It is not clear, however, the extent to which a reasonable result based on a solid evidentiary record will nevertheless be reversed and sent back for retrial because the reasons for the decision are considered inadequate, confusing, or poorly expressed. In most of the reported cases, the deficiency in the reasons created significant problems of substance for the appellate court.
2002	R. v. Sheppard	3/21/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1964/index.do	R. v. Sheppard, [2002] 1 S.C.R. 869, 2002 SCC 26	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Pettitt v. Dunkley, [1971] 1 N.S.W.L.R. 376	lower-level court	Aus	17 In Australia, it has been said by one state appellate court that it is as much a judicial duty "to give reasons in an appropriate case as there is otherwise a duty to act judicially, such as to hear arguments of counsel and hear evidence and admit relevant evidence of a witness": Pettitt v. Dunkley, [1971] 1 N.S.W.L.R. 376 (C.A.), at pp. 387-88. The issue is not only to define the "appropriate case" but to define circumstances in which failure to provide adequate reasons will constitute grounds for an acquittal or a new trial.
2002	Lavoie v. Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1961/index.do	Lavoie v. Canada, [2002] 1 S.C.R. 769, 2002 SCC 23	Bastarache J.	majority	Federal Court of Appeal	Constitutional law	C	referred to	Mathews v. Diaz, 426 U.S. 67 (1976)	SC	US	56 According to Oakes, supra, Parliament's objectives must be sufficiently important to justify overriding a Charter right. The respondents note that virtually all liberal democracies impose citizenship-based restrictions on access to the national Public Service; these restrictions vary from virtual bans on federal Public Service employment (as in Switzerland and the United States) to policies allowing permanent residents to work in the Public Service on a probationary basis (as in Australia). The respondents further argue that international conventions support citizenship-based restrictions by guaranteeing the right of all citizens to work in the Public Service: see Article 21(2) of the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) ("Everyone has the right of equal access to public service in his country"); Article 25(c) of the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966) ("Every citizen shall have the right and the opportunity . . . [t]o have access, on general terms of equality, to public service in his country"). For their part, the appellants claim that widespread acceptance of the citizenship-based restrictions do not justify them, and that Canada should be held to a higher standard than countries which discourage immigration. The appellants also note that citizenship-based restrictions imposed by state legislatures have routinely been struck down by the United States Supreme Court as violations of equality rights: see Mathews v. Diaz, 426 U.S. 67 (1976), and Sugarman v. Dougall, 413 U.S. 634 (1973).

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2002	Lavoie v. Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1961/index.do	Lavoie v. Canada, [2002] 1 S.C.R. 769, 2002 SCC 23	Bastarache J.	majority	Federal Court of Appeal	Constitutional law	C	referred to	Sugarman v. Dougall, 413 U.S. 634 (1973	SC	US	56 According to Oakes, supra, Parliament's objectives must be sufficiently important to justify overriding a Charter right. The respondents note that virtually all liberal democracies impose citizenship-based restrictions on access to the national Public Service; these restrictions vary from virtual bans on federal Public Service employment (as in Switzerland and the United States) to policies allowing permanent residents to work in the Public Service on a probationary basis (as in Australia). The respondents further argue that international conventions support citizenship-based restrictions by guaranteeing the right of all citizens to work in the Public Service: see Article 21(2) of the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) ("Everyone has the right of equal access to public service in his country"); Article 25(c) of the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966) ("Every citizen shall have the right and the opportunity . . . [t]o have access, on general terms of equality, to public service in his country"). For their part, the appellants claim that widespread acceptance of the citizenship-based restrictions do not justify them, and that Canada should be held to a higher standard than countries which discourage immigration. The appellants also note that citizenship-based restrictions imposed by state legislatures have routinely been struck down by the United States Supreme Court as violations of equality rights: see Mathews v. Diaz, 426 U.S. 67 (1976), and Sugarman v. Dougall, 413 U.S. 634 (1973).
2002	Lavoie v. Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1961/index.do	Lavoie v. Canada, [2002] 1 S.C.R. 769, 2002 SCC 23	Bastarache J.	majority	Federal Court of Appeal	Constitutional law	R		law in general		Australia	68 Of the remaining alternatives, I am most compelled by the Australian model of referring permanent residents to open competition pending the outcome of their citizenship applications. To the extent permanent residents are committed to Canadian citizenship but nevertheless burdened by citizenship preferences, s. 16(4) (c) of the PSEA might be considered overbroad. Indeed, it may be argued that the Australian model increases the incentive to naturalize so that permanent residents can remain in the Public Service after they become eligible for citizenship. That being said, the Australian model presents some obvious administrative difficulties. As noted in the American case of Mow Sun Wong v. Hampton, 435 F.Supp. 37 (1977), at pp. 45-46, such a scheme "would be excessively disruptive to the service, in that significant numbers of alien employees would automatically be terminated upon their failure, for one reason or another, to become naturalized". These difficulties would be especially acute in Canada, where an unsuccessful applicant would technically be entitled to keep her job if there were not sufficiently qualified Canadians; thus, the Commission would presumably have to conduct an open competition every time a probationary employee failed to naturalize. It was for such reasons that the trial judge rejected this alternative, reiterating the importance of deferring to Parliament's discretion. Moreover, it is not even clear that the Australian model is less impairing than the Canadian one: not only does Australia prohibit dual citizenship, but it creates an all-out restriction on non-citizens who are not seeking or who fail to obtain naturalization. This seems entirely unwelcoming to those permanent residents who do not apply for citizenship, as opposed to the across-the-board preference in effect in Canada. Indeed, the Australian model would have been of no assistance to the appellants Bailey and Lavoie.
2002	Lavoie v. Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1961/index.do	Lavoie v. Canada, [2002] 1 S.C.R. 769, 2002 SCC 23	Bastarache J.	majority	Federal Court of Appeal	Constitutional law	C	referred to	Mow Sun Wong v. Hampton, 435 F.Supp. 37 (1977)	lower-level court	US	68 Of the remaining alternatives, I am most compelled by the Australian model of referring permanent residents to open competition pending the outcome of their citizenship applications. To the extent permanent residents are committed to Canadian citizenship but nevertheless burdened by citizenship preferences, s. 16(4) (c) of the PSEA might be considered overbroad. Indeed, it may be argued that the Australian model increases the incentive to naturalize so that permanent residents can remain in the Public Service after they become eligible for citizenship. That being said, the Australian model presents some obvious administrative difficulties. As noted in the American case of Mow Sun Wong v. Hampton, 435 F.Supp. 37 (1977), at pp. 45-46, such a scheme "would be excessively disruptive to the service, in that significant numbers of alien employees would automatically be terminated upon their failure, for one reason or another, to become naturalized". These difficulties would be especially acute in Canada, where an unsuccessful applicant would technically be entitled to keep her job if there were not sufficiently qualified Canadians; thus, the Commission would presumably have to conduct an open competition every time a probationary employee failed to naturalize. It was for such reasons that the trial judge rejected this alternative, reiterating the importance of deferring to Parliament's discretion. Moreover, it is not even clear that the Australian model is less impairing than the Canadian one: not only does Australia prohibit dual citizenship, but it creates an all-out restriction on non-citizens who are not seeking or who fail to obtain naturalization. This seems entirely unwelcoming to those permanent residents who do not apply for citizenship, as opposed to the across-the-board preference in effect in Canada. Indeed, the Australian model would have been of no assistance to the appellants Bailey and Lavoie.
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	L'Heureux-Dubé J.	dissenting	Ontario	Insurance	C	D	Dunbar v. Plant, [1997] 4 All E.R. 289	lower-level court	UK	77 I am in agreement with Borins J.A. in this case ((2000), 49 O.R. (3d) 737) that what is at issue here is the balancing of two rules of public policy. However, it is not so much a question of which public policy prevails but rather ensuring that the objectives of competing public policies be conciliated and that a just result ensues, as Borins J.A. states (at p. 750): In Gray v. Barr, [1971] 2 Q.B. 554 at p. 582, [1971] 2 All E.R. 949 (C.A.), which concerned the public policy rule in the context of an indemnity policy, Salmon L.J. pointed out: "Public policy is not static." In Dunbar, at p. 304, Phillips L.J. considered it important to observe that the public policy rule is not absolute, and went on to demonstrate this from his review of the development and evolution of the rule. I see no reason to conclude that the rule should be regarded differently in Canada. I have found nothing in the reasons of Sopinka J. in Brissette Estate to suggest that it is different in Canada. Brissette Estate was not decided on the application of any rule of public policy, but on the interpretation of the insurance contract.
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	L'Heureux-Dubé J.	dissenting	Ontario	Insurance	C	D	Troja v. Troja (1994), 33 N.S.W.L.R. 269	lower-level court	Australia	72 The purpose of the forfeiture rule was best summarized by Kirby P., now of the High Court of Australia, dissenting, but not on this point, in Troja v. Troja (1994), 33 N.S.W.L.R. 269 (C.A.), at p. 286: The forfeiture rule is, in reality, an application to what would otherwise be the operation of law of the equitable principles which deny persons from gaining benefits from their own morally culpable conduct. To prevent that happening, a court of equity is authorised to impose a constructive trust to prevent the perpetrator's gain. The trust will be imposed by the court to achieve a just result and to prevent the unjust enrichment of the wrongdoer. [Emphasis added.]
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	distinguished	Charlton v. Fisher, [2001] E.W.J. No. 271 (QL)	lower-level court	UK	42 A similar statutory provision to s. 195 exists in England. As described by the Court of Appeal there, the Third Parties (Rights against Insurers) Act, 1930 (U.K.), 20 & 21 Geo. 5, c. 25, provides that "the third party simply stands in the shoes of the assured" (Charlton v. Fisher, [2001] E.W.J. No. 271 (QL) (C.A.), at para. 92). In McCormick v. National Motor and Accident Insurance Union, Ltd. (1934), 40 Com. Cas. 76, the Court of Appeal held that a third party suing under the 1930 Act would be subject to any defence available to the insurer as against the insured, such as misrepresentation. Scrutton L.J. held, at p. 82: 43 In Charlton, Rix L.J. considered whether the insurance company could only rely on defences "which arise from terms of the contract itself, or from general principles of contract law such as those dealing with repudiation, avoidance and so forth" (para. 93), or whether it could equally rely on public policy defences that are independent from contract. He concluded that public policy defences applied to assignees with a merely derivative claim (at para. 94): . . . an assignee with a merely derivative claim stands in the guilty person's shoes for the purpose not only of an ordinary contractual defence, but also of the ex turpi causa defence which is personal to the guilty party: and that is so despite the innocence of the assignee himself. 44 Likewise, Laws L.J. held (at para. 27): . . . I agree . . . that this appeal should be allowed on the footing that any recourse by the claimant to the second defendant insurers . . . would require her (strictly, by force of the Third Parties (Rights against Insurers) Act 1930) to stand in the shoes of the first defendant insured; but that cannot avail her, since public policy deprives the first defendant of any claim under the policy of insurance to be indemnified against a liability arising from his own intentional criminal act. Accordingly he possesses no rights under the policy capable of enuring to the benefit of the claimant. 45 Charlton is distinguishable. The Court of Appeal concluded that the insured intentionally caused the loss when he deliberately rammed his car into the claimant's car. The court stated that "an insured cannot recover under his motor policy, even if it would otherwise cover the risk, where he claims in respect of a liability which he has incurred as a result of his deliberate and wilful criminal act of intentional damage or injury" (para. 81). Moreover, because the incident did not occur on a road, the Court of Appeal was dealing with a "merely derivative claim" (para. 94) under the Third Parties (Rights against Insurers) Act, 1930. Both Rix L.J. and Laws L.J. made it clear that a party with an independent and direct right of action is not required to stand in the shoes of the criminal insured party. It follows that the 1930 Act does not operate to transfer the public policy defence to the

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2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Hardy v. Motor Insurers' Bureau, [1964] 2 Q.B. 745	lower-level court	UK	17 The distinction between a claim by a beneficiary as opposed to a claim through the estate developed in decisions like Hardy v. Motor Insurers' Bureau, [1964] 2 Q.B. 745 (C.A.), where Lord Diplock held (at p. 768): [The insurance contract] is capable of giving rise to legally enforceable rights if, apart from the [public policy] rule, the rights of the assured are capable of becoming vested in a third party other than one who is regarded in law as the successor of the assured . . . . 27 If Sopinka J.'s statement was given the broad interpretation that Transamerica seeks, bona fide creditors would be unable to obtain insurance proceeds where an insured died while committing a criminal act. To do so would run contrary to a long-standing principle that there is "no illegality in a stipulation that, if the policy should afterwards be assigned bona fide for a valuable consideration, or a lien upon it should afterwards be acquired bona fide for valuable consideration, it might be enforced for the benefit of others, whatever may be the means by which death is occasioned . . . ." (Moore v. Woolsey (1854), 4 El. & Bl. 241, 119 E.R. 93 (K.B.), at p. 98); see also Beresford (H.L.), supra, at pp. 607-8, per Lord Atkin, and at p. 611, per Lord Macmillan; Stats, supra, at p. 240; Hardy, supra, at p. 760, per Lord Denning M.R., and at p. 768, per Diplock L.J. ("an assignee for value before the occurrence of the event would not be prevented from enforcing the contract notwithstanding that the event was caused by the anti-social act of the original assured"). The exception was not mentioned or considered in Sopinka J.'s decision. 36 If "a contravention of any criminal or other law in force in Ontario or elsewhere" alone rendered life insurance contracts unenforceable, as Transamerica urges, the public policy rule would be significantly broadened. Section 118 is not limited to criminal acts. It includes the contravention of any law in force in Ontario or elsewhere. Therefore, if jaywalking was the proximate cause of the life insured's death, the public policy rule submitted by Transamerica's interpretation of s. 118 would prevent the proceeds from being paid to the insured's family. It is for that reason that the public policy rule is limited to acts that are "sufficiently anti-social to justify the court's refusing to enforce that right" (Hardy, supra, at p. 767). 50 Over time, courts have criticized the idea that a less than strict application of public policy would encourage crime. In Hardy, supra, Diplock L.J. held (at p. 770): It seems to me to be slightly unrealistic to suggest that a person who is not deterred by the risk of a possible sentence of life imprisonment from using a vehicle with intent to commit grievous bodily harm would be deterred by the fear that his civil liability to his victim would not be discharged by his insurers. I do not myself feel that by dismissing this appeal we shall add significantly to the statistics of crime. 62 The public policy rule has gradually been modified. A trickle of reform occurred in Hardy, supra. In Hardy, Diplock L.J. proposed a public policy test that would balance the public policy interests at stake. He held (at pp. 767-68): The court's refusal to assert a right, even against the person who has committed the anti-social act, will depend not only on the nature of the anti-social act but also on the nature of the right asserted. The court has to weigh the gravity of the anti-social act and the extent to which it will be encouraged by enforcing the right sought to be asserted against the social harm which will be caused if the right is not enforced. 67 It might be appropriate to modify the public policy rule so as to permit an innocent person who claims through the criminal's estate to take insurance proceeds.
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Post Office v. Norwich Union Fire Insurance Society Ltd., [1967] 2 Q.B. 363	lower-level court	UK	41 The principle behind s. 195 is that "[t]he third party can be in no better position than the assured" (MacGillivray on Insurance Law (9th ed. 1997), at p. 784). As Harman L.J. held, the third party cannot "pick out the plums and leave the duff behind" (Post Office v. Norwich Union Fire Insurance Society Ltd., [1967] 2 Q.B. 363 (C.A.), at p. 376).
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	McCormick v. National Motor and Accident Insurance Union, Ltd. (1934), 40 Com. Cas. 76	lower-level court	UK	42 A similar statutory provision to s. 195 exists in England. As described by the Court of Appeal there, the Third Parties (Rights against Insurers) Act, 1930 (U.K.), 20 & 21 Geo. 5, c. 25, provides that "the third party simply stands in the shoes of the assured" (Charlton v. Fisher, [2001] E.W.J. No. 271 (QL) (C.A.), at para. 92). In McCormick v. National Motor and Accident Insurance Union, Ltd. (1934), 40 Com. Cas. 76, the Court of Appeal held that a third party suing under the 1930 Act would be subject to any defence available to the insurer as against the insured, such as misrepresentation. Scrutton L.J. held, at p. 82: Now, what is transferred? The rights under the contract. You cannot take the rights under the contract separate from defences under the contract
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Bird v. John Hancock Mutual Life Insurance Co., 320 S.W.2d 955 (1959)	lower-level court	US	51 American courts too have criticized the rationale: The possibility that an affirmance of the judgment will promote evil or cause any considerable number of insureds to commit depredations on the public because of the comforting reassurance that their beneficiaries will collect the insurance if they are killed in the commission of crime is remote, speculative and theoretical. Both the public and the insurer have "a guaranty against increasing the risk insured, by that love of life which nature has implanted in every creature." (Bird v. John Hancock Mutual Life Insurance Co., 320 S.W.2d 955 (Mo. Ct. App. 1959), at p. 958)
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Weeks v. New York Life Ins. Co., 122 S.E. 586 (1924)	lower-level court	US	58 In the United States, some courts have concluded there is a world of difference between an insurance contract that explicitly insures crime and one that does not. In Weeks v. New York Life Ins. Co., 122 S.E. 586 (1924), the Supreme Court of South Carolina held that the position that "because an express contract to insure against death by legal execution would contravene public policy, an ordinary life policy which does not except death from such a cause should be declared unenforceable on grounds of public policy, is . . . clearly untenable" (p. 588). Where an insured "takes out an ordinary life insurance policy, to be matured by death from any cause, no basis in reason or experience exists for assuming that the insured had any intent at the time of making the contract to accelerate the maturity of the policy" by committing a crime (p. 588).
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Saunders v. Edwards, [1987] 1 W.L.R. 1116	lower-level court	UK	63 In Saunders v. Edwards, [1987] 1 W.L.R. 1116 (C.A.), Bingham L.J. expressed a similar balancing test (at p. 1134): . . . it is unacceptable that the court should, on the first indication of unlawfulness affecting any aspect of a transaction, draw up its skirts and refuse all assistance to the plaintiff, no matter how serious his loss nor how disproportionate his loss to the unlawfulness of his conduct.
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Dunbar v. Plant, [1997] 4 All E.R. 289	lower-level court	UK	65 Although the rule was modified by statute, Phillips L.J. held that "the judges would themselves have modified the rule" if the legislature had not done so (Dunbar v. Plant, [1997] 4 All E.R. 289 (C.A.), at p. 310). He added that "the only logical way of modifying the rule would have been to have declined to apply it where the facts of the crime involved such a low degree of culpability, or such a high degree of mitigation, that the sanction of forfeiture, far from giving effect to the public interest, would have been contrary to it" (p. 310).
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	C	referred to	Troja v. Troja (1994), 33 N.S.W.L.R. 269	lower-level court	Australia	66 Other courts have declined to modify the public policy rule, holding that it is up to the legislature to do so (Troja v. Troja (1994), 33 N.S.W.L.R. 269 (C.A.))

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	R		Forfeiture Act 1982 (U.K.), 1982, c. 34, s. 2(2).	statute	UK	64 In England, the public policy rule has been modified by the Forfeiture Act 1982 (U.K.), 1982, c. 34. Under the Act, the court can modify the public policy rule, "having regard to the conduct of the offender and of the deceased", "to such other circumstances as appear to the court to be material" and to "the justice of the case" (s. 2(2)). 67 It might be appropriate to modify the public policy rule so as to permit an innocent person who claims through the criminal's estate to take insurance proceeds. Indeed, in Hardy, Diplock L.J. thought that the public policy rule could be modified to permit the criminal to take insurance proceeds, depending on "the nature of the anti-social act" and "the nature of the right asserted" (p. 768). Under England's Forfeiture Act 1982, courts can modify the effect of the forfeiture rule even where a person who has unlawfully killed another seeks to acquire a benefit in consequence of the killing. I leave the question to be decided either by the legislature or in another case where the issue arises.
2002	Oldfield v. Transamerica Life Insurance Co. of Canada	3/8/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1960/index.do	Oldfield v. Transamerica Life Insurance Co. of Canada, [2002] 1 S.C.R. 742, 2002 SCC 22	Major J.	majority	Ontario	Insurance	R		Third Parties (Rights against Insurers) Act, 1930 (U.K.), 20 & 21 Geo. 5, c. 25.	statute	UK	42 A similar statutory provision to s. 195 exists in England. As described by the Court of Appeal there, the Third Parties (Rights against Insurers) Act, 1930 (U.K.), 20 & 21 Geo. 5, c. 25, provides that "the third party simply stands in the shoes of the assured" (Charlton v. Fisher, [2001] E.W.J. No. 271 (QL) (C.A.), at para. 92). In McCormick v. National Motor and Accident Insurance Union, Ltd. (1934), 40 Com. Cas. 76, the Court of Appeal held that a third party suing under the 1930 Act would be subject to any defence available to the insurer as against the insured, such as misrepresentation. Scrutton L.J. held, at p. 82: Now, what is transferred? The rights under the contract. You cannot take the rights under the contract separate from defences under the contract. 44 Likewise, Laws L.J. held (at para. 27): . . . I agree . . . that this appeal should be allowed on the footing that any recourse by the claimant to the second defendant insurers . . . would require her (strictly, by force of the Third Parties (Rights against Insurers) Act 1930) to stand in the shoes of the first defendant insured; but that cannot avail her, since public policy deprives the first defendant of any claim under the policy of insurance to be indemnified against a liability arising from his own intentional criminal act. Accordingly he possesses no rights under the policy capable of enuring to the benefit of the claimant. 45 Charlton is distinguishable. The Court of Appeal concluded that the insured intentionally caused the loss when he deliberately rammed his car into the claimant's car. The court stated that "an insured cannot recover under his motor policy, even if it would otherwise cover the risk, where he claims in respect of a liability which he has incurred as a result of his deliberate and wilful criminal act of intentional damage or injury" (para. 81). Moreover, because the incident did not occur on a road, the Court of Appeal was dealing with a "merely derivative claim" (para. 94) under the Third Parties (Rights against Insurers) Act, 1930. Both Rix L.J. and Laws L.J. made it clear that a party with an independent and direct right of action is not required to stand in the shoes of the criminal insured party. It follows that the 1930 Act does not operate to transfer the public policy defence to the
2002	Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1957/index.do	Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd., [2002] 1 S.C.R. 678, 2002 SCC 19	Binnie J.	majority	Alberta	Contract Torts	C	referred to	Byrnlea Property Investments Ltd. v. Ramsay, [1969] 2 Q.B. 253	lower-level court	uk	45 The appellants' principal argument against rectification is that the alleged prior oral agreement is void for uncertainty. Reliance is placed on I.C.R.V. Holdings Ltd. v. Tri-Par Holdings Ltd. (1994), 53 B.C.A.C. 72, where rectification of an agreement to purchase a recreational vehicle park was refused because, per Finch J.A. (now C.J.B.C.), at para. 7, the parties never agreed on "the precise location of the eastern boundary", and Gordeyko v. Edmonton (1986), 45 Alta. L.R. (2d) 201 (Q.B.), where Stratton J. (as he then was) found the evidence uncertain about a notice period envisaged by the prior oral agreement. See also Kerr v. Cunard (1914), 16 D.L.R. 662 (N.B.S.C.). Appellants' counsel quotes Lord Denning's "pithy" observation that: "[a] mistake made by one party to the knowledge of the other is a ground for avoiding a contract, but not for making one" (Byrnlea Property Investments Ltd. v. Ramsay, [1969] 2 Q.B. 253 (C.A.), at p. 265).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	LeBel J.	dissenting on the appeal	Ontario	Insurance Torts	C	D	Cassell & Co. v. Broome, [1972] A.C. 1027	SC	UK (HL)	158 The difficulties inherent in the nature of punitive damages have given rise to doubts as to their proper place in the law of torts. Some critics have indeed opined that they have no place in the proper structure of tort law, equating it with some form of "palm tree justice". (See Cassell & Co. v. Broome, [1972] A.C. 1027 (H.L.), at p. 1087, per Lord Reid.) Under the pine trees of this country, as we know, punitive damages have found a place in the law of torts. Nevertheless, as with any legal institution, punitive damages must address some identifiable purpose and concern in order to define their proper role. An overriding objective of general deterrence remains problematic, if punitive damages are to remain a useful incident of tort law. Otherwise, their use may turn some parts of the law of tort into a sort of private criminal law, devoid of all the procedural and evidentiary constraints which have come to be associated with the criminal justice system.
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Cassell & Co. v. Broome, [1972] A.C. 1027, aff'g [1971] 2 Q.B. 354	lower-level court	UK	38 Nevertheless, the hybrid nature of punitive damages offends some jurists who insist that legal remedies should belong to one jurisprudential field or the other. That is one major aspect of the controversy, often framed in the words of Lord Wilberforce's comments, dissenting, in Cassell & Co. v. Broome, [1972] A.C. 1027 (H.L.), at p. 1114: It cannot lightly be taken for granted, even as a matter of theory, that the purpose of the law of tort is compensation, still less that it ought to be, an issue of large social import, or that there is something inappropriate or illogical or anomalous (a question-begging word) in including a punitive element in civil damages, or, conversely, that the criminal law, rather than the civil law, is in these cases the better instrument for conveying social disapproval, or for redressing a wrong to the social fabric, or that damages in any case can be broken down into the two separate elements. As a matter of practice English law has not committed itself to any of these theories: it may have been wiser than it knew. 39 A second major aspect of the controversy surrounding punitive damages is related to the quantum. Substantial awards are occasionally assessed at figures seemingly plucked out of the air. The usual procedural protections for an individual faced with potential punishment in a criminal case are not available. Plaintiffs, it is said, recover punitive awards out of all proportion to just compensation. They are subjected, it is said, to "palm tree justice": Cassell, supra, at p. 1087. They are handed a financial windfall serendipitously just because, coincidentally with their claim, the court desires to punish the defendant and deter others from similar outrageous conduct. Defendants on the other hand say they suffer out of all proportion to the actual wrongs they have committed. Because the punishment is tailored to fit not only the "crime" but the financial circumstances of the defendant (i.e., to ensure that it is big enough to "sting"), defendants complain that they are being punished for who they are rather than for what they have done. The critics of punitive awards refer in terrorem to the United States experience where, for example, an Alabama jury awarded $4 million in punitive damages against a BMW dealership for failure to disclose a minor paint job to fix a cosmetic blemish on a new vehicle in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). In 1994, a jury in New Mexico awarded 81-year-old Stella Liebeck $160,000 in compensatory damages and $2.7 million in punitive damages against McDonald's Restaurants for burns resulting from a spilled cup of coffee, notwithstanding that she tried to open the cup while balancing it on her lap in the passenger seat of a car (Liebeck v. McDonald's Restaurants, P.T.S., Inc., 1995 WL 360309 (D. N.M.)). Critics of punitive damages warn against an "Americanization" of our law that, if adopted, would bring the administration of justice in this country into disrepute. A. England 47 In Rookes v. Barnard, [1964] A.C. 1129, and Cassell, supra, the House of Lords sought to significantly limit the availability of punitive damages. In Lord Devlin's leading speech in Rookes, he distinguished "exemplary" (punitive) and "aggravated" (compensatory) damages and classified many purportedly punitive awards in the law books as disguised compensation. Second, he reduced the availability of punitive damages to two common law categories of causes of action, namely (1) "oppressive, arbitrary, or unconstitutional action by the servants of the government" (p. 1226) and (2) where the defendant's conduct is calculated to make a profit. To these he added a third permissible category where punitive damages have express statutory authorization. Since Rookes was decided, the categories test has persisted despite various academic and judicial assaults, but later cases have somewhat loosened the categories' application (by, for example, including police wrongdoing in category one). More recently, in June of last year, the House of Lords opened up the categories themselves to further evolution: Kuddus v. Chief Constable of Leicestershire Constabulary, [2001] 3 All E.R. 193. 48 The attempt in Rookes to narrow the availability of punitive damages by a categorical approach, has been criticized in both academic and judicial forums. The Court of Appeal in England attempted to undermine the new doctrine in Broome v. Cassell & Co., [1971] 2 Q.B. 354; however,

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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996)	SC	US	39 A second major aspect of the controversy surrounding punitive damages is related to the quantum. Substantial awards are occasionally assessed at figures seemingly plucked out of the air. The usual procedural protections for an individual faced with potential punishment in a criminal case are not available. Plaintiffs, it is said, recover punitive awards out of all proportion to just compensation. They are subjected, it is said, to "palm tree justice": Cassell, supra, at p. 1087. They are handed a financial windfall serendipitously just because, coincidentally with their claim, the court desires to punish the defendant and deter others from similar outrageous conduct. Defendants on the other hand say they suffer out of all proportion to the actual wrongs they have committed. Because the punishment is tailored to fit not only the "crime" but the financial circumstances of the defendant (i.e., to ensure that it is big enough to "sting"), defendants complain that they are being punished for who they are rather than for what they have done. The critics of punitive awards refer in terrorem to the United States experience where, for example, an Alabama jury awarded $4 million in punitive damages against a BMW dealership for failure to disclose a minor paint job to fix a cosmetic blemish on a new vehicle in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). In 1994, a jury in New Mexico awarded 81-year-old Stella Liebeck $160,000 in compensatory damages and $2.7 million in punitive damages against McDonald's Restaurants for burns resulting from a spilled cup of coffee, notwithstanding that she tried to open the cup while balancing it on her lap in the passenger seat of a car (Liebeck v. McDonald's Restaurants, P.T.S., Inc., 1995 WL 360309 (D. N.M.)). Critics of punitive damages warn against an "Americanization" of our law that, if adopted, would bring the administration of justice in this country into disrepute.
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	BMW of North America, Inc. v. Gore, 701 So.2d 507 (1997)	lower-level court	US	63 In the absence of statutory intervention, the appellate courts in the United States impose a measure of discipline usually based on constitutional due process considerations. In BMW, supra, the Alabama trial jury awarded punitive damages of $4 million. The Alabama appellate court substituted an award of $2 million, which the U.S. Supreme Court quashed as so "grossly excessive" as to be unconstitutional. In its view, BMW's conduct was not particularly reprehensible and there was an unacceptable ratio of 500:1 between the punitive damages and the actual harm. The issue of quantum was remitted to the Alabama courts and Dr. Gore's roller coaster ride in the courts terminated in $50,000 in punitive damages: BMW of North America, Inc. v. Gore, 701 So.2d 507 (Ala. 1997). In the case of Liebeck, supra, the jury's award of $2.7 million in punitive damages for a hot coffee burn was reduced to $480,000 by the trial judge, and the parties settled the case before appeal.
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Rookes v. Barnard, [1964] A.C. 1129	SC	UK (HL)	A. England 47 In Rookes v. Barnard, [1964] A.C. 1129, and Cassell, supra, the House of Lords sought to significantly limit the availability of punitive damages. In Lord Devlin's leading speech in Rookes, he distinguished "exemplary" (punitive) and "aggravated" (compensatory) damages and classified many purportedly punitive awards in the law books as disguised compensation. Second, he reduced the availability of punitive damages to two common law categories of causes of action, namely (1) "oppressive, arbitrary, or unconstitutional action by the servants of the government" (p. 1226) and (2) where the defendant's conduct is calculated to make a profit. To these he added a third permissible category where punitive damages have express statutory authorization. Since Rookes was decided, the categories test has persisted despite various academic and judicial assaults, but later cases have somewhat loosened the categories' application (by, for example, including police wrongdoing in category one). More recently, in June of last year, the House of Lords opened up the categories themselves to further evolution: Kuddus v. Chief Constable of Leicestershire Constabulary, [2001] 3 All E.R. 193. 48 The attempt in Rookes to narrow the availability of punitive damages by a categorical approach, has been criticized in both academic and judicial forums. The Court of Appeal in England attempted to undermine the new doctrine in Broome v. Cassell & Co., [1971] 2 Q.B. 354; however, the attempt was crushed on further appeal of its decision to the House of Lords, [1972] A.C. 1027. The Law Commission for England and Wales concluded recently that the limitations comported neither with "sound principle" nor "sound policy" (Report 247, Aggravated, Exemplary and Restitutionary Damages (1997), at para 1.2). Canada, Australia, New Zealand, and Ireland have all explicitly rejected the "category" approach of Rookes: Vorvis, supra, at pp. 1104-6; Uren v. John Fairfax & Sons Pty. Ltd. (1966), 117 C.L.R. 118 (Austl. H.C.); Taylor v. Beere, [1982] 1 N.Z.L.R. 81 (C.A.); Conway v. Irish National Teachers' Organisation, [1991] 11 I.L.R.M. 497 (S.C.). Category one has been criticized on the grounds that corporations and individuals can exercise enormous power in an outrageous way just as governmental actors do. Criticisms have been especially vigorous against category two which strikes many as illogical. Commentators wonder why conduct motivated by economic profit is punished while that inspired "only" by malice escapes. (Lord Nicholls lends support to both these views in Kuddus, supra, at paras. 66-67; see also Taylor J. in Uren, supra, at pp. 132-39; and Richardson J. in Taylor, supra, at p. 92.) 50 At the present time, the English courts are developing a variety of principles and guidelines to control the award of punitive damages: Halsbury's Laws of England (4th ed. 1998), vol. 12(1), at paras. 1115-17; McGregor on Damages (16th ed. 1997), at paras. 461-70; Law Commission for England and Wales, supra, Part IV. Some of these are substantive and some are procedural. In substantive terms, it is now well established that the plaintiff and not somebody else must be the victim of the defendant's wrongful conduct; restraint should be exercised in the award of punitive damages; and punitive damages should be awarded under the Rookes approach "if, but only if" compensatory damages are inadequate to punish the defendant (which means that punitive damages are a "topping up" award and a remedy of last resort). Relevant factors include the reprehensibility of the defendant's conduct; the existence of multiple plaintiffs or multiple defendants; the defendant's good faith; and whether the defendant has already been punished under criminal law (this may be an absolute bar). The parties' means are relevant to the assessment. 53 In 1966 in the companion cases of Uren, supra, and Australian Consolidated Press Ltd. v. Uren (1966), 117 C.L.R. 185, the High Court declined to adopt Rookes's "categories" of restrictions on punitive damage awards. Punitive damages are available for "conscious wrongdoing in contumelious disregard of another's rights" (Whitfeld v. De Lauret & Co. (1920), 29 C.L.R. 71 (Austl. H.C.), at p. 77, per Knox C.J.). Punitive damages are awarded
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Kuddus v. Chief Constable of Leicestershire Constabulary, [2001] 3 All E.R. 193	SC	UK (HL)	47 In Rookes v. Barnard, [1964] A.C. 1129, and Cassell, supra, the House of Lords sought to significantly limit the availability of punitive damages. In Lord Devlin's leading speech in Rookes, he distinguished "exemplary" (punitive) and "aggravated" (compensatory) damages and classified many purportedly punitive awards in the law books as disguised compensation. Second, he reduced the availability of punitive damages to two common law categories of causes of action, namely (1) "oppressive, arbitrary, or unconstitutional action by the servants of the government" (p. 1226) and (2) where the defendant's conduct is calculated to make a profit. To these he added a third permissible category where punitive damages have express statutory authorization. Since Rookes was decided, the categories test has persisted despite various academic and judicial assaults, but later cases have somewhat loosened the categories' application (by, for example, including police wrongdoing in category one). More recently, in June of last year, the House of Lords opened up the categories themselves to further evolution: Kuddus v. Chief Constable of Leicestershire Constabulary, [2001] 3 All E.R. 193. 48 The attempt in Rookes to narrow the availability of punitive damages by a categorical approach, has been criticized in both academic and judicial forums. The Court of Appeal in England attempted to undermine the new doctrine in Broome v. Cassell & Co., [1971] 2 Q.B. 354; however, the attempt was crushed on further appeal of its decision to the House of Lords, [1972] A.C. 1027. The Law Commission for England and Wales concluded recently that the limitations comported neither with "sound principle" nor "sound policy" (Report 247, Aggravated, Exemplary and Restitutionary Damages (1997), at para 1.2). Canada, Australia, New Zealand, and Ireland have all explicitly rejected the "category" approach of Rookes: Vorvis, supra, at pp. 1104-6; Uren v. John Fairfax & Sons Pty. Ltd. (1966), 117 C.L.R. 118 (Austl. H.C.); Taylor v. Beere, [1982] 1 N.Z.L.R. 81 (C.A.); Conway v. Irish National Teachers' Organisation, [1991] 11 I.L.R.M. 497 (S.C.). Category one has been criticized on the grounds that corporations and individuals can exercise enormous power in an outrageous way just as governmental actors do. Criticisms have been especially vigorous against category two which strikes many as illogical. Commentators wonder why conduct motivated by economic profit is punished while that inspired "only" by malice escapes. (Lord Nicholls lends support to both these views in Kuddus, supra, at paras. 66-67; see also Taylor J. in Uren, supra, at pp. 132-39; and Richardson J. in Taylor, supra, at p. 92.)
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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Conway v. Irish National Teachers' Organisation (1991), 11 I.L.R.M. 497	SC	Ireland	48 The attempt in Rookes to narrow the availability of punitive damages by a categorical approach, has been criticized in both academic and judicial forums. The Court of Appeal in England attempted to undermine the new doctrine in Broome v. Cassell & Co., [1971] 2 Q.B. 354; however, the attempt was crushed on further appeal of its decision to the House of Lords, [1972] A.C. 1027. The Law Commission for England and Wales concluded recently that the limitations comported neither with "sound principle" nor "sound policy" (Report 247, Aggravated, Exemplary and Restitutionary Damages (1997), at para 1.2). Canada, Australia, New Zealand, and Ireland have all explicitly rejected the "category" approach of Rookes: Vorvis, supra, at pp. 1104-6; Uren v. John Fairfax & Sons Pty. Ltd. (1966), 117 C.L.R. 118 (Austl. H.C.); Taylor v. Beere, [1982] 1 N.Z.L.R. 81 (C.A.); Conway v. Irish National Teachers' Organisation, [1991] 11 I.L.R.M. 497 (S.C.). Category one has been criticized on the grounds that corporations and individuals can exercise enormous power in an outrageous way just as governmental actors do. Criticisms have been especially vigorous against category two which strikes many as illogical. Commentators wonder why conduct motivated by economic profit is punished while that inspired "only" by malice escapes. (Lord Nicholls lends support to both these views in Kuddus, supra, at paras. 66-67; see also Taylor J. in Uren, supra, at pp. 132-39; and Richardson J. in Taylor, supra, at p. 92.)
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	John v. MGN Ltd., [1997] Q.B. 586	lower-level court	UK	51 In terms of procedure, the English courts have made important changes. In John v. MGN Ltd., [1997] Q.B. 586, the Court of Appeal ruled that a jury's attention can be directed to previous awards that the Court of Appeal has either approved or substituted for a jury award as well as to compensatory damage scales. The Court of Appeal also approved the practice of judges and counsel indicating an appropriate award level. The Court of Appeal felt that the process of mentioning figures, "far from developing into an auction", would "induce a mood of realism" on both sides (p. 615). In Thompson v. Commissioner of Police of the Metropolis, [1997] 2 All E.R. 762, the Court of Appeal went further still and approved "guideline" brackets for both compensatory and punitive damages. The Court of Appeal set down general guiding principles, and minimum and ceiling amounts specific to the cause of action at issue, thus permitting brackets in the consideration of punitive damages claims. The Court of Appeal's guiding principles for jury instruction included (1) the familiar "if, but only if" test; (2) pointing out that aggravated damages, because they compensate for injuries due to outrageous defendant behaviour, already include a measure of punishment, albeit incidental; (3) punitive damages are a "windfall" to the plaintiff; and (4) punitive damages against a public authority may mean that the sums are not available to be spent on behalf of the general public (i.e., punitive damages against the state come at the general public's expense) (p. 776). In the specific case of an action of a malicious prosecution and false imprisonment against police, for example, the Court of Appeal selected brackets (to be adjusted for inflation) for the punitive damages that are "unlikely to be less than £5,000" as otherwise the conduct probably does not justify any punitive damages award. The "conduct must be particularly deserving of condemnation for an award of as much as £25,000 to be justified and the figure of £50,000 should be regarded as the absolute maximum, involving directly officers of at least the rank of superintendent" (p. 776). The Court of Appeal in Thompson also observed that a useful rule of thumb is that the total sum of damages (including punitive damages) should not exceed three times the basic compensatory damages (p. 777)
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Thompson v. Commissioner of Police of the Metropolis, [1997] 2 All E.R. 762	lower-level court	UK	51 In terms of procedure, the English courts have made important changes. In John v. MGN Ltd., [1997] Q.B. 586, the Court of Appeal ruled that a jury's attention can be directed to previous awards that the Court of Appeal has either approved or substituted for a jury award as well as to compensatory damage scales. The Court of Appeal also approved the practice of judges and counsel indicating an appropriate award level. The Court of Appeal felt that the process of mentioning figures, "far from developing into an auction", would "induce a mood of realism" on both sides (p. 615). In Thompson v. Commissioner of Police of the Metropolis, [1997] 2 All E.R. 762, the Court of Appeal went further still and approved "guideline" brackets for both compensatory and punitive damages. The Court of Appeal set down general guiding principles, and minimum and ceiling amounts specific to the cause of action at issue, thus permitting brackets in the consideration of punitive damages claims. The Court of Appeal's guiding principles for jury instruction included (1) the familiar "if, but only if" test; (2) pointing out that aggravated damages, because they compensate for injuries due to outrageous defendant behaviour, already include a measure of punishment, albeit incidental; (3) punitive damages are a "windfall" to the plaintiff; and (4) punitive damages against a public authority may mean that the sums are not available to be spent on behalf of the general public (i.e., punitive damages against the state come at the general public's expense) (p. 776). In the specific case of an action of a malicious prosecution and false imprisonment against police, for example, the Court of Appeal selected brackets (to be adjusted for inflation) for the punitive damages that are "unlikely to be less than £5,000" as otherwise the conduct probably does not justify any punitive damages award. The "conduct must be particularly deserving of condemnation for an award of as much as £25,000 to be justified and the figure of £50,000 should be regarded as the absolute maximum, involving directly officers of at least the rank of superintendent" (p. 776). The Court of Appeal in Thompson also observed that a useful rule of thumb is that the total sum of damages (including punitive damages) should not exceed three times the basic compensatory damages (p. 777)
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Lamb v. Cotogno (1987), 164 C.L.R. 1	SC	Australia	52 The High Court of Australia takes the view that the purposes of punitive damages are (1) deterrence of the wrongdoer, "other like-minded persons", and generally of "conduct of the same reprehensible kind"; and (2) the social function of "teach[ing] a wrong-doer that tort does not pay" (Lamb v. Cotogno (1987), 164 C.L.R. 1, at p. 10; XL Petroleum (N.S.W.) Pty. Ltd. v. Caltex Oil (Australia) Pty. Ltd. (1985), 155 C.L.R. 448, at p. 471, per Brennan J.). Punitive damages "serve to mark the court's condemnation" and "disapprobation" of the defendant's behaviour (Lamb, supra, at pp. 10 and 13). Punitive damages require something more than a jury's "mere disapproval" of the defendant's conduct (Uren, supra, at p. 153). The High Court has endorsed moderation and proportion in punitive awards; proportionality is relative to the circumstances of the case, and there is "no necessary proportionality" between the assessment of compensatory and punitive damages (XL Petroleum (N.S.W.) Pty., supra, per Gibbs C.J., at p. 463, and Brennan J., at p. 471; Lamb, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	XL Petroleum (N.S.W.) Pty. Ltd. v. Caltex Oil (Australia) Pty. Ltd. (1985), 155 C.L.R. 448	SC	Australia	52 The High Court of Australia takes the view that the purposes of punitive damages are (1) deterrence of the wrongdoer, "other like-minded persons", and generally of "conduct of the same reprehensible kind"; and (2) the social function of "teach[ing] a wrong-doer that tort does not pay" (Lamb v. Cotogno (1987), 164 C.L.R. 1, at p. 10; XL Petroleum (N.S.W.) Pty. Ltd. v. Caltex Oil (Australia) Pty. Ltd. (1985), 155 C.L.R. 448, at p. 471, per Brennan J.). Punitive damages "serve to mark the court's condemnation" and "disapprobation" of the defendant's behaviour (Lamb, supra, at pp. 10 and 13). Punitive damages require something more than a jury's "mere disapproval" of the defendant's conduct (Uren, supra, at p. 153). The High Court has endorsed moderation and proportion in punitive awards; proportionality is relative to the circumstances of the case, and there is "no necessary proportionality" between the assessment of compensatory and punitive damages (XL Petroleum (N.S.W.) Pty., supra, per Gibbs C.J., at p. 463, and Brennan J., at p. 471; Lamb, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Australian Consolidated Press Ltd. v. Uren (1966), 117 C.L.R. 185	SC	Australia	53 In 1966 in the companion cases of Uren, supra, and Australian Consolidated Press Ltd. v. Uren (1966), 117 C.L.R. 185, the High Court declined to adopt Rookes's "categories" of restrictions on punitive damage awards. Punitive damages are available for "conscious wrongdoing in contumelious disregard of another's rights" (Whitfeld v. De Lauret & Co. (1920), 29 C.L.R. 71 (Austl. H.C.), at p. 77, per Knox C.J.). Punitive damages are awarded "rarely" but in a wider range of torts than those prescribed in Rookes, supra. They are most commonly awarded for intentional torts but their availability is not precluded merely because the cause of action is framed in negligence if the wrongdoing is wanton, reckless or outrageous (Gray v. Motor Accident Commission (1998), 196 C.L.R. 1 (Austl. H.C.), at pp. 9 and 28; Lamb, supra). Thus punitive damages have been awarded for trespass to chattels, trespass to land, trespass to the person, deceit, reckless negligence, and defamation (Gray, supra, at pp. 27-28); and see generally, Halsbury's Laws of Australia (1995), vol. 9, 1995, "Damages", at paras. 135-505. The defendant's misconduct, and not the cause of action, thus governs the availability of punitive damages
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Whitfeld v. De Lauret & Co. (1920), 29 C.L.R. 71	SC	Australia	53 In 1966 in the companion cases of Uren, supra, and Australian Consolidated Press Ltd. v. Uren (1966), 117 C.L.R. 185, the High Court declined to adopt Rookes's "categories" of restrictions on punitive damage awards. Punitive damages are available for "conscious wrongdoing in contumelious disregard of another's rights" (Whitfeld v. De Lauret & Co. (1920), 29 C.L.R. 71 (Austl. H.C.), at p. 77, per Knox C.J.). Punitive damages are awarded "rarely" but in a wider range of torts than those prescribed in Rookes, supra. They are most commonly awarded for intentional torts but their availability is not precluded merely because the cause of action is framed in negligence if the wrongdoing is wanton, reckless or outrageous (Gray v. Motor Accident Commission (1998), 196 C.L.R. 1 (Austl. H.C.), at pp. 9 and 28; Lamb, supra). Thus punitive damages have been awarded for trespass to chattels, trespass to land, trespass to the person, deceit, reckless negligence, and defamation (Gray, supra, at pp. 27-28); and see generally, Halsbury's Laws of Australia (1995), vol. 9, 1995, "Damages", at paras. 135-505. The defendant's misconduct, and not the cause of action, thus governs the availability of punitive damages

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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Gray v. Motor Accident Commission (1998), 196 C.L.R. 1	SC	Australia	53 In 1966 in the companion cases of Uren, supra, and Australian Consolidated Press Ltd. v. Uren (1966), 117 C.L.R. 185, the High Court declined to adopt Rookes's "categories" of restrictions on punitive damage awards. Punitive damages are available for "conscious wrongdoing in contumelious disregard of another's rights" (Whitfeld v. De Lauret & Co. (1920), 29 C.L.R. 71 (Austl. H.C.), at p. 77, per Knox C.J.). Punitive damages are awarded "rarely" but in a wider range of torts than those prescribed in Rookes, supra. They are most commonly awarded for intentional torts but their availability is not precluded merely because the cause of action is framed in negligence if the wrongdoing is wanton, reckless or outrageous (Gray v. Motor Accident Commission (1998), 196 C.L.R. 1 (Austl. H.C.), at pp. 9 and 28; Lamb, supra). Thus punitive damages have been awarded for trespass to chattels, trespass to land, trespass to the person, deceit, reckless negligence, and defamation (Gray, supra, at pp. 27-28); and see generally, Halsbury's Laws of Australia (1995), vol. 9, 1995, "Damages", at paras. 135-505. The defendant's misconduct, and not the cause of action, thus governs the availability of punitive damages.
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	M'Comb v. Low (1873), 1 N.Z. Jur. 49	lower-level court	New Zealand	55 Punitive damages in tort have always been part of New Zealand's common law and have been recognized repeatedly by its Supreme Court and Court of Appeal. See, for example, M'Comb v. Low (1873), 1 N.Z. Jur. 49 (punitive damages award in malicious prosecution). After Rookes, supra, New Zealand affirmed the judicial power to mark high-handed and heinous conduct in contumelious disregard of another's rights through the award of punitive damages without limitation to Rookes's narrow categories (Taylor, supra; Donselaar v. Donselaar, [1982] 1 N.Z.L.R. 97 (C.A.); and Daniels v. Thompson, [1998] 3 N.Z.L.R. 22 (C.A.)).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Donselaar v. Donselaar, [1982] 1 N.Z.L.R. 9	lower-level court	New Zealand	55 Punitive damages in tort have always been part of New Zealand's common law and have been recognized repeatedly by its Supreme Court and Court of Appeal. See, for example, M'Comb v. Low (1873), 1 N.Z. Jur. 49 (punitive damages award in malicious prosecution). After Rookes, supra, New Zealand affirmed the judicial power to mark high-handed and heinous conduct in contumelious disregard of another's rights through the award of punitive damages without limitation to Rookes's narrow categories (Taylor, supra; Donselaar v. Donselaar, [1982] 1 N.Z.L.R. 97 (C.A.); and Daniels v. Thompson, [1998] 3 N.Z.L.R. 22 (C.A.)). 57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Daniels v. Thompson, [1998] 3 N.Z.L.R. 2	lower-level court	New Zealand	55 Punitive damages in tort have always been part of New Zealand's common law and have been recognized repeatedly by its Supreme Court and Court of Appeal. See, for example, M'Comb v. Low (1873), 1 N.Z. Jur. 49 (punitive damages award in malicious prosecution). After Rookes, supra, New Zealand affirmed the judicial power to mark high-handed and heinous conduct in contumelious disregard of another's rights through the award of punitive damages without limitation to Rookes's narrow categories (Taylor, supra; Donselaar v. Donselaar, [1982] 1 N.Z.L.R. 97 (C.A.); and Daniels v. Thompson, [1998] 3 N.Z.L.R. 22 (C.A.)).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Cook v. Evatt (No. 2), [1992] 1 N.Z.L.R. 676	lower-level court	New Zealand	56 The New Zealand courts have permitted punitive damage awards in a wide range of causes of action in both common law and equity (Cook v. Evatt (No. 2), [1992] 1 N.Z.L.R. 676 (H.C.)) and for both intentional and unintentional defendant conduct: see, for example, McLaren Transport Ltd. v. Somerville, [1996] 3 N.Z.L.R. 424 (H.C.) (negligence); Aquaculture Corp. v. New Zealand Green Mussel Co., [1990] 3 N.Z.L.R. 299 (C.A.) (breach of confidence); Coloca v. B.P. Australia Ltd., [1992] 2 V.R. 441 (S.C.) (negligence); L. v. Robinson, [2000] 3 N.Z.L.R. 499 (H.C.) (negligence). Punitive damages for negligence causing personal injury, while rare, may be awarded if, but only if, the level of negligence is "so high that it amounts to an outrageous and flagrant disregard for the plaintiff's safety, meriting condemnation and punishment" (McLaren Transport, supra, at p. 434, per Tipping J.; Ellison v. L., [1998] 1 N.Z.L.R. 416 (C.A.)).
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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Coloca v. B.P. Australia Ltd., [1992] 2 V.R. 441	lower-level court	Australia	56 The New Zealand courts have permitted punitive damage awards in a wide range of causes of action in both common law and equity (Cook v. Evatt (No. 2), [1992] 1 N.Z.L.R. 676 (H.C.)) and for both intentional and unintentional defendant conduct: see, for example, McLaren Transport Ltd. v. Somerville, [1996] 3 N.Z.L.R. 424 (H.C.) (negligence); Aquaculture Corp. v. New Zealand Green Mussel Co., [1990] 3 N.Z.L.R. 299 (C.A.) (breach of confidence); Coloca v. B.P. Australia Ltd., [1992] 2 V.R. 441 (S.C.) (negligence); L. v. Robinson, [2000] 3 N.Z.L.R. 499 (H.C.) (negligence). Punitive damages for negligence causing personal injury, while rare, may be awarded if, but only if, the level of negligence is "so high that it amounts to an outrageous and flagrant disregard for the plaintiff's safety, meriting condemnation and punishment" (McLaren Transport, supra, at p. 434, per Tipping J.; Ellison v. L., [1998] 1 N.Z.L.R. 416 (C.A.)).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	L. v. Robinson, [2000] 3 N.Z.L.R. 499	lower-level court	New Zealand	56 The New Zealand courts have permitted punitive damage awards in a wide range of causes of action in both common law and equity (Cook v. Evatt (No. 2), [1992] 1 N.Z.L.R. 676 (H.C.)) and for both intentional and unintentional defendant conduct: see, for example, McLaren Transport Ltd. v. Somerville, [1996] 3 N.Z.L.R. 424 (H.C.) (negligence); Aquaculture Corp. v. New Zealand Green Mussel Co., [1990] 3 N.Z.L.R. 299 (C.A.) (breach of confidence); Coloca v. B.P. Australia Ltd., [1992] 2 V.R. 441 (S.C.) (negligence); L. v. Robinson, [2000] 3 N.Z.L.R. 499 (H.C.) (negligence). Punitive damages for negligence causing personal injury, while rare, may be awarded if, but only if, the level of negligence is "so high that it amounts to an outrageous and flagrant disregard for the plaintiff's safety, meriting condemnation and punishment" (McLaren Transport, supra, at p. 434, per Tipping J.; Ellison v. L., [1998] 1 N.Z.L.R. 416 (C.A.)).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Ellison v. L., [1998] 1 N.Z.L.R. 416	lower-level court	New Zealand	56 The New Zealand courts have permitted punitive damage awards in a wide range of causes of action in both common law and equity (Cook v. Evatt (No. 2), [1992] 1 N.Z.L.R. 676 (H.C.)) and for both intentional and unintentional defendant conduct: see, for example, McLaren Transport Ltd. v. Somerville, [1996] 3 N.Z.L.R. 424 (H.C.) (negligence); Aquaculture Corp. v. New Zealand Green Mussel Co., [1990] 3 N.Z.L.R. 299 (C.A.) (breach of confidence); Coloca v. B.P. Australia Ltd., [1992] 2 V.R. 441 (S.C.) (negligence); L. v. Robinson, [2000] 3 N.Z.L.R. 499 (H.C.) (negligence). Punitive damages for negligence causing personal injury, while rare, may be awarded if, but only if, the level of negligence is "so high that it amounts to an outrageous and flagrant disregard for the plaintiff's safety, meriting condemnation and punishment" (McLaren Transport, supra, at p. 434, per Tipping J.; Ellison v. L., [1998] 1 N.Z.L.R. 416 (C.A.)). 57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions

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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732	lower-level court	New Zealand	57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Green v. Matheson, [1989] 3 N.Z.L.R. 564	lower-level court	New Zealand	57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14	lower-level court	New Zealand	57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136	lower-level court	New Zealand	57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	W. v. W., [1999] 2 N.Z.L.R. 1	lower-level court	New Zealand	57 New Zealand's situation is somewhat complicated by its extensive statutory scheme of no-fault benefits to compensate personal injuries from accidents in lieu of compensatory damages. However, even here the New Zealand Court of Appeal has held that the legislation does not bar the award of punitive damages for the defendant's related misconduct because the respective functions are different: the benefits under no-fault legislation compensate the victim for his or her loss without punishing the defendant, while punitive damages punish and deter the wrongdoer and are based on the quality of the defendant's conduct (Donselaar, supra; McLaren Transport, supra; Auckland City Council v. Blundell, [1986] 1 N.Z.L.R. 732; Green v. Matheson, [1989] 3 N.Z.L.R. 564; McKenzie v. Attorney-General, [1992] 2 N.Z.L.R. 14). Punitive damages awards are a "serious and exceptional remedy" (Donselaar, supra, at p. 107). They are reserved for truly outrageous conduct where the other remedies that the defendant must bear will fall short of an adequate punishment (Dunlea v. Attorney-General, [2000] 3 N.Z.L.R. 136 (C.A.); Ellison, supra; Blundell, supra; Aquaculture Corp., supra; Cook, supra). The marking out and punishment of outrageous conduct can be achieved by a relatively modest penalty that is fairly and reasonably commensurate with the gravity of the conduct being condemned (Daniels, supra; Ellison, supra; Blundell, supra). Civil actions should be stayed until criminal actions are concluded or until it is clear that they will not be instituted (W. v. W., [1999] 2 N.Z.L.R. 1 (P.C.)). Professional disciplinary sanctions against a defendant are a "factor" but not a decisive bar against the award of punitive damages (Robinson, supra).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Cooper v. O'Connell, No. 85/90-96, 1997 Ireland S.C. Lexis	SC	Ireland	59 Irish courts also emphasize the need for moderation and restraint in the award of punitive damages. The Irish Supreme Court has recognized that the power to award punitive damages is a "weapon" that can be used both in defence of, and against, liberty, and that punitive damages are a "drastic, although essential, rule grounded on public policy" (Conway, supra, at p. 512, per Griffin J.; Cooper v. O'Connell, No. 85/90-96, 1997 Ireland S.C. Lexis, June 5, 1997, at p. 8, per Keane J.). As a general principle, punitive damages are not awarded if the amount of compensatory damages constitutes a sufficient public disapproval of and punishment for the particular form of the wrongdoing. See generally, Ireland, Law Reform Commission, Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (1998).
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Day v. Woodworth, 54 U.S. (13 How.) 363 (1851)	SC	US	60 Punitive damages have not lacked for critics in the United States. However, in response to those critics who questioned "the propriety of this doctrine", the Supreme Court pointed to its history: "[I]f repeated judicial decisions for more than a century are to be received as the best exposition of what the law is, the question will not admit of argument" (Day v. Woodworth, 54 U.S. (13 How.) 363 (1851), at p. 371). Nevertheless, as early as 1872, Foster J. of the New Hampshire Supreme Court surveyed the American and English precedents in Fay v. Parker, 53 N.H. 342 (1872), and, at p. 382, uttered a much-quoted condemnation calling punitive damages a "monstrous heresy" and an "unsightly and an unhealthy excrescence, deforming the symmetry of the body of the law".
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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Liebeck v. McDonald's Restaurants, P.T.S., Inc., 1995 WL 360309	lower-level court	US	39 A second major aspect of the controversy surrounding punitive damages is related to the quantum. Substantial awards are occasionally assessed at figures seemingly plucked out of the air. The usual procedural protections for an individual faced with potential punishment in a criminal case are not available. Plaintiffs, it is said, recover punitive awards out of all proportion to just compensation. They are subjected, it is said, to "palm tree justice": Cassell, supra, at p. 1087. They are handed a financial windfall serendipitously just because, coincidentally with their claim, the court desires to punish the defendant and deter others from similar outrageous conduct. Defendants on the other hand say they suffer out of all proportion to the actual wrongs they have committed. Because the punishment is tailored to fit not only the "crime" but the financial circumstances of the defendant (i.e., to ensure that it is big enough to "sting"), defendants complain that they are being punished for who they are rather than for what they have done. The critics of punitive awards refer in terrorem to the United States experience where, for example, an Alabama jury awarded $4 million in punitive damages against a BMW dealership for failure to disclose a minor paint job to fix a cosmetic blemish on a new vehicle in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). In 1994, a jury in New Mexico awarded 81-year-old Stella Liebeck $160,000 in compensatory damages and $2.7 million in punitive damages against McDonald's Restaurants for burns resulting from a spilled cup of coffee, notwithstanding that she tried to open the cup while balancing it on her lap in the passenger seat of a car (Liebeck v. McDonald's Restaurants, P.T.S., Inc., 1995 WL 360309 (D. N.M.)). Critics of punitive damages warn against an "Americanization" of our law that, if adopted, would bring the administration of justice in this country into disrepute.

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2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Honda Motor Co. v. Oberg, 512 U.S. 415 (1994)	Sc	us	65 In Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), the court again emphasized the need for rationality. Then in TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993), it held that even a "dramatic disparity" (p. 462) between the actual and punitive award is not a controlling factor, in part because the magnitude of the potential harm to the intended victim and the possible harm to other victims if the conduct were not deterred are important considerations. (In that case, punitive damages were about ten times the compensatory damages.) The most recent decision by the U.S. Supreme Court on punitive damage awards was handed down in May 2001 in Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S.Ct. 1678 (2001). Cooper Industries held that the courts of appeal should apply a de novo, rather than abuse of discretion, standard when reviewing district court determinations of the constitutionality of punitive damages awards. The court again emphasized that, while the constitutional line is "inherently imprecise" (p. 1684) for assessing whether punishments are grossly disproportionate to the gravity of the misconduct, the three factors from BMW (1996), supra, provide "guideposts" (p. 605): (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm or potential harm to the victim caused by the defendant's actions; and (3) civil or criminal penalties imposed in other cases for
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993)	SC	US	65 In Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), the court again emphasized the need for rationality. Then in TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993), it held that even a "dramatic disparity" (p. 462) between the actual and punitive award is not a controlling factor, in part because the magnitude of the potential harm to the intended victim and the possible harm to other victims if the conduct were not deterred are important considerations. (In that case, punitive damages were about ten times the compensatory damages.) The most recent decision by the U.S. Supreme Court on punitive damage awards was handed down in May 2001 in Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S.Ct. 1678 (2001). Cooper Industries held that the courts of appeal should apply a de novo, rather than abuse of discretion, standard when reviewing district court determinations of the constitutionality of punitive damages awards. The court again emphasized that, while the constitutional line is "inherently imprecise" (p. 1684) for assessing whether punishments are grossly disproportionate to the gravity of the misconduct, the three factors from BMW (1996), supra, provide "guideposts" (p. 605): (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm or potential harm to the victim caused by the defendant's actions; and (3) civil or criminal penalties imposed in other cases for
2002	Whiten v. Pilot Insurance Co.	2/22/2002	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1956/index.do	Whiten v. Pilot Insurance Co., [2002] 1 S.C.R. 595, 2002 SCC 18	Binnie J.	majority	Ontario	Insurance Torts	C	referred to	Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S.Ct. 1678 (2001)	SC	US	65 In Honda Motor Co. v. Oberg, 512 U.S. 415 (1994), the court again emphasized the need for rationality. Then in TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993), it held that even a "dramatic disparity" (p. 462) between the actual and punitive award is not a controlling factor, in part because the magnitude of the potential harm to the intended victim and the possible harm to other victims if the conduct were not deterred are important considerations. (In that case, punitive damages were about ten times the compensatory damages.) The most recent decision by the U.S. Supreme Court on punitive damage awards was handed down in May 2001 in Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S.Ct. 1678 (2001). Cooper Industries held that the courts of appeal should apply a de novo, rather than abuse of discretion, standard when reviewing district court determinations of the constitutionality of punitive damages awards. The court again emphasized that, while the constitutional line is "inherently imprecise" (p. 1684) for assessing whether punishments are grossly disproportionate to the gravity of the misconduct, the three factors from BMW (1996), supra, provide "guideposts" (p. 605): (1) the degree of the defendant's reprehensibility or culpability; (2) the relationship between the penalty and the harm or potential harm to the victim caused by the defendant's actions; and (3) civil or criminal penalties imposed in other cases for
2002	R. v. Fliss	2/21/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1954/index.do	R. v. Fliss, [2002] 1 S.C.R. 535, 2002 SCC 16	Binnie J.	majority	British Columbia	Constitutional law Criminal law	C	referred to	Lopez v. United States, 373 U.S. 427 (1963)	SC	US	47 In Duarte, supra, the Court established the principle that the secret recording of a conversation by one of the participants who is an agent of the state is a violation of s. 8 of the Charter . It intrudes on a reasonable expectation of privacy and annihilates the very important right to choose the range of our listeners (pp. 44 and 51). In that case, the accused and others discussed a cocaine transaction with an undercover officer and an informer. The conversations were secretly recorded. The officer made notes of the relevant conversations based on his review of the recordings which had not been judicially authorized. The Ontario Court of Appeal, per Cory J.A. (as he then was), held that, because the witness was himself a participant in the conversations, there was no violation of s. 8 (reported at (1987), 61 O.R. (2d) 385 (sub nom. R. v. Sanelli)). The agent of the state had heard nothing that the accused did not intend him to hear. A similar position had been adopted by the United States Supreme Court in Lopez v. United States, 373 U.S. 427 (1963).
2002	R. v. Law	2/7/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1947/index.do	R. v. Law, [2002] 1 S.C.R. 227, 2002 SCC 10	the Court	unanimous	New Brunswick	Constitutional law	C	referred to	United States v. Procopio, 88 F.3d 21 (1996)	lower-level court	US	17 Courts have, to be sure, recognized situations where it is unreasonable to expect personal property or information to remain private. It has been held that an individual can effectively abandon his own property by relinquishing any privacy interest in it: see Stillman, supra. It has also been implied that where the police recover property that has been cast off or stolen, they may infer it has been "abandoned" for the purposes of their investigation: R. v. LeBlanc (1981), 64 C.C.C. (2d) 31 (N.B.C.A.), cited in Dyment, supra, at p. 435; see also, United States v. Procopio, 88 F.3d 21 (1st Cir. 1996). Without more, however, the mere fact that the police recover lost or stolen property is insufficient to support an inference that the owner voluntarily relinquished his expectation of privacy in the item. The question remains: on the facts of the case, did the owner have a reasonable expectation of privacy in the item, or had he relinquished it?
2002	R. v. Law	2/7/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1947/index.do	R. v. Law, [2002] 1 S.C.R. 227, 2002 SCC 10	the Court	unanimous	New Brunswick	Constitutional law	C	referred to	United States v. Sumlin, 909 F.2d 1218 (1990)	lower-level court	US	27 The respondent attempts to rely on the plain view doctrine, arguing that evidence that comes within the view of a "lawfully positioned" officer may be admissible if it is discovered inadvertently. Many of the authorities cited by the respondent may be characterized as plain view searches: see United States v. Sumlin, 909 F.2d 1218 (8th Cir. 1990); Coolidge v. New Hampshire, 403 U.S. 443 (1971); United States v. O'Bryant, 775 F.2d 1528 (11th Cir. 1985). In this case, I agree with McKee Prov. Ct. J. that the incriminating evidence was neither immediately obvious to Corporal Desroches nor discovered inadvertently. On the contrary, it came to light only after he examined, translated and photocopied several documents. Corporal Desroches admitted there was nothing facially wrong with the documents. He testified they contained a series of numbers and Chinese characters, and that he lacked both accounting expertise and proficiency in Chinese. Not having detected anything incriminating through the unaided use of his senses, Corporal Desroches cannot rely on the plain view doctrine either to establish reasonable and probable grounds to search, or to avoid the requirement of reasonable and probable grounds entirely; see W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (3rd ed. 1996), at pp. 395-98.
2002	R. v. Law	2/7/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1947/index.do	R. v. Law, [2002] 1 S.C.R. 227, 2002 SCC 10	the Court	unanimous	New Brunswick	Constitutional law	C	referred to	Coolidge v. New Hampshire, 403 U.S. 443 (1971)	SC	US	27 The respondent attempts to rely on the plain view doctrine, arguing that evidence that comes within the view of a "lawfully positioned" officer may be admissible if it is discovered inadvertently. Many of the authorities cited by the respondent may be characterized as plain view searches: see United States v. Sumlin, 909 F.2d 1218 (8th Cir. 1990); Coolidge v. New Hampshire, 403 U.S. 443 (1971); United States v. O'Bryant, 775 F.2d 1528 (11th Cir. 1985). In this case, I agree with McKee Prov. Ct. J. that the incriminating evidence was neither immediately obvious to Corporal Desroches nor discovered inadvertently. On the contrary, it came to light only after he examined, translated and photocopied several documents. Corporal Desroches admitted there was nothing facially wrong with the documents. He testified they contained a series of numbers and Chinese characters, and that he lacked both accounting expertise and proficiency in Chinese. Not having detected anything incriminating through the unaided use of his senses, Corporal Desroches cannot rely on the plain view doctrine either to establish reasonable and probable grounds to search, or to avoid the requirement of reasonable and probable grounds entirely; see W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (3rd ed. 1996), at pp. 395-98.
2002	R. v. Law	2/7/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1947/index.do	R. v. Law, [2002] 1 S.C.R. 227, 2002 SCC 10	the Court	unanimous	New Brunswick	Constitutional law	C	referred to	United States v. O'Bryant, 775 F.2d 1528 (1985)	lower-level court	US	27 The respondent attempts to rely on the plain view doctrine, arguing that evidence that comes within the view of a "lawfully positioned" officer may be admissible if it is discovered inadvertently. Many of the authorities cited by the respondent may be characterized as plain view searches: see United States v. Sumlin, 909 F.2d 1218 (8th Cir. 1990); Coolidge v. New Hampshire, 403 U.S. 443 (1971); United States v. O'Bryant, 775 F.2d 1528 (11th Cir. 1985). In this case, I agree with McKee Prov. Ct. J. that the incriminating evidence was neither immediately obvious to Corporal Desroches nor discovered inadvertently. On the contrary, it came to light only after he examined, translated and photocopied several documents. Corporal Desroches admitted there was nothing facially wrong with the documents. He testified they contained a series of numbers and Chinese characters, and that he lacked both accounting expertise and proficiency in Chinese. Not having detected anything incriminating through the unaided use of his senses, Corporal Desroches cannot rely on the plain view doctrine either to establish reasonable and probable grounds to search, or to avoid the requirement of reasonable and probable grounds entirely; see W. R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment (3rd ed. 1996), at pp. 395-98.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2002	R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.	1/24/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1945/index.do	R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd., [2002] 1 S.C.R. 156, 2002 SCC 8	the Court	unanimous	Saskatchewan	Labour law	C	referred to	National Labor Relations Board v. Fruit & Vegetable Packers & Warehousemen, Local 760, 377 U.S. 58 (1964)	SC	US	99 The United States Supreme Court recognized this distinction in National Labor Relations Board v. Fruit & Vegetable Packers & Warehousemen, Local 760, 377 U.S. 58 (1964), at pp. 63-64 and 70: All that the legislative history shows in the way of an "isolated evil" believed to require proscription of peaceful consumer picketing at secondary sites, was its use to persuade the customers of the secondary employer to cease trading with him in order to force him to cease dealing with, or to put pressure upon, the primary employer. This narrow focus reflects the difference between such conduct and peaceful picketing at the secondary site directed only at the struck product. In the latter case, the union's appeal to the public is confined to its dispute with the primary employer, since the public is not asked to withhold its patronage from the secondary employer, but only to boycott the primary employer's goods. On the other hand, a union appeal to the public at the secondary site not to trade at all with the secondary employer goes beyond the goods of the primary employer, and seeks the public's assistance in forcing the secondary employer to cooperate with the union in its primary dispute. . . . Peaceful consumer picketing to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer, is poles apart from such picketing which only persuades his customers not to buy the struck product.
2002	Suresh v. Canada (Minister of Citizenship and Immigration)	1/11/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1937/index.do	Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1	The Court	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Hat'm Abu Zayda v. Israel General Security Service, 38 I.L.M. 1471 (1999)	SC	Israel	74 Finally, we note that the Supreme Court of Israel sitting as the High Court of Justice and the House of Lords have rejected torture as a legitimate tool to use in combatting terrorism and protecting national security: H.C. 6536/95, Hat'm Abu Zayda v. Israel General Security Service, 38 I.L.M. 1471 (1999); Rehman, supra, at para. 54, per Lord Hoffmann.
2002	Suresh v. Canada (Minister of Citizenship and Immigration)	1/11/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1937/index.do	Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1	The Court	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Secretary of State for the Home Department v. Rehman, [2001] 3 W.L.R. 877	lower-level court	UK	31 The first factor suggests that Parliament intended only a limited right of appeal. Although the Minister's s. 53(1)(b) opinion is not protected by a privative clause, it may only be appealed by leave of the Federal Court, Trial Division (s. 82.1(1)), and that leave decision may not itself be appealed (s. 82.2). The second factor, the relative expertise of the decision-maker, again favours deference. As stated in Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, "[t]he fact that the formal decision-maker is the Minister is a factor militating in favour of deference" (para. 59). The Minister, as noted by Lord Hoffmann in Secretary of State for the Home Department v. Rehman, [2001] 3 W.L.R. 877 (H.L.), at para. 62, "has access to special information and expertise in . . . matters [of national security]". The third factor — the purpose of the legislation — again favours deference. This purpose, as discussed in Pushpanathan, supra, at para. 73, is to permit a "humanitarian balance" of various interests — "the seriousness of the danger posed to Canadian society" on the one hand, and "the danger of persecution upon refoulement"on the other. Again, the Minister is in a superior position to a court in making this assessment. Finally, the nature of the case points to deference. The inquiry is highly fact-based and contextual. As in Baker, supra, at para. 61, the s. 53(1)(b) danger opinion "involves a considerable appreciation of the facts of that person's case, and is not one which involves the application or interpretation of definitive legal rules", suggesting it merits a wide degree of deference.
2002	Suresh v. Canada (Minister of Citizenship and Immigration)	1/11/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1937/index.do	Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1	The Court	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147	SC	UK (HL)	37 The passages in Baker referring to the "weight" of particular factors (see paras. 68 and 73-75) must be read in this context. It is the Minister who was obliged to give proper weight to the relevant factors and none other. Baker does not authorize courts reviewing decisions on the discretionary end of the spectrum to engage in a new weighing process, but draws on an established line of cases concerning the failure of ministerial delegates to consider and weigh implied limitations and/or patently relevant factors: see Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147 (H.L.); Re Sheehan and Criminal Injuries Compensation Board (1974), 52 D.L.R. (3d) 728 (Ont. C.A.); Maple Lodge Farms Ltd. v. Government of Canada, [1982] 2 S.C.R. 2; Dagg, supra, at paras. 111-12, per La Forest J. (dissenting on other grounds).
2002	Suresh v. Canada (Minister of Citizenship and Immigration)	1/11/2002	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1937/index.do	Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1	The Court	unanimous	Federal Court of Appeal	Administrative law Constitutional law	C	referred to	R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [1999] 2 W.L.R. 827	lower-level court	UK	64 Last, a number of international authorities state that the prohibition on torture is an established peremptory norm: see Hannikainen, supra, at p. 509; M. N. Shaw, International Law (4th ed. 1997), at pp. 203-4; Prosecutor v. Furundzija, 38 I.L.M. 317 (1999) (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber, No. IT-95-17/1-T, December 10, 1998); R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3), [1999] 2 W.L.R. 827 (H.L.). Others do not explicitly set it out as a peremptory norm; however, they do generally accept that the protection of human rights or humanitarian rights is a peremptory norm: see I. Brownlie, Principles of Public International Law (5th ed. 1998), at p. 515, and C. Emanuelli, Droit international public: Contribution à l'étude du droit international selon une perspective canadienne (1998), at sections 251, 1394 and 1396.
2001	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1932/index.do	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90	BINNIE J.	unanimous	Federal Court of Appeal	Courts	C	referred to	In re Treco, 240 F.3d 148 (2001)	lower-level court	US	23 For present purposes, I accept the following convenient definitions of the "universalist approach" and the "territorialist approach" (sometimes referred to as the "Grab Rule"): . . . courts and commentators have identified two general approaches to distributing assets in such proceedings. Under the "territoriality" approach, or the "Grab Rule," the court in each jurisdiction where the debtor has assets distributes the assets located in that jurisdiction pursuant to local rules. Under the "universality" approach, a primary insolvency proceeding is instituted in the debtor's domiciliary country, and ancillary courts in other jurisdictions -- typically in jurisdictions where the debtor has assets -- defer to the foreign proceeding and in effect collaborate to facilitate the centralized liquidation of the debtor's estate according to the rules of the debtor's home country. (In re Treco, 240 F.3d 148 (2d Cir. 2001), at p. 153) 77 Professor J. S. Ziegel contrasts the "universalist" approach to the "territorialist" approach, earlier referred to as the "Grab Rule", and concludes that most jurisdictions exhibit elements of both approaches: International insolvency jurists have long classified countries and their conflict of laws rules according to their willingness to recognize and give effect to foreign insolvency orders and judgments. Those regimes that are hospitable to extending such recognition are labelled universalist; those that deny such recognition are classified as territorialist. Common law countries are often described as belonging among the universalist families, while civil law systems are believed to be territorialist. However, the pigeonholing is misleading. Common law countries differ as widely in their international insolvency rules as do civil law jurisdictions. On closer examination it will be found that some of the jurisdictions that claim to be universalist only practise a very diluted form of universalism while countries labelled as territorialist in fact extend varying measures of recognition to foreign insolvency orders and foreign insolvency representatives. ("Ships at Sea, International Insolvencies, and Divided Courts" (1998), 50 C.B.R. (3d) 310. See also In re Treco, supra, and Castel, supra, at pp. 553-54.)

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2001	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1932/index.do	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90	BINNIE J.	unanimous	Federal Court of Appeal	Courts	C	referred to	Hilton v. Guyot, 159 U.S. 113 (1895)	SC	US	69 Subsequently, in Spencer v. The Queen, [1985] 2 S.C.R. 278, at p. 283, Estey J. accepted as accurate the following definition of international comity: "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws: Hilton v. Guyot, 159 U.S. 113 (1895), at pp. 163-64
2001	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1932/index.do	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90	BINNIE J.	unanimous	Federal Court of Appeal	Courts	C	referred to	Canada Southern Railway Co. v. Gebhard, 109 U.S. 527 (1883)	SC	US	75 There is much to be said for the proposition that primary insolvency proceedings having been instituted in Belgium, other jurisdictions where the bankrupt possessed assets should cooperate to the extent permitted by their respective laws with the Belgian courts. The need for such international cooperation in bankruptcy and insolvency has been evident for a very long time, though the ever-continuing ascendency of multi-national enterprises and acceleration towards a global economy have made the underlying problems more acute. As long ago as 1883, in the case of Canada Southern Railway Co. v. Gebhard, 109 U.S. 527 (1883), the United States Supreme Court said, at p. 539: Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries
2001	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1932/index.do	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90	BINNIE J.	unanimous	Federal Court of Appeal	Courts	C	referred to	The Atlantic Star, [1973] 2 All E.R. 175	SC	UK (HL)	93 The appellants' strongest argument is that the dispute is but weakly connected to Canada. This Court, however, in Antares Shipping Corp. v. The Ship "Capricorn", [1977] 2 S.C.R. 422, recognized that lack of substantive connections to any particular jurisdiction, including its home port, is a feature of ships engaged in international maritime commerce. In that case, the Court refused to stay proceedings in rem in which three Liberian corporations contested in Canada the ownership of a Liberian registered ship. Liberia, of course, is a flag of convenience. Ships registered there may never have occasion to "go home". In Antares Shipping, the only connection to Canada was that the ship was arrested at the suit of one of the Liberian corporations while it was in Canadian waters. Ritchie J., speaking for the majority, recognized that ocean-going ships present a particular problem. At p. 453, he adopted the following observations of Lord Simon, dissenting, in The Atlantic Star, [1973] 2 All E.R. 175 (H.L.), at p. 197: Ships are elusive. The power to arrest in any port and found thereon an action in rem is increasingly required with the custom of ships being owned singly and sailing under flags of convenience. A large tanker may by negligent navigation cause extensive damage to beaches or to other shipping: she will take very good care to keep out of the ports of the 'convenient' forum. If the aggrieved party manages to arrest her elsewhere, it will be said forcibly (as the appellants say here): 'The defendant has no sort of connection with the forum except that she was arrested within its jurisdiction.' But that will frequently be the only way of securing justice. Belgium is not a "flag of convenience" like Liberia but the principle remains the same. The "real and substantial connection" test must take into account
2001	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1932/index.do	Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of), [2001] 3 S.C.R. 907, 2001 SCC 90	BINNIE J.	unanimous	Federal Court of Appeal	Courts	R		Commercial Instruments and Maritime Liens Act, 46 U.S.C. § 31342.	statute	US	26 The in rem interest in ships took many forms, some created by statute, others by mortgage, still others by possession. One of the most ancient and effective forms of security was (and is) the maritime lien. In this action, Holt claims a maritime lien for stevedoring services pursuant to the U.S. Commercial Instruments and Maritime Liens Act, 46 U.S.C. § 31342. Broadly speaking, a maritime lien arises without registration or other formality when debts of a specific nature are incurred by or on behalf of a ship. The lien creates a charge which "goes with the ship everywhere, even in the hands of a purchaser for value without notice, and has a certain ranking with other maritime liens, all of which take precedence over mortgages" (The Tolten, [1946] P. 135 (C.A.), per Scott L.J., at p. 150). It may be described, in that sense, as a "secret lien".
2001	Sam Lévy & Associés Inc. v. Azco Mining Inc.	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1934/index.do	Sam Lévy & Associés Inc. v. Azco Mining Inc., [2001] 3 S.C.R. 978, 2001 SCC 92	BINNIE J.	unanimous	Quebec	Bankruptcy and insolvency	C	referred to	Industrial Packaging Products Co. v. Fort Pitt Packaging International, Inc., 161 A.2d 19 (1960)	lower-level court	US	64 It could be argued that the public policy favouring a "single control" of bankruptcy proceedings and opposition to their fragmentation demands that a choice of forum clause receive lesser effect in bankruptcy than in the context of ordinary commercial litigation: Industrial Packaging Products Co. v. Fort Pitt Packaging International, Inc., 161 A.2d 19 (Pa. 1960); In re Treco, 239 B.R. 36 (S.D.N.Y. 1999), aff'd 240 F.3d 148 (2d Cir. 2001).
2001	Sam Lévy & Associés Inc. v. Azco Mining Inc.	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1934/index.do	Sam Lévy & Associés Inc. v. Azco Mining Inc., [2001] 3 S.C.R. 978, 2001 SCC 92	BINNIE J.	unanimous	Quebec	Bankruptcy and insolvency	C	referred to	In re Treco, 239 B.R. 36 (1999), aff'd 240 F.3d 148 (2001)	lower-level court	US	64 It could be argued that the public policy favouring a "single control" of bankruptcy proceedings and opposition to their fragmentation demands that a choice of forum clause receive lesser effect in bankruptcy than in the context of ordinary commercial litigation: Industrial Packaging Products Co. v. Fort Pitt Packaging International, Inc., 161 A.2d 19 (Pa. 1960); In re Treco, 239 B.R. 36 (S.D.N.Y. 1999), aff'd 240 F.3d 148 (2d Cir. 2001).
2001	Sam Lévy & Associés Inc. v. Azco Mining Inc.	12/20/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1934/index.do	Sam Lévy & Associés Inc. v. Azco Mining Inc., [2001] 3 S.C.R. 978, 2001 SCC 92	BINNIE J.	unanimous	Quebec	Bankruptcy and insolvency	C	referred to	Coastal Steel Corp. v. Tilghman Wheelabrator Ltd., 709 F.2d 190 (1983)	lower-level court	US	67 The implementation of these public policies might be expected to take priority over private "choice of forum" agreements where the two come into conflict, as indeed Robert J.A. concluded in the Quebec Court of Appeal. A similar position is expressed in I. F. Fletcher, Insolvency in Private International Law (1999), at p. 47, fn. 73: [P]rivate contractual arrangements between parties cannot prevail over the exercise of bankruptcy jurisdiction, which belongs to the realm of public policy, serving a wider spread of interests including, ultimately, those of society at large. In the United States, however, there is a competing body of judicial opinion that a trustee in bankruptcy who sues on an agreement containing a forum selection clause should, as a general rule, be bound by that clause to the same extent as the parties thereto: see Coastal Steel Corp. v. Tilghman Wheelabrator Ltd., 709 F.2d 190 (3d Cir. 1983); In re Diaz Contracting, Inc., 817 F.2d 1047 (3d Cir. 1987), and Hays and Co. v. Merrill Lynch, 885 F.2d 1149
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2001	Osoyoos Indian Band v. Oliver (Town)	12/7/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1927/index.do	Osoyoos Indian Band v. Oliver (Town), [2001] 3 S.C.R. 746, 2001 SCC 85	Gonthier J.	dissenting	British Columbia	Aboriginal law	C	D	Rugby Joint Water Board v. Shaw-Fox, [1973] A.C. 202	SC	UK (HL)	149 The general law of expropriation is itself entirely a creature of statute: see Rugby Joint Water Board v. Shaw-Fox, [1973] A.C. 202 (H.L.), and E. C. E. Todd, The Law of Expropriation and Compensation in Canada (2nd ed. 1992), at p. 27. In Todd's book at p. 29, he notes that "a power of expropriation conferred for a particular purpose ceases to exist upon the completion of that purpose". This in no way lends support to the notion that a reversionary interest ought to accompany every expropriation for a public purpose where the public work is not guaranteed to last in perpetuity. Rather it means simply that the government's ability to first exercise a power to expropriate is coterminous with the need for the land for the public purpose. In other words, as a matter of common sense, if the purpose is exhausted before the power is exercised, then it really is too late to invoke the power to expropriate for that purpose. On the other hand, once the power to expropriate is exercised and the land taken, the completion of the initial purpose is irrelevant
2001	Osoyoos Indian Band v. Oliver (Town)	12/7/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1927/index.do	Osoyoos Indian Band v. Oliver (Town), [2001] 3 S.C.R. 746, 2001 SCC 85	Iacobucci J.	majority	British Columbia	Aboriginal law	C	referred to	Belfast Corp. v. O.D. Cars Ltd., [1960] A.C. 490	SC	UK (HL)	86 To elaborate further, the word "take" in relation to land does not necessarily refer to the acquisition of full title. Rather, The Dictionary of Canadian Law (2nd ed. 1995) defines "take lands" as including to "enter upon, take possession of, use and take lands for a limited time or otherwise or for a limited estate or interest". Similarly, several courts including this one have acknowledged that a "taking" of land includes the acquisition of possession and other interests less than full title: see The Queen in right of British Columbia v. Tener, [1985] 1 S.C.R. 533, at p. 563; Manitoba Fisheries Ltd. v. The Queen, [1979] 1 S.C.R. 101, at pp. 109-10, citing Belfast Corp. v. O.D. Cars Ltd., [1960] A.C. 490 (H.L.), at p. 523; Saskatchewan Land and Homestead Co. v. Calgary and Edmonton Railway Co. (1913), 14 D.L.R. 193 (Alta. S.C.), at p. 197, affirmed (1915), 51 S.C.R. 1; Canada (Attorney General) v. Canadian Pacific Ltd. (2000), 79 B.C.L.R. (3d) 62, 2000 BCSC 933.
2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Bastarache J.	dissenting	Ontario	Constitutional law Criminal law	C	D	United States v. Robinson, 414 U.S. 218 (1973)	SC	US	63 The U.S. Supreme Court has considered the common law power to search incident to arrest on several occasions. In United States v. Robinson, 414 U.S. 218 (1973), the police arrested the accused for operating a vehicle after his operator's permit had been revoked. They conducted a "pat-down" search of the accused's clothing and pockets and found a quantity of heroin on his person. The majority held that this search did not contravene the Fourth Amendment to the Constitution. In determining whether the police had the power to conduct such a search, the majority reviewed the U.S. precedents, and concluded that they had recognized a power to search a lawfully arrested person as an incident to arrest. Such power was found to be well-rooted in the American legal tradition, and served the practical function of removing weapons from an arrestee and preventing the destruction of evidence in his or her possession. In reaching its conclusion, the majority (per Rehnquist J., as he then was) stated the following (at p. 235): The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment. The reasoning in Robinson was reiterated by the Supreme Court in Gustafson v. Florida, 414 U.S. 260 (1973), a companion case to Robinson, which also involved a pat-down and a search of the arrestee's pockets upon arrest.
2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Iacobucci and Arbour JJ.	majority	Ontario	Constitutional law Criminal law	C	referred to	Lindley v. Rutter, [1980] 3 W.L.R. 660 (Q.B.), and R. v. Naylor, [1979] Crim. L.R. 532.	lower-level court	UK	54 The power of search and seizure incident to arrest was considered more recently in England in the cases of Lindley v. Rutter, [1980] 3 W.L.R. 660 (Q.B.), and R. v. Naylor, [1979] Crim. L.R. 532. Both cases involved searches of female detainees at the police station carried out by female officers, and the removal of articles worn by the detainees. In Lindley, the article removed was a brassiere. In Naylor, the officer removed the detainee's earrings, rings and necklace. In both cases, it was a matter of police policy to remove the items in question. The detainees in both cases resisted the search and seizure and were charged with assaulting a police officer. In Lindley, the defendant successfully appealed her conviction for unlawfully assaulting a police officer. The court concluded that, as the search and removal of the brassiere was not justified, the defendant was entitled to use reasonable force to resist and the assault charge could not stand. In Naylor, the trial judge directed the jury to return a verdict of not guilty on the basis that the police officers did not have the right to search the plaintiff and remove her jewellery and that the defendant was therefore entitled to resist in the way that she did
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2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Iacobucci and Arbour JJ.	majority	Ontario	Constitutional law Criminal law	C	referred to	Gustafson v. Florida, 414 U.S. 260 (1973)	Sc	US	63 The U.S. Supreme Court has considered the common law power to search incident to arrest on several occasions. In United States v. Robinson, 414 U.S. 218 (1973), the police arrested the accused for operating a vehicle after his operator's permit had been revoked. They conducted a "pat-down" search of the accused's clothing and pockets and found a quantity of heroin on his person. The majority held that this search did not contravene the Fourth Amendment to the Constitution. In determining whether the police had the power to conduct such a search, the majority reviewed the U.S. precedents, and concluded that they had recognized a power to search a lawfully arrested person as an incident to arrest. Such power was found to be well-rooted in the American legal tradition, and served the practical function of removing weapons from an arrestee and preventing the destruction of evidence in his or her possession. In reaching its conclusion, the majority (per Rehnquist J., as he then was) stated the following (at p. 235): The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment. The reasoning in Robinson was reiterated by the Supreme Court in Gustafson v. Florida, 414 U.S. 260 (1973), a companion case to Robinson, which also involved a pat-down and a search of the arrestee's pockets upon arrest.

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2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Iacobucci and Arbour JJ.	majority	Ontario	Constitutional law Criminal law	R		Crimes Act 1914 (Austl.), Part 1AA, c. 3C, s. 1 "strip search".	statute	Australia	47 The appellant submits that the term "strip search" is properly defined as follows: the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments. This definition in essence reflects the definition of a strip search that has been adopted in various statutory materials and policy manuals in Canada and other jurisdictions (see for example: Toronto Police Service, Policy & Procedure Manual: Search of Persons, Arrest & Release (1999), at p. 3; Crimes Act 1914 (Austl.), Part 1AA, c. 3C, s. 1 "strip search"; Cal. Penal Code § 4030 (West 2000); Colo. Rev. Stat. Ann. § 16-3-405 (West 1998); Wash. Rev. Code Ann. § 10.79.070(1) (West 1990)). In our view, this definition accurately captures the meaning of the term "strip search" and we adopt it for the purpose of these reasons. This definition distinguishes strip searches from less intrusive "frisk" or "pat-down" searches, which do not involve the removal of clothing, and from more intrusive body cavity searches, which involve a physical inspection of the detainee's genital or anal regions. While the mouth is a body cavity, it is not encompassed by the term "body cavity search". Searches of the mouth do not involve the same privacy concerns, although they may raise other health concerns for both the detainee and for those conducting the search.
2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Iacobucci and Arbour JJ.	majority	Ontario	Constitutional law Criminal law	R		Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60.	statute	UK	8 My colleagues refer to the English legislation, the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, as authority for the requirement that searches be conducted in police stations. Although foreign legislation can be useful as a source of criteria to determine the reasonableness of a search, I think it is clearly excessive to adopt foreign legislation to reinvent the common law rule in Canada. This is particularly inopportune given that the foreign legislation referred to by my colleagues was specifically adopted to supersede the common law. In my view, the proposed rule that all strip searches proceed at a police station absent exigent circumstances should be left to Parliament. 57 The common law power to carry out a personal search upon arrest in England has been superseded by the statutory powers of search set out in the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60 ("P.A.C.E."). The four main categories of search under the P.A.C.E. scheme are the "superficial" search, "full" search, "strip" search and "intimate" search. Superficial searches do not require the suspect to remove any indoor clothing, while a full search may involve the removal of clothing but does not involve the removal of underclothing.
2001	R. v. Golden	12/6/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1924/index.do	R. v. Golden, [2001] 3 S.C.R. 679, 2001 SCC 83	Iacobucci and Arbour JJ.	majority	Ontario	Constitutional law Criminal law	R		Wash. Rev. Code Ann. § 10.79.070(1) (West 1990).	lower-level statute	US	47 The appellant submits that the term "strip search" is properly defined as follows: the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts (in the case of a female), or undergarments. This definition in essence reflects the definition of a strip search that has been adopted in various statutory materials and policy manuals in Canada and other jurisdictions (see for example: Toronto Police Service, Policy & Procedure Manual: Search of Persons, Arrest & Release (1999), at p. 3; Crimes Act 1914 (Austl.), Part 1AA, c. 3C, s. 1 "strip search"; Cal. Penal Code § 4030 (West 2000); Colo. Rev. Stat. Ann. § 16-3-405 (West 1998); Wash. Rev. Code Ann. § 10.79.070(1) (West 1990)). In our view, this definition accurately captures the meaning of the term "strip search" and we adopt it for the purpose of these reasons. This definition distinguishes strip searches from less intrusive "frisk" or "pat-down" searches, which do not involve the removal of clothing, and from more intrusive body cavity searches, which involve a physical inspection of the detainee's genital or anal regions. While the mouth is a body cavity, it is not encompassed by the term "body cavity search". Searches of the mouth do not involve the same privacy concerns, although they may raise other health concerns for both the detainee and for those conducting the search.
2001	Cooper v. Hobart	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1920/index.do	Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79	McLachlin C.J. and Major	unanimous	British Columbia	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	1 The present appeal revisits the Anns test (from Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.)) and, in particular, highlights and hones the role of policy concerns in determining the scope of liability for negligence. The appellant is an investor who alleges that the Registrar of Mortgage Brokers, a statutory regulator, is liable in negligence for failing to oversee the conduct of an investment company which the Registrar licensed. The question is whether the Registrar owes a private law duty of care to members of the investing public giving rise to liability in negligence for economic losses that the investors sustained. Such a duty of care is as yet unrecognized by Canadian courts. For the reasons that follow, we find that this is not a proper case in which to recognize a new duty of care. In the course of these reasons, we attempt to clarify the distinctive policy considerations which impact each stage of the Anns analysis.
2001	Cooper v. Hobart	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1920/index.do	Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79	McLachlin C.J. and Major	unanimous	British Columbia	Torts	C	referred to	Yuen Kun Yeu v. Attorney-General of Hong Kong, [1988] 1 A.C. 175	SC	UK (PC)	29 Nevertheless, it is important from the point of view of methodology and clarity in the law to be clear on what falls to be considered at e

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2001	Cooper v. Hobart	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1920/index.do	Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79	McLachlin C.J. and Major	unanimous	British Columbia	Torts	C	referred to	Davis v. Radcliffe, [1990] 2 All E.R. 536	SC	UK (PC)	35 The factors which may satisfy the requirement of proximity are diverse and depend on the circumstances of the case. One searches in vain for a single unifying characteristic. As stated by McLachlin J. (as she then was) in Canadian National Railway Co. v. Norsk Pacific Steamship Co., [1992] 1 S.C.R. 1021, at p. 1151: "[p]roximity may be usefully viewed, not so much as a test in itself, but as a broad concept which is capable of subsuming different categories of cases involving different factors" (cited with approval in Hercules Managements, supra, at para. 23). Lord Goff made the same point in Davis v. Radcliffe, [1990] 2 All E.R. 536 (P.C.), at p. 540: . . . it is not desirable, at least in the present stage of development of the law, to attempt to state in broad general propositions the circumstances in which such proximity may or may not be held to exist. On the contrary, following the expression of opinion by Brennan J in Sutherland Shire Council v Heyman (1985) 60 ALR 1 at 43-44, it is considered preferable that 'the law should develop categories of negligence incrementally and by analogy with established categories'
2001	Cooper v. Hobart	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1920/index.do	Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79	McLachlin C.J. and Major	unanimous	British Columbia	Torts	C	referred to	Alcock v. Chief Constable of the South Yorkshire Police, [1991] 4 All E.R. 907	SC	UK (HL)	36 What then are the categories in which proximity has been recognized? First, of course, is the situation where the defendant's act foreseeably causes physical harm to the plaintiff or the plaintiff's property. This has been extended to nervous shock (see, for example, Alcock v. Chief Constable of the South Yorkshire Police, [1991] 4 All E.R. 907 (H.L.)). Yet other categories are liability for negligent misstatement: Hedley Byrne & Co. v. Heller & Partners Ltd., [1963] 2 All E.R. 575 (H.L.), and misfeasance in public office. A duty to warn of the risk of danger has been recognized: Rivtow Marine Ltd. v. Washington Iron Works, [1974] S.C.R. 1189. Again, a municipality has been held to owe a duty to prospective purchasers of real estate to inspect housing developments without negligence: Anns, supra; Kamloops, supra. Similarly, governmental authorities who have undertaken a policy of road maintenance have been held to owe a duty of care to execute the maintenance in a non-negligent manner: Just v. British Columbia, [1989] 2 S.C.R. 1228, Swinamer v. Nova Scotia (Attorney General), [1994] 1 S.C.R. 445, etc. Relational economic loss (related to a contract's performance) may give rise to a tort duty of care in certain situations, as where the claimant has a possessory or proprietary interest in the property, the general average cases, and cases where the relationship between the claimant and the property owner constitutes a joint venture: Norsk, supra; Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd., [1997] 3 S.C.R. 1210. When a case falls within one of these situations or an analogous one and reasonable foreseeability is established, a prima facie duty of care may be posited.
2001	Cooper v. Hobart	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1920/index.do	Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79	McLachlin C.J. and Major	unanimous	British Columbia	Torts	C	referred to	Hedley Byrne & Co. v. Heller & Partners Ltd., [1963] 2 All E.R. 575	SC	UK (HL)	36 What then are the categories in which proximity has been recognized? First, of course, is the situation where the defendant's act foreseeably causes physical harm to the plaintiff or the plaintiff's property. This has been extended to nervous shock (see, for example, Alcock v. Chief Constable of the South Yorkshire Police, [1991] 4 All E.R. 907 (H.L.)). Yet other categories are liability for negligent misstatement: Hedley Byrne & Co. v. Heller & Partners Ltd., [1963] 2 All E.R. 575 (H.L.), and misfeasance in public office. A duty to warn of the risk of danger has been recognized: Rivtow Marine Ltd. v. Washington Iron Works, [1974] S.C.R. 1189. Again, a municipality has been held to owe a duty to prospective purchasers of real estate to inspect housing developments without negligence: Anns, supra; Kamloops, supra. Similarly, governmental authorities who have undertaken a policy of road maintenance have been held to owe a duty of care to execute the maintenance in a non-negligent manner: Just v. British Columbia, [1989] 2 S.C.R. 1228, Swinamer v. Nova Scotia (Attorney General), [1994] 1 S.C.R. 445, etc. Relational economic loss (related to a contract's performance) may give rise to a tort duty of care in certain situations, as where the claimant has a possessory or proprietary interest in the property, the general average cases, and cases where the relationship between the claimant and the property owner constitutes a joint venture: Norsk, supra; Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd., [1997] 3 S.C.R. 1210. When a case falls within one of these situations or an analogous one and reasonable foreseeability is established, a prima facie duty of care may be posited.
2001	Edwards v. Law Society of Upper Canada	11/16/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1921/index.do	Edwards v. Law Society of Upper Canada, [2001] 3 S.C.R. 562, 2001 SCC 80	McLachlin C.J. and Major	unanimous	Ontario	Torts	C	referred to	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	5 In the Ontario Court (General Division), Sharpe J. allowed the respondent's Rule 21 motion to strike for failure to disclose a cause of action. Sharpe J. first reviewed the jurisprudence predating Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), and Kamloops (City of) v. Nielsen, [1984] 2 S.C.R. 2, on the tort liability of the Law Society and concluded its quasi-judicial function immunized it from liability in negligence. For this point, Sharpe J. relied on French v. Law Society of Upper Canada (1975), 61 D.L.R. (3d) 28 (Ont. C.A.), which characterized the Law Society's Discipline Committee as an "adjudicative body" (p. 32), as well as numerous cases, both Canadian and foreign, immunizing bodies such as the Law Society from suit: see especially, Voratovic v. Law Society of Upper Canada (1978), 20 O.R. (2d) 214 (H.C.), Calvert v. Law Society of Upper Canada (1981), 32 O.R. (2d) 176 (H.C.), Lee v. Law Society of Upper Canada, [1994] O.J. No. 1468 (QL) (Gen. Div.), Carnegie v. Rasmussen Starr Ruddy (1994), 19 O.R. (3d) 272 (Gen. Div.), at p. 279. In answer to the appellants' claim that the Anns/Kamloops test governed the liability of public authorities, Sharpe J. reasoned that the quasi-judicial immunity test from earlier cases had evolved into the policy/operational distinction in Anns. Common to both approaches, in his view, was the principle that a "body charged with the exercise of quasi-judicial powers must act in the public interest and must take into account a number of factors, only one of which will be the private interest of individuals such as the plaintiff" (p. 285). On this basis, he held it was "plain and obvious" the appellants would not succeed at trial: R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd. (1991), 5 O.R. (3d) 778 (C.A.); Hunt v. Carey Canada Inc., [1990] 2 S.C.R. 959, at p. 977.
2001	R. v. Nette	11/15/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1919/index.do	R. v. Nette, [2001] 3 S.C.R. 488, 2001 SCC 78	Arbour J.	majority	British Columbia	Criminal law	C	referred to	R. v. Cheshire, [1991] 3 All E.R. 670	lower-level court	UK	72 In deciding how the applicable standard of causation should be articulated to the jury, trial judges have a discretion in choosing the terminology they wish to use to explain the standard. Causation issues are case-specific and fact-driven. For that reason, it is important to afford a trial judge with the flexibility to put issues of causation to the jury in an intelligible fashion that is relevant to the circumstances of the case, including whether or not there are multiple accused persons or parties. As I discussed in Cribbin, supra, at pp. 565-66, while different terminology has been used to explain the applicable standard in Canada, Australia and England, whether the terminology used is "beyond de minimis", "significant contribution" or "substantial cause", the standard of causation which this terminology seeks to articulate, within the context of causation in homicide, is essentially the same: see R. v. Pagett (1983), 76 Cr. App. R. 279 (C.A.); R. v. Hallett, [1969] S.A.S.R. 141 (S.C. in banco); Royall v. R. (1991), 100 A.L.R. 669 (H.C.); R. v. Smith (1959), 43 Cr. App. R. 121 (C.-M.A.C.); R. v. Cheshire, [1991] 3 All E.R. 670 (C.A.), and R. v. Hennigan, [1971] 3 All E.R. 133 (C.A.). For example, in Cheshire, the court stated that (at p. 677):
2001	R. v. Nette	11/15/2001	https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1919/index.do	R. v. Nette, [2001] 3 S.C.R. 488, 2001 SCC 78	Arbour J.	majority	British Columbia	Criminal law	C	referred to	R. v. Hennigan, [1971] 3 All E.R. 133	lower-level court	UK	72 In deciding how the applicable standard of causation should be articulated to the jury, trial judges have a discretion in choosing the terminology they wish to use to explain the standard. Causation issues are case-specific and fact-driven. For that reason, it is important to afford a trial judge with the flexibility to put issues of causation to the jury in an intelligible fashion that is relevant to the circumstances of the case, including whether or not there are multiple accused persons or parties. As I discussed in Cribbin, supra, at pp. 565-66, while different terminology has been used to explain the applicable standard in Canada, Australia and England, whether the terminology used is "beyond de minimis", "significant contribution" or "substantial cause", the standard of causation which this terminology seeks to articulate, within the context of causation in homicide, is essentially the same: see R. v. Pagett (1983), 76 Cr. App. R. 279 (C.A.); R. v. Hallett, [1969] S.A.S.R. 141 (S.C. in banco); Royall v. R. (1991), 100 A.L.R. 669 (H.C.); R. v. Smith (1959), 43 Cr. App. R. 121 (C.-M.A.C.); R. v. Cheshire, [1991] 3 All E.R. 670 (C.A.), and R. v. Hennigan, [1971] 3 All E.R. 133 (C.A.). For example, in Cheshire, the court stated that (at p. 677): It is not the function of the jury to evaluate competing causes or to choose which is dominant provided they are satisfied that the accused's acts can fairly be said to have made a significant contribution to the victim's death. We think the word 'significant' conveys the necessary substance of a contribution made to the death which is more than negligible. Similarly, in Hennigan, the court described the standard of causation on a charge of causing death by dangerous driving as follows at p. 135: The court would like to emphasise this, that there is of course nothing in s. 1 of the Road Traffic Act 1960 which requires the manner of the driving to be a substantial cause, or a major cause, or any other description of cause, of the accident. So long as the dangerous driving is a cause and something more than de minimis, the statute operates. What has happened in the past is that judges have found it convenient to direct the jury in the form that it must be, as in one case it was put, the substantial cause. To the extent that trial judges may find it more useful to express the standard of causation in Smithers in a more direct and affirmative fashion, they may find it preferable to express the standard positively as a "significant contributing cause", to use the terminology of Lambert J.A. in the present appeal.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2001	Derksen v. 539938 Ontario Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1913/index.do	Derksen v. 539938 Ontario Ltd., [2001] 3 S.C.R. 398, 2001 SCC 72	MAJOR J.	unanimous	Ontario	Insurance	C	not followed	Wayne Tank and Pump Co. v. Employers' Liability Assurance Corp., [1973] 3 All E.R. 825	lower-level court	UK	43 To the extent the foregoing appellate cases were decided upon the general principle advocated by the appellants, the genesis for this principle is found in the Canadian case Ford and the English case Wayne Tank and Pump Co. v. Employers' Liability Assurance Corp., [1973] 3 All E.R. 825 (C.A.). As already indicated, Ford does not stand for this general principle. 44 In Wayne Tank a fire was caused both by the dangerous goods used by the insured and the negligent acts of the insured's employee. The insurance covered liability as a result of accident but excluded coverage for liability resulting from the condition of the goods. At issue before the English Court of Appeal was whether the exclusion clause in the insurance policy applied in these circumstances. The court held that the exclusion clause applied. 46 On review of the analysis in Wayne Tank, which had its roots in the field of maritime law, there is no compelling reason to favour exclusion of coverage where there are two concurrent causes, one of which is excluded from coverage. A presumption that coverage is excluded is inconsistent with the well-established principle in Canadian jurisprudence that exclusion clauses in insurance policies are to be interpreted narrowly and generally in favour of the insured in case of ambiguity in the wording (contra proferentem). 47 Separate from the shortcomings in the analysis in Wayne Tank, another compelling reason for rejecting the presumptive proposition advocated by the appellants is the fact that insurers have language available to them that would remove all ambiguity from the meaning of an exclusion clause in the event of concurrent causes. This can be accomplished by the insurer clearly specifying that if a loss is produced by an excluded peril, all coverage is ousted despite the fact that the loss may also have been caused by another, covered peril. Examples from case law indicate that insurers have in fact successfully used enforceable exculpatory language. See Ford, supra, and Pavlovic v. Economical Mutual Insurance Co. (1994), 28 C.C.L.I. (2d) 314, at p. 320, per Finch J.A. of the British Columbia Court of Appeal: Applied to the circumstances of this case, the meaning of exclusion [clause] (12) is, at best, ambiguous. It leaves open the question whether the loss is excluded where seepage or leakage is a "contributing cause", as opposed to the only cause. Apt language to achieve the end argued for by the insurer is seen in the policies considered in some other cases. Similar exclusion clauses have used language such as "cause directly or indirectly", or "caused by, resulting from, contributed to or aggravated by". One exclusion clause read: We do not insure for such loss regardless of the cause of the excluded event, other causes of the loss, or whether other causes acted concurrently or in any sequence with the excluded event to produce the loss . . . These examples simply show that it was possible for the insurer to choose language which would not have left the meaning of the exclusion clause open
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	L'HEUREUX-DUBÉ J.	concurring	Quebec	Constitutional law Labour law	C	referred to	Eur. Court H.R., Sigurjónsson v. Iceland judgment of 30 June 1993, Series A No. 264	international	ECHR	70 The course of judicial restraint suggests that no new constitutional doctrine should be developed if existing doctrine could resolve the issue. In this regard, I would make a comment on the case of Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, cited by LeBel J. in his reasons at para. 250, where he stated that in Sigurjónsson, the European Court of Human Rights ("ECHR") "clearly accepted that a right not to associate should be read into the guarantee of art. 11(1)". At p. 17, the majority of the ECHR stated: . . . Sigurjónsson objected to being a member of the association in question partly because he disagreed with its policy in favour of limiting the number of taxicabs and, thus, access to the occupation; in his opinion the interests of his country were better served by extensive personal freedoms, including freedom of occupation, than State regulation. Therefore, the Court is of the view that Article 11 can, in the circumstances, be considered in the light of Articles 9 and 10, the protection of personal opinion being also one of the purposes of the freedom of association guaranteed by Article 11 (see the above-mentioned Young, James and Webster judgment, pp. 23-24, § 57). The pressure exerted on the applicant in order to compel him to remain a member of Frami contrary to his wishes was a further aspect going to the very essence of an Article 11 right; there was an interference too in this respect. [Emphasis added.] 71 It is apparent that the ECHR reached its conclusion by considering Mr. Sigurjónsson's individual goals in the context of art. 11 of the European Convention. The ECHR also held unanimously that it was "not necessary also to examine the case under Articles 9 or 10" (p. 20). 74 As discussed above, the analysis followed in Sigurjónsson would be contrary to our jurisprudence for two reasons. First, it grounded its analysis primarily on individual goals, giving far lesser weight to communal goals. Secondly, a solution could have been found under arts. 9 or 10, but the ECHR decided otherwise. 75 This judicial parsimony should be ascribed to prudence, not miserliness. Constitutional remedies are powerful tools which ought to be used with prudence. When required, however, they should be applied with vigour and in a purposive manner. 76 An additional reason for caution is based on the fact that the impetus for efforts to establish the negative right to association has historically originated with those opposed to the establishment or maintenance of labour associations. Such a tainted pedigree raises the question of whether we should constitutionalize an initiative whose purpose was to defeat the right to associate. This concern is reflected in the dissenting opinion of Judge Thór Vilhjálmsson in the Sigurjónsson case, where he comments (at p. 21):
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	L'HEUREUX-DUBÉ J.	concurring	Quebec	Constitutional law Labour law	C	referred to	Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III	international	ECHR	72 Similarly, in another case cited by LeBel J. at para. 250, Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III, the ECHR applied a hybrid analysis, a methodology which would not be required in Canada. In that case, all the applicants were owners of small landholdings. By law, the applicants, who are opposed to hunting, had to become members of the approved municipal or intermunicipality hunters' associations set up in their municipalities and to transfer hunting rights over their land to these associations so that all hunters living in the relevant municipality could hunt there. The ECHR stated (at para. 117): To compel a person by law to join an association such that it is fundamentally contrary to his own convictions to be a member of it, and to oblige him, on account of his membership of that association, to transfer his rights over the land he owns so that the association in question can attain objectives of which he disapproves, goes beyond what is necessary to ensure that a fair balance is struck between conflicting interests and cannot be considered proportionate to the aim pursued. There has therefore been a violation of Article 11

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2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949)	SC	US	241 In their pleadings, the appellants put great emphasis on a comparative law argument based on American jurisprudence and on their interpretation of European case law. I will now turn briefly to this comparative law argument. I will first consider the American jurisprudence and then some European case law. 245 The Supreme Court refused to invalidate the provisions of a state constitution that restrained or prohibited some forms of closed shop or union shop (Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949); American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949)). On the other hand, the court found that the provisions of the Railway Labour Act which authorized a form of union shop did not infringe the First Amendment, absent evidence that it deprived employees of their freedom of thought and conscience: Railway Employes' Department v. Hanson, 351 U.S. 225 (1956), at p. 238.
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949)	SC	US	245 The Supreme Court refused to invalidate the provisions of a state constitution that restrained or prohibited some forms of closed shop or union shop (Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949); American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949)). On the other hand, the court found that the provisions of the Railway Labour Act which authorized a form of union shop did not infringe the First Amendment, absent evidence that it deprived employees of their freedom of thought and conscience: Railway Employes' Department v. Hanson, 351 U.S. 225 (1956), at p. 238.
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Railway Employes' Department v. Hanson, 351 U.S. 225 (1956)	SC	US	245 The Supreme Court refused to invalidate the provisions of a state constitution that restrained or prohibited some forms of closed shop or union shop (Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949); American Federation of Labor v. American Sash & Door Co., 335 U.S. 538 (1949)). On the other hand, the court found that the provisions of the Railway Labour Act which authorized a form of union shop did not infringe the First Amendment, absent evidence that it deprived employees of their freedom of thought and conscience: Railway Employes' Department v. Hanson, 351 U.S. 225 (1956), at p. 238.
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	International Association of Machinists v. Street, 367 U.S. 740 (1961)	SC	US	246 In a later case, it held that the compulsory withholding of union dues from wages was only a device to compel otherwise "free riders" to share in the cost of negotiating and administering collective agreements. Yet such compulsory dues should not be used to compel employees to support causes that they oppose: International Association of Machinists v. Street, 367 U.S. 740 (1961). (See also Brotherhood of Railway and Steamship Clerks v. Allen, 373 U.S. 113 (1963).) In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Supreme Court revisited the problem of the relationship between compelled union support and the guarantee of freedom of speech and opinion. On this occasion, it examined the validity and effect of an agency-shop clause similar to the Rand formula whereby every employee represented by the union, whether he or she had joined it or not, had to pay it a service fee equal to union dues. A group of employees objected to the enforcement of this provision. In their view, such a provision deprived them of their freedom of association protected by the First Amendment. They asserted that they were opposed to the payment of union dues to unions as well as to collective bargaining in the public sector and objected to various social and political activities carried on by their union. A majority of the Supreme Court held that the obligation to join the union was constitutionally justified "by the legislative assessment of the important contribution of the union shop to the system of labour relations established by Congress" (p. 222, per Stewart J.). Union dues could be exacted as long as they were used for collective bargaining, contract administration and grievance-adjustment purposes. Beyond that, the obligation to contribute to causes that members disapproved of violated their freedoms of association, speech and belief protected by the First Amendment.
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Brotherhood of Railway and Steamship Clerks v. Allen, 373 U.S. 113 (1963)	SC	US	246 In a later case, it held that the compulsory withholding of union dues from wages was only a device to compel otherwise "free riders" to share in the cost of negotiating and administering collective agreements. Yet such compulsory dues should not be used to compel employees to support causes that they oppose: International Association of Machinists v. Street, 367 U.S. 740 (1961). (See also Brotherhood of Railway and Steamship Clerks v. Allen, 373 U.S. 113 (1963).) In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Supreme Court revisited the problem of the relationship between compelled union support and the guarantee of freedom of speech and opinion. On this occasion, it examined the validity and effect of an agency-shop clause similar to the Rand formula whereby every employee represented by the union, whether he or she had joined it or not, had to pay it a service fee equal to union dues. A group of employees objected to the enforcement of this provision. In their view, such a provision deprived them of their freedom of association protected by the First Amendment. They asserted that they were opposed to the payment of union dues to unions as well as to collective bargaining in the public sector and objected to various social and political activities carried on by their union. A majority of the Supreme Court held that the obligation to join the union was constitutionally justified "by the legislative assessment of the important contribution of the union shop to the system of labour relations established by Congress" (p. 222, per Stewart J.). Union dues could be exacted as long as they were used for collective bargaining, contract administration and grievance-adjustment purposes. Beyond that, the obligation to contribute to causes that members disapproved of violated their freedoms of association, speech and belief protected by the First Amendment.
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2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 466 U.S. 435 (1984)	SC	US	247 Since Abood, a recurrent problem in the application of union-agency clauses has remained the proper delineation between core union functions and more peripheral activities, as dues may be collected from unwilling employees only for the traditional collective bargaining purposes. This analysis has required the creation of subtle distinctions within the broad range of possible union activities. Dissenting employees are now entitled to a procedure that mitigates the infringement of their First Amendment rights by preventing the use of their contributions for impermissible purposes (see Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 466 U.S. 435 (1984); Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986); Communications Workers of America v. Beck, 487 U.S. 735 (1988); Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)).
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986)	SC	US	247 Since Abood, a recurrent problem in the application of union-agency clauses has remained the proper delineation between core union functions and more peripheral activities, as dues may be collected from unwilling employees only for the traditional collective bargaining purposes. This analysis has required the creation of subtle distinctions within the broad range of possible union activities. Dissenting employees are now entitled to a procedure that mitigates the infringement of their First Amendment rights by preventing the use of their contributions for impermissible purposes (see Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 466 U.S. 435 (1984); Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986); Communications Workers of America v. Beck, 487 U.S. 735 (1988); Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)).
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Communications Workers of America v. Beck, 487 U.S. 735 (1988)	SC	US	247 Since Abood, a recurrent problem in the application of union-agency clauses has remained the proper delineation between core union functions and more peripheral activities, as dues may be collected from unwilling employees only for the traditional collective bargaining purposes. This analysis has required the creation of subtle distinctions within the broad range of possible union activities. Dissenting employees are now entitled to a procedure that mitigates the infringement of their First Amendment rights by preventing the use of their contributions for impermissible purposes (see Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 466 U.S. 435 (1984); Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986); Communications Workers of America v. Beck, 487 U.S. 735 (1988); Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)).
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)	SC	US	247 Since Abood, a recurrent problem in the application of union-agency clauses has remained the proper delineation between core union functions and more peripheral activities, as dues may be collected from unwilling employees only for the traditional collective bargaining purposes. This analysis has required the creation of subtle distinctions within the broad range of possible union activities. Dissenting employees are now entitled to a procedure that mitigates the infringement of their First Amendment rights by preventing the use of their contributions for impermissible purposes (see Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, 466 U.S. 435 (1984); Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986); Communications Workers of America v. Beck, 487 U.S. 735 (1988); Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)).

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2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Eur. Court H.R., Young, James and Webster judgment of 13 August 1981, Series A No. 44;	international	ECHR	70 The course of judicial restraint suggests that no new constitutional doctrine should be developed if existing doctrine could resolve the issue. In this regard, I would make a comment on the case of Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, cited by LeBel J. in his reasons at para. 250, where he stated that in Sigurjónsson, the European Court of Human Rights ("ECHR") "clearly accepted that a right not to associate should be read into the guarantee of art. 11(1)". At p. 17, the majority of the ECHR stated: . . . Sigurjónsson objected to being a member of the association in question partly because he disagreed with its policy in favour of limiting the number of taxicabs and, thus, access to the occupation; in his opinion the interests of his country were better served by extensive personal freedoms, including freedom of occupation, than State regulation. Therefore, the Court is of the view that Article 11 can, in the circumstances, be considered in the light of Articles 9 and 10, the protection of personal opinion being also one of the purposes of the freedom of association guaranteed by Article 11 (see the above-mentioned Young, James and Webster judgment, pp. 23-24, § 57). The pressure exerted on the applicant in order to compel him to remain a member of Frami contrary to his wishes was a further aspect going to the very essence of an Article 11 right; there was an interference too in this respect. [Emphasis added.] 250 Nevertheless, despite this silence of the Convention, since Young, James and Webster, Eur. Court H.R., judgment of 13 August 1981, Series A No. 44, the European Court has moved towards a recognition of the right not to associate as a necessary component of the guarantee of freedom of association under art. 11(1) of the Convention. In this case, in the opinion of the court, a union shop arrangement which imposed ideological conformity under the threat of dismissal from employment infringed art. 11 of the Convention and was not held to be justifiable. The court, nevertheless, held that not all forms of compelled association were inconsistent with art. 11. For example, a public interest law compelling doctors to join a professional regulatory body did not engage the guarantee of freedom of association (Le Compte, Van Leuven and De Meyere, Eur. Court H.R., judgment of 23 June 1981, Series A No. 43). In Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, the court clearly accepted that a right not to associate should be read into the guarantee of art. 11(1). In that case, it found that the legislative obligation to join a taxi-driver's union infringed the guarantee of freedom of association. It viewed this compulsion as a violation of the freedom of opinion of the complainant. On the other hand, the court held that art. 11 did not grant an employer the right to refuse to enter into a collective agreement as required by the relevant national legislation (Gustafsson v. Sweden, Eur. Court H.R., judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II). In a recent judgment, outside the sphere of labour relations, an obligation to join hunter associations under a French law was declared invalid. On this occasion, the court reasserted the existence of the negative component of the guarantee of freedom of association (Chassagnou and
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A No. 43	international	ECHR	250 Nevertheless, despite this silence of the Convention, since Young, James and Webster, Eur. Court H.R., judgment of 13 August 1981, Series A No. 44, the European Court has moved towards a recognition of the right not to associate as a necessary component of the guarantee of freedom of association under art. 11(1) of the Convention. In this case, in the opinion of the court, a union shop arrangement which imposed ideological conformity under the threat of dismissal from employment infringed art. 11 of the Convention and was not held to be justifiable. The court, nevertheless, held that not all forms of compelled association were inconsistent with art. 11. For example, a public interest law compelling doctors to join a professional regulatory body did not engage the guarantee of freedom of association (Le Compte, Van Leuven and De Meyere, Eur. Court H.R., judgment of 23 June 1981, Series A No. 43). In Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, the court clearly accepted that a right not to associate should be read into the guarantee of art. 11(1). In that case, it found that the legislative obligation to join a taxi-driver's union infringed the guarantee of freedom of association. It viewed this compulsion as a violation of the freedom of opinion of the complainant. On the other hand, the court held that art. 11 did not grant an employer the right to refuse to enter into a collective agreement as required by the relevant national legislation (Gustafsson v. Sweden, Eur. Court H.R., judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II). In a recent judgment, outside the sphere of labour relations, an obligation to join hunter associations under a French law was declared invalid. On this occasion, the court reasserted the existence of the negative component of the guarantee of freedom of association (Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III)
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Eur. Court H.R., Sigurjónsson v. Iceland judgment of 30 June 1993, Series A No. 264	international	ECHR	250 Nevertheless, despite this silence of the Convention, since Young, James and Webster, Eur. Court H.R., judgment of 13 August 1981, Series A No. 44, the European Court has moved towards a recognition of the right not to associate as a necessary component of the guarantee of freedom of association under art. 11(1) of the Convention. In this case, in the opinion of the court, a union shop arrangement which imposed ideological conformity under the threat of dismissal from employment infringed art. 11 of the Convention and was not held to be justifiable. The court, nevertheless, held that not all forms of compelled association were inconsistent with art. 11. For example, a public interest law compelling doctors to join a professional regulatory body did not engage the guarantee of freedom of association (Le Compte, Van Leuven and De Meyere, Eur. Court H.R., judgment of 23 June 1981, Series A No. 43). In Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, the court clearly accepted that a right not to associate should be read into the guarantee of art. 11(1). In that case, it found that the legislative obligation to join a taxi-driver's union infringed the guarantee of freedom of association. It viewed this compulsion as a violation of the freedom of opinion of the complainant. On the other hand, the court held that art. 11 did not grant an employer the right to refuse to enter into a collective agreement as required by the relevant national legislation (Gustafsson v. Sweden, Eur. Court H.R., judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II). In a recent judgment, outside the sphere of labour relations, an obligation to join hunter associations under a French law was declared invalid. On this occasion, the court reasserted the existence of the negative component of the guarantee of freedom of association (Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III)
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Eur. Court H.R., Gustafsson v. Sweden judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II	international	ECHR	250 Nevertheless, despite this silence of the Convention, since Young, James and Webster, Eur. Court H.R., judgment of 13 August 1981, Series A No. 44, the European Court has moved towards a recognition of the right not to associate as a necessary component of the guarantee of freedom of association under art. 11(1) of the Convention. In this case, in the opinion of the court, a union shop arrangement which imposed ideological conformity under the threat of dismissal from employment infringed art. 11 of the Convention and was not held to be justifiable. The court, nevertheless, held that not all forms of compelled association were inconsistent with art. 11. For example, a public interest law compelling doctors to join a professional regulatory body did not engage the guarantee of freedom of association (Le Compte, Van Leuven and De Meyere, Eur. Court H.R., judgment of 23 June 1981, Series A No. 43). In Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, the court clearly accepted that a right not to associate should be read into the guarantee of art. 11(1). In that case, it found that the legislative obligation to join a taxi-driver's union infringed the guarantee of freedom of association. It viewed this compulsion as a violation of the freedom of opinion of the complainant. On the other hand, the court held that art. 11 did not grant an employer the right to refuse to enter into a collective agreement as required by the relevant national legislation (Gustafsson v. Sweden, Eur. Court H.R., judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II). In a recent judgment, outside the sphere of labour relations, an obligation to join hunter associations under a French law was declared invalid. On this occasion, the court reasserted the existence of the negative component of the guarantee of freedom of association (Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III)
2001	R. v. Advance Cutting & Coring Ltd.	10/19/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1910/index.do	R. v. Advance Cutting & Coring Ltd., [2001] 3 S.C.R. 209, 2001 SCC 70	LeBel J.	majority	Quebec	Constitutional law Labour law	C	referred to	Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III	international	ECHR	250 Nevertheless, despite this silence of the Convention, since Young, James and Webster, Eur. Court H.R., judgment of 13 August 1981, Series A No. 44, the European Court has moved towards a recognition of the right not to associate as a necessary component of the guarantee of freedom of association under art. 11(1) of the Convention. In this case, in the opinion of the court, a union shop arrangement which imposed ideological conformity under the threat of dismissal from employment infringed art. 11 of the Convention and was not held to be justifiable. The court, nevertheless, held that not all forms of compelled association were inconsistent with art. 11. For example, a public interest law compelling doctors to join a professional regulatory body did not engage the guarantee of freedom of association (Le Compte, Van Leuven and De Meyere, Eur. Court H.R., judgment of 23 June 1981, Series A No. 43). In Sigurjónsson v. Iceland, Eur. Court H.R., judgment of 30 June 1993, Series A No. 264, the court clearly accepted that a right not to associate should be read into the guarantee of art. 11(1). In that case, it found that the legislative obligation to join a taxi-driver's union infringed the guarantee of freedom of association. It viewed this compulsion as a violation of the freedom of opinion of the complainant. On the other hand, the court held that art. 11 did not grant an employer the right to refuse to enter into a collective agreement as required by the relevant national legislation (Gustafsson v. Sweden, Eur. Court H.R., judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II). In a recent judgment, outside the sphere of labour relations, an obligation to join hunter associations under a French law was declared invalid. On this occasion, the court reasserted the existence of the negative component of the guarantee of freedom of association (Chassagnou and Others v. France [GD], Nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III)

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2001	Proulx v. Quebec (Attorney General)	10/18/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1906/index.do	proulx v. quebec (a.g.), [2001] 3 S.C.R. 9, 2001 SCC 66	L'Heureux-Dubé J.	dissenting	Quebec	Torts	C	D	Imbler v. Pachtman, 424 U.S. 409 (1976)	SC	US	125 The test laid down in Nelles for lifting the immunity of Crown attorneys is very strict, and for a good reason. It must be recalled that before Nelles, immunity was absolute, as it has in fact always been the case in the United States. In Imbler v. Pachtman, 424 U.S. 409 (1976), the United States Supreme Court held (at pp. 422-24): The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust. One court expressed both considerations as follows: "The office of public prosecutor is one which must be administered with courage and independence. Yet how can this be if the prosecutor is made subject to suit by those whom he accuses and fails to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. . . . The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office. The work of the prosecutor would thus be impeded and we would have moved away from the desired objective of stricter and fairer law enforcement." Pearson v. Reed, 6 Cal. App. 2d 277, 287, 44 P.2d 592, 597 (1935). In Yaselli v. Goff, 12 F.2d 396 (2d Cir. 1926), Rogers J. wrote, at p. 406: The public interest requires that persons occupying such important positions and so closely identified with the judicial departments of the government should speak and act freely and fearlessly in the discharge of their important official functions. They should be no more liable to private suits for what they say and do in the discharge of their duties than are the judges and jurors, to say nothing of the witnesses who testify in a case. Lamer J. recognized in Nelles that "[t]here is no doubt that the policy considerations in favour of absolute immunity have some merit" (p. 199). Those considerations include public confidence, diversion from duties, the choice between two evils and other available recourses. He concludes as follows (at p. 199):
2001	Proulx v. Quebec (Attorney General)	10/18/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1906/index.do	proulx v. quebec (a.g.), [2001] 3 S.C.R. 9, 2001 SCC 66	L'Heureux-Dubé J.	dissenting	Quebec	Torts	C	D	Yaselli v. Goff, 12 F.2d 396 (1926)	lower-level court	US	125 The test laid down in Nelles for lifting the immunity of Crown attorneys is very strict, and for a good reason. It must be recalled that before Nelles, immunity was absolute, as it has in fact always been the case in the United States. In Imbler v. Pachtman, 424 U.S. 409 (1976), the United States Supreme Court held (at pp. 422-24): The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust. One court expressed both considerations as follows: "The office of public prosecutor is one which must be administered with courage and independence. Yet how can this be if the prosecutor is made subject to suit by those whom he accuses and fails to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. . . . The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office. The work of the prosecutor would thus be impeded and we would have moved away from the desired objective of stricter and fairer law enforcement." Pearson v. Reed, 6 Cal. App. 2d 277, 287, 44 P.2d 592, 597 (1935). In Yaselli v. Goff, 12 F.2d 396 (2d Cir. 1926), Rogers J. wrote, at p. 406: The public interest requires that persons occupying such important positions and so closely identified with the judicial departments of the government should speak and act freely and fearlessly in the discharge of their important official functions. They should be no more liable to private suits for what they say and do in the discharge of their duties than are the judges and jurors, to say nothing of the witnesses who testify in a case. Lamer J. recognized in Nelles that "[t]here is no doubt that the policy considerations in favour of absolute immunity have some merit" (p. 199). Those considerations include public confidence, diversion from duties, the choice between two evils and other available recourses. He concludes as follows (at p. 199):
2001	671122 Ontario Ltd. v. Sagaz Industries Canada Inc.	9/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1898/index.do	671122 Ontario Ltd. v. Sagaz Industries Canada Inc., [2001] 2 S.C.R. 983, 2001 SCC 59	MAJOR J.	unanimous	Ontario	Criminal law Torts	C	referred to	Stevenson Jordan and Harrison, Ltd. v. Macdonald, [1952] 1 The Times L.R. 101	lower-level court	UK	40 As MacGuigan J.A. notes, a similar general test, known as the "organization test" or "integration test" was used by Denning L.J. (as he then was) in Stevenson Jordan and Harrison, Ltd. v. Macdonald, [1952] 1 The Times L.R. 101 (C.A.), at p. 111: One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it. 46 In my opinion, there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in Stevenson Jordan, supra, that it may be impossible to give a precise definition of the distinction (p. 111) and, similarly, Fleming observed that "no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing employment relations . . ." (p. 416). Further, I agree with MacGuigan J.A. in Wiebe Door, at p. 563, citing Atiyah, supra, at p. 38, that what must always occur is a search for the total relationship of the parties: [I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose.... The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.

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2001	671122 Ontario Ltd. v. Sagaz Industries Canada Inc.	9/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1898/index.do	671122 Ontario Ltd. v. Sagaz Industries Canada Inc., [2001] 2 S.C.R. 983, 2001 SCC 59	MAJOR J.	unanimous	Ontario	Criminal law Torts	C	referred to	Market Investigations, Ltd. v. Minister of Social Security, [1968] 3 All E.R. 732	lower-level court	UK	44 According to MacGuigan J.A., the best synthesis found in the authorities is that of Cooke J. in Market Investigations, Ltd. v. Minister of Social Security, [1968] 3 All E.R. 732 (Q.B.D.), at pp. 737-38 (followed by the Privy Council in Lee Ting Sang v. Chung Chi-Keung, [1990] 2 A.C. 374, per Lord Griffiths, at p. 382): The observations of LORD WRIGHT, of DENNING, L.J., and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?". If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no" then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. [Emphasis added.] 47 Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in Market Investigations, supra. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks. 49 According to the agreement between Sagaz and AIM dated January 29, 1985, AIM was hired to "provide assistance to Sagaz in retaining the goodwill of [Canadian Tire]". Although the contract designated AIM as an "independent contractor", this classification is not always determinative for the purposes of vicarious liability. The starting point for this analysis is whether AIM, while engaged to perform such services for Sagaz, was in business on its own account. If so, AIM is an independent contractor as opposed to an employee of Sagaz and vicarious liability likely will not follow. It is helpful to examine the non-exhaustive list of factors from Montreal and Market Investigations to assist in this determination. 56 In my opinion, the contravening factors such as the suggestion that the Canadian Tire account was a "house account" and the one letter written by Landow on Sagaz's letterhead, while of interest, are not sufficient to show that AIM was an employee as part of the Sagaz "sales team". I agree with the courts below that these factors likely came about because Canadian Tire preferred to deal with its suppliers, like Sagaz, directly and not through external sales agents. Looking at the non-exhaustive list of factors set out in Market Investigations, supra, including ownership of tools, hiring its own helpers, the degree of financial risk or opportunity for profit by AIM and the responsibility for investment and management, it is clear to me that, based on the total
2001	671122 Ontario Ltd. v. Sagaz Industries Canada Inc.	9/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1898/index.do	671122 Ontario Ltd. v. Sagaz Industries Canada Inc., [2001] 2 S.C.R. 983, 2001 SCC 59	MAJOR J.	unanimous	Ontario	Criminal law Torts	C	referred to	Lee Ting Sang v. Chung Chi-Keung, [1990] 2 A.C. 374	SC	UK (PC)	44 According to MacGuigan J.A., the best synthesis found in the authorities is that of Cooke J. in Market Investigations, Ltd. v. Minister of Social Security, [1968] 3 All E.R. 732 (Q.B.D.), at pp. 737-38 (followed by the Privy Council in Lee Ting Sang v. Chung Chi-Keung, [1990] 2 A.C. 374, per Lord Griffiths, at p. 382): The observations of LORD WRIGHT, of DENNING, L.J., and of the judges of the Supreme Court in the U.S.A. suggest that the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?". If the answer to that question is "yes", then the contract is a contract for services. If the answer is "no" then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. [Emphasis added.]
2001	671122 Ontario Ltd. v. Sagaz Industries Canada Inc.	9/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1898/index.do	671122 Ontario Ltd. v. Sagaz Industries Canada Inc., [2001] 2 S.C.R. 983, 2001 SCC 59	MAJOR J.	unanimous	Ontario	Criminal law Torts	C	referred to	Ladd v. Marshall, [1954] 1 W.L.R. 1489.	lower-level court	UK	63 In my opinion, the Court of Appeal erred in substituting its discretion for that of the trial judge in deciding to reopen the trial. On the first branch of the test set out in Scott, the trial judge found that Landow's credibility would be in issue whereas the Court of Appeal found it difficult to see how the trial judge could make this determination without hearing Landow testify. In the Court of Appeal's determination, it was not sufficiently clear that Landow would be disbelieved. I disagree with the Court of Appeal on this point. Landow's affidavit evidence contradicts his sworn evidence on discovery, particularly with respect to the existence of the bribery scheme which Landow avoids acknowledging on discovery. To this significant extent, Landow is akin to a recanting liar. Lord Denning's comments in Ladd v. Marshall, [1954] 1 W.L.R. 1489 (C.A.), at p. 1491, are applicable: It is very rare that application is made to this court for a new trial on the ground that a witness has told a lie. The principles to be applied are the same as those always applied when fresh evidence is sought to be introduced. To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible. We have to apply those principles to the case where a witness comes and says: "I told a lie but nevertheless I now want to 'tell the truth'". It seems to me that the fresh evidence of such a witness will not as a rule satisfy the third condition. A confessed liar cannot usually be accepted as being credible. To justify the reception of the fresh evidence, some good reason must be shown why a lie was told in the first instance, and good ground given for thinking the witness will tell the truth on the second occasion. [Emphasis added.]
2001	Naylor Group Inc. v. Ellis-Don Construction Ltd.	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1897/index.do	Naylor Group Inc. v. Ellis-Don Construction Ltd., [2001] 2 S.C.R. 943, 2001 SCC 58	BINNIE J.	unanimous	Ontario	Contract	C	referred to	Davis Contractors Ltd. v. Fareham Urban District Council, [1956] A.C. 696	SC	UK (HL)	53 Frustration occurs when a situation has arisen for which the parties made no provision in the contract and performance of the contract becomes "a thing radically different from that which was undertaken by the contract": Peter Kiewit Sons' Co. v. Eakins Construction Ltd., [1960] S.C.R. 361, per Judson J., at p. 368, quoting Davis Contractors Ltd. v. Fareham Urban District Council, [1956] A.C. 696 (H.L.), at p. 729.
2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Gonthier J.	dissenting	Quebec	Municipal law	C	D	Squillante v. Zoning Board of Appeals of the City of Hartford, 1997 Conn. Super. Lexis 2612	lower-level court	US	80 In Squillante v. Zoning Board of Appeals of the City of Hartford, 1997 Conn. Super. Lexis 2612, the plaintiffs had obtained a certificate of occupancy from the municipality to operate a "Café Liquor" (p. 2). At the time the certificate was issued, it would have been open to them to present "adult" entertainment under the by-laws then in force. However, there was nothing in the evidence to show that they had done any such thing. The city then amended its zoning by-laws, and "adult" entertainment establishments were prohibited in the zone where the plaintiffs' business was located. The plaintiffs subsequently began to operate an establishment of that nature. The city had issued a notice of violation to the plaintiffs, who then claimed that their activities were protected by acquired rights. The court rejected that argument, stating, at pp. 12-13: [T]he simple fact is that the record reflects that no adult entertainment was actually being provided on the premises prior to the time the municipal code was amended on May 9, 1994, to exclude adult entertainment from a B-1 zone. Accordingly, because a "Café Liquor" and an adult entertainment establishment are entirely different in nature, operation of the former could not mean that operation of the latter was protected by acquired rights

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2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Gonthier J.	dissenting	Quebec	Municipal law	C	D	Marzocco v. City of Albany, 629 N.Y.S.2d 847 (1995)	lower-level court	US	81 In Marzocco v. City of Albany, 629 N.Y.S.2d 847 (App. Div. 1995), the petitioner had purchased a tavern featuring male strippers as entertainment, which catered primarily to the area gay population. That use was prohibited by the zoning by-laws in force, but was protected by acquired rights. The petitioner first replaced the male strippers with topless female dancers. He then decided to surrender his liquor licence and establish a "juice bar", and present totally nude female dancers and other forms of erotic entertainment. He therefore applied to the City of Albany Board of Building, Zoning and Housing Appeals for permission to change the use of the premises. When the request was denied, he turned to the courts, which affirmed the Board's decision. The Appellate Division of the New York State Supreme Court held, at p. 848: Initially, we agree with Supreme Court that there is rational basis and substantial evidence in the record to support respondent's factual determination that petitioner's change in the character of his property was sufficient to require a use variance. . . . Notably, the abandonment of petitioner's tavern trade and surrender of his liquor license freed him from the restrictions (and the public from the protections) of the Alcoholic Beverage Control Law and the rules of the State Liquor Authority. In the same connection, the primary purpose and profit motive of the business changed from the sale of food and beverages, with adult entertainment a mere incidental attraction, to the exhibition of nude dancing, thereby effecting a fundamental change in the character of the clientele and, as a consequence, the impact of the business on the neighborhood. [Emphasis added.]
2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Gonthier J.	dissenting	Quebec	Municipal law	C	D	Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976)	SC	US	82 The dissimilarity between a country and western bar and a bar that presents entertainment involving nude dancers is also revealed by a line of more general cases concerning the validity of land use planning provisions governing establishments that present erotic entertainment. In Val-d'Or (Ville de) v. 2550-9613 Québec Inc., [1997] R.J.Q. 2090 (C.A.), it was argued that the distinction made by the municipality between [TRANSLATION] "taverns, bars and night clubs" and establishments that present entertainment with male and female nude dancers was discriminatory, as that term is understood in administrative law. Chamberland J.A., writing for the Court of Appeal, rejected that argument and stated in his reasons, at p. 2095: [TRANSLATION] It is clear from the evidence in this case that the adoption of the zoning by-law (June 7, 1993) and the decision to refuse the [respondent's] request to amend the by-law (July 17, 1995) were based on considerations involving the proximity of a church and an elementary school, child protection, crime prevention and the safety and welfare of the public, as well as the improvement of the image of downtown Val-d'Or. These are relevant considerations in zoning and urban planning matters. The distinction was therefore held to be permitted under the Act Respecting Land Use Planning and Development. As well, in Moncton (City) v. Steldon Enterprises Ltd. (2000), 225 N.B.R. (2d) 11 (Q.B.), it was concluded that a by-law adopted under the Community Planning Act, R.S.N.B. 1973, c. C-12, prohibiting the operation of "adult cabarets" within the city, was valid. Those cases are also consistent with the opinion stated by the United States Supreme Court regarding the validity of similar zoning ordinances (Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); Renton (City of) v. Playtime Theatres, Inc., 475 U.S. 41 (1986)).
2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Gonthier J.	dissenting	Quebec	Municipal law	C	D	Renton (City of) v. Playtime Theatres, Inc., 475 U.S. 41 (1986	SC	US	82 The dissimilarity between a country and western bar and a bar that presents entertainment involving nude dancers is also revealed by a line of more general cases concerning the validity of land use planning provisions governing establishments that present erotic entertainment. In Val-d'Or (Ville de) v. 2550-9613 Québec Inc., [1997] R.J.Q. 2090 (C.A.), it was argued that the distinction made by the municipality between [TRANSLATION] "taverns, bars and night clubs" and establishments that present entertainment with male and female nude dancers was discriminatory, as that term is understood in administrative law. Chamberland J.A., writing for the Court of Appeal, rejected that argument and stated in his reasons, at p. 2095: [TRANSLATION] It is clear from the evidence in this case that the adoption of the zoning by-law (June 7, 1993) and the decision to refuse the [respondent's] request to amend the by-law (July 17, 1995) were based on considerations involving the proximity of a church and an elementary school, child protection, crime prevention and the safety and welfare of the public, as well as the improvement of the image of downtown Val-d'Or. These are relevant considerations in zoning and urban planning matters. The distinction was therefore held to be permitted under the Act Respecting Land Use Planning and Development. As well, in Moncton (City) v. Steldon Enterprises Ltd. (2000), 225 N.B.R. (2d) 11 (Q.B.), it was concluded that a by-law adopted under the Community Planning Act, R.S.N.B. 1973, c. C-12, prohibiting the operation of "adult cabarets" within the city, was valid. Those cases are also consistent with the opinion stated by the United States Supreme Court regarding the validity of similar zoning ordinances (Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); Renton (City of) v. Playtime Theatres, Inc., 475 U.S. 41 (1986)).
2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Binnie J.	majority	Quebec	Municipal law	C	referred to	East Barnet Urban District Council v. British Transport Commission, [1962] 2 Q.B. 484	lower-level court	UK	35 The relevance of remoteness is self-explanatory, but the relevance of neighbourhood effects perhaps requires some discussion. The balancing of interests takes place in the framework of zoning control. The Quebec law, as mentioned, expressly takes neighbourhood effects into account in the legislative establishment of use categories. The by-law in this particular case speaks of [TRANSLATION] "volume, nuisance, compatibility, use and aesthetics", and see Val-d'Or (Ville de) v. 2550-9613 Québec Inc., [1997] R.J.Q. 2090 (C.A.)). It stands to reason that in attempting to accommodate the landowner's real and natural expectation of the continuation of the status quo, and to properly maintain the balance between the interests of the landowner and the community, the Court should also have these "neighbourhood effects" in mind in considering the situation of a landowner who has somewhat modified or extended pre-existing activities within the same general use category. The adverse impact of neighbourhood effects generated by added or modified activities constitutes one of the guiding principles under the somewhat different regulatory systems in Britain (see, for example, East Barnet Urban District Council v. British Transport Commission, [1962] 2 Q.B. 484, and Thames Heliports PLC v. London Borough of Tower Hamlets (1996), 74 P. & C.R. 164 (C.A.), and in the United States (see Bridgewater (Town of) v. Chuckran, 217 N.E. 2d 726 (Mass. 1966), at pp. 727-28, Conforti v. City of Manchester, 677 A.2d 147 (N.H. 1996), at p. 150, Belleville (Town of) v. Parrillo's Inc., 416 A.2d 388 (N.J. 1980), and Cape Resort Hotels, Inc. v. Alcoholic Licensing Board of Falmouth, 431 N.E.2d 213 (Mass. 1982), at p. 217). In those jurisdictions, as in Canada, planning is concerned not only with the physical use of land but also with any adverse effects of such uses on the surrounding area. It is appropriate to carry that concern forward into the Court's consideration of added, altered or modified activities which are claimed to be protected by the prior existing use.
2001	Saint-Romuald (City) v. Olivier	9/27/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1896/index.do	Saint-Romuald (City) v. Olivier, [2001] 2 S.C.R. 898, 2001 SCC 57	Binnie J.	majority	Quebec	Municipal law	C	referred to	Thames Heliports PLC v. London Borough of Tower Hamlets (1996), 74 P. & C.R. 164	lower-level court	UK	35 The relevance of remoteness is self-explanatory, but the relevance of neighbourhood effects perhaps requires some discussion. The balancing of interests takes place in the framework of zoning control. The Quebec law, as mentioned, expressly takes neighbourhood effects into account in the legislative establishment of use categories. The by-law in this particular case speaks of [TRANSLATION] "volume, nuisance, compatibility, use and aesthetics", and see Val-d'Or (Ville de) v. 2550-9613 Québec Inc., [1997] R.J.Q. 2090 (C.A.)). It stands to reason that in attempting to accommodate the landowner's real and natural expectation of the continuation of the status quo, and to properly maintain the balance between the interests of the landowner and the community, the Court should also have these "neighbourhood effects" in mind in considering the situation of a landowner who has somewhat modified or extended pre-existing activities within the same general use category. The adverse impact of neighbourhood effects generated by added or modified activities constitutes one of the guiding principles under the somewhat different regulatory systems in Britain (see, for example, East Barnet Urban District Council v. British Transport Commission, [1962] 2 Q.B. 484, and Thames Heliports PLC v. London Borough of Tower Hamlets (1996), 74 P. & C.R. 164 (C.A.), and in the United States (see Bridgewater (Town of) v. Chuckran, 217 N.E. 2d 726 (Mass. 1966), at pp. 727-28, Conforti v. City of Manchester, 677 A.2d 147 (N.H. 1996), at p. 150, Belleville (Town of) v. Parrillo's Inc., 416 A.2d 388 (N.J. 1980), and Cape Resort Hotels, Inc. v. Alcoholic Licensing Board of Falmouth, 431 N.E.2d 213 (Mass. 1982), at p. 217). In those jurisdictions, as in Canada, planning is concerned not only with the physical use of land but also with any adverse effects of such uses on the surrounding area. It is appropriate to carry that concern forward into the Court's consideration of added, altered or modified activities which are claimed to be protected by the prior existing use.

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2001	Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc.	9/13/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1890/index.do	Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc., [2001] 2 S.C.R. 743, 2001 SCC 51	LEBEL J.	unanimous	Quebec	Civil procedure Courts	C	referred to	Harman v. Secretary of State for the Home Department, [1983] A.C. 280	SC	UK (HL)	11 Maillhot J.A. relied, inter alia, on Goodman v. Rossi (1995), 24 O.R. (3d) 359, in which the Ontario Court of Appeal held that the implied undertaking rule was part of the law in Ontario. She also cited the judgment of the House of Lords in Harman v. Secretary of State for the Home Department, [1983] A.C. 280.
2001	Monenco Ltd. v. Commonwealth Insurance Co.	9/13/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1888/index.do	Monenco Ltd. v. Commonwealth Insurance Co., [2001] 2 S.C.R. 699, 2001 SCC 49	IACOBUCCI J.	unanimous	British Columbia	Insurance	C	referred to	Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (1997)	lower-level court	US	33 The pleadings rule was further considered by this Court in Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551, 2000 SCC 24. In that case, the Court unanimously affirmed the principles set out in Nichols. The majority also endorsed the reasoning of the Colorado Court of Appeals in Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (1997), at p. 912, to the effect that the "duty to defend arises when the underlying complaint alleges any facts that might fall within the coverage of the policy" (at para. 78 (emphasis added)).
2001	Western Canadian Shopping Centres Inc. v. Dutton	7/13/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1884/index.do	Western Canadian Shopping Centres Inc. v. Dutton, [2001] 2 S.C.R. 534, 2001 SCC 46	McLachlin C.J.	unanimous	Alberta	Action	C	referred to	Langley v. North West Water Authority, [1991] 3 All E.R. 610, leave denied [1991] 1 W.L.R. 711n	lower-level court	UK	34 Absent comprehensive legislation, the courts must fill the void under their inherent power to settle the rules of practice and procedure as to disputes brought before them: Bell v. Wood, [1927] 1 W.W.R. 580 (B.C.S.C.), at pp. 581-82; Langley v. North West Water Authority, [1991] 3 All E.R. 610 (C.A.), leave denied [1991] 1 W.L.R. 711n (H.L.); Newfoundland Association of Public Employees v. Newfoundland (1995), 132 Nfld. & P.E.I.R. 205 (Nfld. S.C.T.D.); W. A. Stevenson and J. E. Côté, Civil Procedure Guide, 1996, at p. 4. However desirable comprehensive legislation on class action practice may be, if such legislation has not been enacted, the courts must determine the availability of the class action and the mechanics of class action practice.
2001	Western Canadian Shopping Centres Inc. v. Dutton	7/13/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1884/index.do	Western Canadian Shopping Centres Inc. v. Dutton, [2001] 2 S.C.R. 534, 2001 SCC 46	McLachlin C.J.	unanimous	Alberta	Action	C	referred to	Drummond-Jackson v. British Medical Association, [1970] 1 All E.R. 109	lower-level court	UK	45 The need to strike a balance between efficiency and fairness belies the suggestion that a class action should be struck only where the deficiency is "plain and obvious", as the Chambers judge held. Unlike Rule 129, which is directed at the question of whether the claim should be prosecuted at all, Rule 42 is directed at the question of how the claim should be prosecuted. The "plain and obvious" standard is appropriate where the result of striking is to forever end the action. It recognizes that a plaintiff "should not be 'driven from the judgment seat' at this very early stage unless it is quite plain that his alleged cause of action has no chance of success": Drummond-Jackson v. British Medical Association, [1970] 1 All E.R. 1094 (C.A.), at p. 1102 (quoted in Hunt, supra, at pp. 974-75). Denial of class status under Rule 42, by contrast, does not defeat the claim. It merely places the plaintiffs in the position of any litigant who comes before the court in his or her individual capacity. Moreover, nothing in Alberta's rules suggests that class actions should be disallowed only where it is plain and obvious that the action should not proceed as a representative one. Rule 42 and the analogous rules in other provinces merely state that a representative may maintain a class action if certain conditions are met

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2001	Western Canadian Shopping Centres Inc. v. Dutton	7/13/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1884/index.do	Western Canadian Shopping Centres Inc. v. Dutton, [2001] 2 S.C.R. 534, 2001 SCC 46	McLachlin C.J.	unanimous	Alberta	Action	R		Federal Rules of Civil Procedure, 28 U.S.C.A. § 23.	statute	US	30 In recognition of the modern importance of representative litigation, many jurisdictions have enacted comprehensive class action legislation. In the United States, Federal Rules of Civil Procedure, 28 U.S.C.A. § 23 (introduced in 1938 and substantially amended in 1966) addressed aspects of class action practice, including certification of litigant classes, notice, and settlement. The English procedural rules of 1999 include detailed provisions governing "Group Litigation": United Kingdom, Civil Procedure Rules 1998, SI 1998/3132, rr. 19.10-19.15. And in Canada, the provinces of British Columbia, Ontario, and Quebec have enacted comprehensive statutory schemes to govern class action practice: see British Columbia Class Proceedings Act, R.S.B.C. 1996, c. 50; Ontario Class Proceedings Act, 1992, S.O. 1992, c. 6; Quebec Code of Civil Procedure, R.S.Q., c. C-25, Book IX. Yet other Canadian provinces, including Alberta and Manitoba, are considering enacting such legislation: see Manitoba Law Reform Commission, Report #100, Class Proceedings (January 1999); Alberta Law Reform Institute, Final Report No. 85, Class Actions (December 2000); see also R. Rogers, "A Uniform Class Actions Statute", Appendix Q to the Proceedings of the 1995 Meeting of The Uniform Law Conference of Canada.
2001	Danyluk v. Ainsworth Technologies Inc.	7/12/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1882/index.do	Danyluk v. Ainsworth Technologies Inc., [2001] 2 S.C.R. 460, 2001 SCC 44	BINNIE J.	unanimous	Ontario	Administrative law	C	referred to	Thrasyvoulou v. Environment Secretary, [1990] 2 A.C. 273	SC	UK (HL)	22 The extension of the doctrine of issue estoppel in Canada to administrative agencies is traced back to cases in the mid-1800s by D. J. Lange in The Doctrine of Res Judicata in Canada (2000), at p. 94 et seq., including Robinson v. McQuaid (1854), 1 P.E.I.R. 103 (S.C.), at pp. 104-5, and Bell v. Miller (1862), 9 Gr. 385 (U.C. Ch.), at p. 386. The modern cases at the appellate level include Raison v. Fenwick (1981), 120 D.L.R. (3d) 622 (B.C.C.A.); Rasanen, supra; Wong v. Shell Canada Ltd. (1995), 15 C.C.E.L. (2d) 182 (Alta. C.A.); Machin v. Tomlinson (2000), 194 D.L.R. (4th) 326 (Ont. C.A.); and Hamelin v. Davis (1996), 18 B.C.L.R. (3d) 112 (C.A.). See also Thrasyvoulou v. Environment Secretary, [1990] 2 A.C. 273 (H.L.). Modifications were necessary because of the "major differences that can exist between [administrative orders and court orders] in relation, inter alia, to their legal nature and the position within the state structure of the institutions that issue them": R. v. Consolidated Maybrun Mines Ltd., [1998] 1 S.C.R. 706, at para. 4. There is generally no dispute that court orders are judicial orders; the same cannot be said of the myriad of orders that are issued across the range of administrative tribunals.
2001	Danyluk v. Ainsworth Technologies Inc.	7/12/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1882/index.do	Danyluk v. Ainsworth Technologies Inc., [2001] 2 S.C.R. 460, 2001 SCC 44	BINNIE J.	unanimous	Ontario	Administrative law	C	referred to	Thoday v. Thoday, [1964] P. 181	lower-level court	UK	40 One distinction between administrative and judicial decisions lies in differentiating adjudicative from investigative functions. In the latter mode the ESA officer is taking the initiative to gather information. The ESA officer acts as a self-starting investigator who is not confined within the limits of the adversarial process. The distinction between investigative and adjudicative powers is discussed in Guay v. Lafleur, [1965] S.C.R. 12, at pp. 17-18. The inapplicability of issue estoppel to investigations is noted by Diplock L.J. in Thoday v. Thoday, [1964] P. 181 (Eng. C.A.), at p. 197.
2001	Danyluk v. Ainsworth Technologies Inc.	7/12/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1882/index.do	Danyluk v. Ainsworth Technologies Inc., [2001] 2 S.C.R. 460, 2001 SCC 44	BINNIE J.	unanimous	Ontario	Administrative law	C	referred to	Arnold v. National Westminster Bank plc, [1991] 3 All E.R. 41	SC	UK (HL)	64 Courts elsewhere in the Commonwealth apply similar principles. In Arnold v. National Westminster Bank plc, [1991] 3 All E.R. 41, the House of Lords exercised its discretion against the application of issue estoppel arising out of an earlier arbitration, per Lord Keith of Kinkel, at p. 50: One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result . . . .
2001	Fortin v. Chrétien	7/12/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1883/index.do	Fortin v. Chrétien, [2001] 2 S.C.R. 500, 2001 SCC 45	GONTHIER J.	unanimous	Quebec	Civil procedure Contract Professional law	C	referred to	Cass. civ. 1re, December 16, 1992, Bull. civ. X, No. 316	SC	France	38 As a rule, the nullity of an act cannot extend to other distinct juridical acts: H., L. and J. Mazeaud and F. Chabas, Leçons de droit civil, t. II, vol. 1, Obligations -- théorie générale (9th ed. 1998), at para. 329-2; Picod, supra, at paras. 99 to 102. However, an act may by its nature be incidental to another, or they may be genuinely interdependent, in which case the nullity of one results in the nullity of the other. This doctrine of the accessory applies to security interests, for example. The nullity of the principal contract may also extend to the credit contract used to finance it. This is the case in Quebec under s. 116 of the Consumer Protection Act, R.S.Q., c. P-40.1, which provides that a consumer who has used the net capital of a contract for the loan of money to make full or partial payment for the purchase or the lease of goods or services may, if the money lender and the vending or leasing merchant regularly work together with a view to the granting of loans of money to consumers, plead against the money lender any ground of defence that he may urge against the vending or leasing merchant. (See the French equivalent: art. L. 311-21 of the Code de la consommation; and the following decisions of the Cour de cassation: Cass. civ. 1re, December 16, 1992, Bull. civ. X, No. 316, and Cass. civ. 2e, March 11, 1992, Bull. civ. III, No. 79.) However, other than in specific legislation so providing, extended nullity occurs only exceptionally. It applies to other juridical acts only when the two acts are closely connected and were made by the same parties for a common purpose.
2001	Fortin v. Chrétien	7/12/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1883/index.do	Fortin v. Chrétien, [2001] 2 S.C.R. 500, 2001 SCC 45	GONTHIER J.	unanimous	Quebec	Civil procedure Contract Professional law	C	referred to	Cass. civ. 2e, March 11, 1992, Bull. civ. III, No. 79	SC	France	38 As a rule, the nullity of an act cannot extend to other distinct juridical acts: H., L. and J. Mazeaud and F. Chabas, Leçons de droit civil, t. II, vol. 1, Obligations -- théorie générale (9th ed. 1998), at para. 329-2; Picod, supra, at paras. 99 to 102. However, an act may by its nature be incidental to another, or they may be genuinely interdependent, in which case the nullity of one results in the nullity of the other. This doctrine of the accessory applies to security interests, for example. The nullity of the principal contract may also extend to the credit contract used to finance it. This is the case in Quebec under s. 116 of the Consumer Protection Act, R.S.Q., c. P-40.1, which provides that a consumer who has used the net capital of a contract for the loan of money to make full or partial payment for the purchase or the lease of goods or services may, if the money lender and the vending or leasing merchant regularly work together with a view to the granting of loans of money to consumers, plead against the money lender any ground of defence that he may urge against the vending or leasing merchant. (See the French equivalent: art. L. 311-21 of the Code de la consommation; and the following decisions of the Cour de cassation: Cass. civ. 1re, December 16, 1992, Bull. civ. X, No. 316, and Cass. civ. 2e, March 11, 1992, Bull. civ. III, No. 79.) However, other than in specific legislation so providing, extended nullity occurs only exceptionally. It applies to other juridical acts only when the two acts are closely connected and were made by the same parties for a common purpose.
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2001	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1879/index.do	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41	Binnie J.	concurring	Quebec	Administrative law	C	referred to	Perry v. Sindermann, 408 U.S. 593 (1972)	SC	US	15 In the United States a broad interpretation is sometimes given to the notion of "property" for the purposes of the due process clause (e.g., Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) (state employment); Perry v. Sindermann, 408 U.S. 593 (1972); Mathews v. Eldridge, 424 U.S. 319 (1976) (right to social security disability benefits); and Barry v. Barchi, 443 U.S. 55 (1979) (renewal of horse trainer's licence)), but even the U.S. cases seem to contemplate the possession and expected continuation of an existing permit or benefit, not the hoped-for acquisition of a new one.

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2001	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1879/index.do	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41	Binnie J.	concurring	Quebec	Administrative law	C	referred to	R. v. Secretary of State for the Home Department, ex parte Ruddock, [1987] 2 All E.R. 518	lower-level court	UK	22 The respondents argue that the doctrine of legitimate expectations can be used to compel not only procedural protection but a substantive result provided such result is not contrary to law and is otherwise within the power of the Minister, which in this case it would be (see S. J. Schønberg, Legitimate Expectations in Administrative Law (2000), ch. 4). The prior jurisprudence in this Court is against such a proposition: see Old St. Boniface, supra, at pp. 1203-4; Reference re Canada Assistance Plan, supra, at pp. 557-58; Baker v. Canada, supra, at para. 26. However, the respondents say that this doctrine is rapidly evolving and expanding, and has been employed in Canada and elsewhere to impose a substantive rather than merely procedural result on decision makers exercising statutory or prerogative powers. Relevant authorities include the decision of a panel of the Quebec Court of Appeal in Sous-ministre du Revenu du Québec v. Transport Lessard (1976) Ltée, supra; trial level decisions elsewhere in Canada including Gingras v. Canada, [1990] 2 F.C. 68 (T.D.), and Bloomfield v. Saskatchewan (Minister of Health), [1986] S.J. No. 675 (QL) (Q.B.); in England by Parker L.J. in R. v. Secretary of State for the Home Department, ex parte Khan, [1984] 1 W.L.R. 1337 (C.A.), and subsequently by Taylor J. (later Lord Chief Justice) in R. v. Secretary of State for the Home Department, ex parte Ruddock, [1987] 2 All E.R. 518 (Q.B.), and Sedley J. (later Lord Justice) in R. v. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd., [1995] 2 All E.R. 714 (Q.B.), at p. 724 (which contains a useful discussion of European law to the same effect). More recently in R. v. North and East Devon Health Authority, ex parte Coughlan, [2000] 3 All E.R. 850, the English Court of Appeal has resoundingly confirmed that in English law the doctrine of legitimate expectations does give rise to substantive remedies. Lord Woolf M.R. was unequivocal at para. 71: Fairness in such a situation, if it is to mean anything, must for the reasons we have considered include fairness of outcome. This in turn is why the doctrine of legitimate expectation has emerged as a distinct application of the concept of abuse of power in relation to substantive as well as procedural
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2001	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1879/index.do	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41	Binnie J.	concurring	Quebec	Administrative law	C	referred to	Haoucher v. Minister for Immigration, Local Government and Ethnic Affairs (1990), 19 A.L.D. 577	SC	Australia	30 The doctrine of legitimate expectations is sometimes treated as a form of estoppel, but the weight of authority and principle suggests that an applicant who relies on the doctrine of legitimate expectations may show, but does not necessarily have to show, that he or she was aware of such conduct, or that it was relied on with detrimental results. This is because the focus is on promoting "regularity, predictability, and certainty in government's dealing with the public": S. A. de Smith, H. Woolf and J. Jowell, Judicial Review of Administrative Action (5th ed. 1995), at p. 417, to which the editors add, at p. 426, that insisting on estoppel-type requirements would involve unfair discrimination between those who were and were not aware of the representation and would benefit the well-informed or well-advised. It would also encourage undesirable administrative practice by too readily relieving decision-makers of the normal consequences of their actions. The High Court of Australia espouses a similar view: But, more importantly, the notion of legitimate expectation is not dependent upon any principle of estoppel. Whether the Minister can be estopped in the exercise of his discretion is another question; it was not a question raised by the appellant. Legitimate expectation does not depend upon the knowledge and state of mind of the individual concerned, although such an expectation may arise from the conduct of a public authority towards an individual. . . . (Haoucher v. Minister for Immigration, Local Government and Ethnic Affairs (1990), 19 A.L.D. 577, per Toohey J., at p. 590) See also Minister of State for Immigration and Ethnic Affairs v. Teoh (1995), 183 C.L.R. 273 (H.C.).

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2001	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1879/index.do	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41	Binnie J.	concurring	Quebec	Administrative law	C	referred to	Minister of State for Immigration and Ethnic Affairs v. Teoh (1995), 183 C.L.R. 273	SC	Australia	30 The doctrine of legitimate expectations is sometimes treated as a form of estoppel, but the weight of authority and principle suggests that an applicant who relies on the doctrine of legitimate expectations may show, but does not necessarily have to show, that he or she was aware of such conduct, or that it was relied on with detrimental results. This is because the focus is on promoting "regularity, predictability, and certainty in government's dealing with the public": S. A. de Smith, H. Woolf and J. Jowell, Judicial Review of Administrative Action (5th ed. 1995), at p. 417, to which the editors add, at p. 426, that insisting on estoppel-type requirements would involve unfair discrimination between those who were and were not aware of the representation and would benefit the well-informed or well-advised. It would also encourage undesirable administrative practice by too readily relieving decision-makers of the normal consequences of their actions. The High Court of Australia espouses a similar view: But, more importantly, the notion of legitimate expectation is not dependent upon any principle of estoppel. Whether the Minister can be estopped in the exercise of his discretion is another question; it was not a question raised by the appellant. Legitimate expectation does not depend upon the knowledge and state of mind of the individual concerned, although such an expectation may arise from the conduct of a public authority towards an individual. . . . (Haoucher v. Minister for Immigration, Local Government and Ethnic Affairs (1990), 19 A.L.D. 577, per Toohey J., at p. 590) See also Minister of State for Immigration and Ethnic Affairs v. Teoh (1995), 183 C.L.R. 273 (H.C.).
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2001	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1879/index.do	Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 S.C.R. 281, 2001 SCC 41	Binnie J.	concurring	Quebec	Administrative law	C	referred to	Office of Personnel Management v. Richmond, 496 U.S. 414 (1990)	SC	US	44 Decisions in which the U.S. Supreme Court has however refused to rule out public law estoppel entirely (at least in theory) include Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), at p. 423, and United States v. Pennsylvania Industrial Chemical Corp., 411 U.S. 655 (1973). Circuit courts which have allowed estoppel against the government in exceptional circumstances are referred to in United States v. Asmar, 827 F.2d 907 (3rd Cir. 1987), at p. 911, note 4. Professors Davis and Pierce, supra, suggest at p. 231 that a successful claim for equitable estoppel in the United States would have to involve at least the following characteristics: "(1) unequivocal advice from an unusually authoritative source; (2) reasonable reliance on that advice by an individual; (3) extreme harm resulting from that reliance; and (4) gross injustice to the individual in the absence of judicial estoppel".
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2001	R. v. Pan; R. v. Sawyer	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1880/index.do	R. v. Pan; R. v. Sawyer, [2001] 2 S.C.R. 344, 2001 SCC 42	ARBOUR J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	Tanner v. United States, 483 U.S. 107 (1987)	SC	US	71 In light of the above, it is unnecessary to review extensively the American jurisprudence on this point. On its face, the Rule does not render information concerning internal jury deliberations admissible, even where this evidence indicates concerns about the performance of the jury. For example, in Tanner v. United States, 483 U.S. 107 (1987), the majority held that evidence that jurors had consumed drugs and alcohol during the course of the trial was not admissible. The approach to admissibility embodied in Rule 606(b) is similar to the approach in Canada, as described by the Court of Appeal, which focuses on whether the evidence relates to information or an influence originating from outside of the jury deliberation process.
2001	R. v. Pan; R. v. Sawyer	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1880/index.do	R. v. Pan; R. v. Sawyer, [2001] 2 S.C.R. 344, 2001 SCC 42	ARBOUR J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	United States v. Perez, 22 U.S. (9 Wheat.) 579 (1824)	SC	US	115 In support of his submissions on the double jeopardy issue, Pan relies heavily on the American jurisprudence, which only permits a subsequent trial following the declaration of a mistrial where circumstances of "manifest necessity" exist. The obvious example of such a situation would be where the jury is hopelessly deadlocked: United States v. Perez, 22 U.S. (9 Wheat.) 579 (1824); United States v. Sanford, 429 U.S. 14 (1976); Richardson v. United States, 468 U.S. 317 (1984). Pan submits that the declaration of a mistrial in this case did not meet the standard of "manifest necessity" and that it was therefore improperly declared. In my view, the American jurisprudence is of limited assistance given the differences in our respective constitutions and case law on the double jeopardy issue. However, even if the American test of "manifest necessity" were applied to the Pan appeal, it would not appear to assist the appellant since it too allows for re-prosecution after a deadlocked jury trial.
2001	R. v. Pan; R. v. Sawyer	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1880/index.do	R. v. Pan; R. v. Sawyer, [2001] 2 S.C.R. 344, 2001 SCC 42	ARBOUR J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	United States v. Sanford, 429 U.S. 14 (1976)	SC	US	115 In support of his submissions on the double jeopardy issue, Pan relies heavily on the American jurisprudence, which only permits a subsequent trial following the declaration of a mistrial where circumstances of "manifest necessity" exist. The obvious example of such a situation would be where the jury is hopelessly deadlocked: United States v. Perez, 22 U.S. (9 Wheat.) 579 (1824); United States v. Sanford, 429 U.S. 14 (1976); Richardson v. United States, 468 U.S. 317 (1984). Pan submits that the declaration of a mistrial in this case did not meet the standard of "manifest necessity" and that it was therefore improperly declared. In my view, the American jurisprudence is of limited assistance given the differences in our respective constitutions and case law on the double jeopardy issue. However, even if the American test of "manifest necessity" were applied to the Pan appeal, it would not appear to assist the appellant since it too allows for re-prosecution after a deadlocked jury trial.

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2001	R. v. Pan; R. v. Sawyer	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1880/index.do	R. v. Pan; R. v. Sawyer, [2001] 2 S.C.R. 344, 2001 SCC 42	ARBOUR J.	unanimous	Ontario	Constitutional law Criminal law	R		Federal Rules of Evidence, Rule 606(b).	statute	US	69 The interpretation of the common law rule adopted by the majority of the Court of Appeal is similar to the statutory rule of evidence in the United States set out in Federal Rule 606(b). Rule 606(b), or a modified version thereof, has been adopted in many U.S. states. It provides that: Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror . . . . [Emphasis added.]
2001	R. v. Pan; R. v. Sawyer	6/29/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1880/index.do?q=%22++++++The+application+of+the+rule+in+the+English+cases+has+resulted%2C+at+times%2C+in+incongruous+results.++For+example%2C+evidence+that+a+jury+bailiff+told+the+jurors+of+the+accused%E2%80%99s+previous+convictions+has+been+held+to+be+admissible%22	R. v. Pan; R. v. Sawyer, [2001] 2 S.C.R. 344, 2001 SCC 42	ARBOUR J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Thompson, [1962] 1 All E.R. 65	lower-level court	UK	56 The application of the rule in the English cases has resulted, at times, in incongruous results. For example, evidence that a jury bailiff told the jurors of the accused's previous convictions has been held to be admissible (Brandon, supra), whereas evidence that the jury foreperson told the other jurors of the accused's previous convictions has been held to be inadmissible (R. v. Thompson, [1962] 1 All E.R. 65 (C.C.A.)). The rationale for the different result in these two situations is presumably that, in the former, the prejudicial information emanated from a source outside the jury room while, in the latter, the information, though equally prejudicial, was furnished by one of the jurors. In each case, however, the information is the same and its effect upon the jury is likely the same. 58 As noted by the majority of the Court of Appeal, Lord Mansfield's rule has been applied restrictively in some Canadian cases so as to preclude the admission of evidence emanating from one of the jurors even where this evidence concerns the alleged influence of a third party on the jury deliberations. For example, in R. v. Wilson (1993), 78 C.C.C. (3d) 568 (Man. C.A.), the appellant claimed that an RCMP officer had communicated information to a juror about the appellant's co-conspirator and that this information was conveyed to the other jurors. This evidence was sought to be admitted through the testimony of the jury foreman. The court held that the foreman's evidence as to comments made in the jury room was inadmissible. This is similar to the English case of Thompson, supra, in which the rule was applied restrictively to preclude the admission of evidence that the foreman had produced a list of the accused's previous convictions during the deliberations. 63 The Crown's position is that Lord Mansfield's rule should be strictly applied and that the line should be drawn at the jury room door. In the Crown's submission, any information emanating from the jurors themselves, even evidence that one juror told the others that the accused has a previous criminal record, as was the case in Thompson, supra, should be inadmissible. According to the Crown, a clear, bright line is required in this area of the law and nuances based on whether evidence is extrinsic or intrinsic to the deliberation process should therefore be avoided.
2001	114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)	6/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1878/index.do	114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40	L'Heureux-Dubé J.	majority	Quebec	Municipal law	C	referred to	A.P. Pollution Control Board v. Nayudu, 1999 S.O.L. Case No. 53	SC	India	32 Scholars have documented the precautionary principle's inclusion "in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment" (D. Freestone and E. Hey, "Origins and Development of the Precautionary Principle", in D. Freestone and E. Hey, eds., The Precautionary Principle and International Law (1996), at p. 41. As a result, there may be "currently sufficient state practice to allow a good argument that the precautionary principle is a principle of customary international law" (J. Cameron and J. Abouchar, "The Status of the Precautionary Principle in International Law", in ibid., at p. 52). See also O. McIntyre and T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 J. Env. L. 221, at p. 241 ("the precautionary principle has indeed crystallised into a norm of customary international law"). The Supreme Court of India considers the precautionary principle to be "part of the Customary International Law" (A.P. Pollution Control Board v. Nayudu, 1999 S.O.L. Case No. 53, at para. 27). See also Vellore Citizens Welfare Forum v. Union of India, [1996] Supp. 5 S.C.R. 241. In the context of the precautionary principle's tenets, the Town's concerns about pesticides fit well under their rubric of preventive action.
2001	114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)	6/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1878/index.do	114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40	L'Heureux-Dubé J.	majority	Quebec	Municipal law	C	referred to	Vellore Citizens Welfare Forum v. Union of India, [1996] Supp. 5 S.C.R. 241	SC	India	32 Scholars have documented the precautionary principle's inclusion "in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment" (D. Freestone and E. Hey, "Origins and Development of the Precautionary Principle", in D. Freestone and E. Hey, eds., The Precautionary Principle and International Law (1996), at p. 41. As a result, there may be "currently sufficient state practice to allow a good argument that the precautionary principle is a principle of customary international law" (J. Cameron and J. Abouchar, "The Status of the Precautionary Principle in International Law", in ibid., at p. 52). See also O. McIntyre and T. Mosedale, "The Precautionary Principle as a Norm of Customary International Law" (1997), 9 J. Env. L. 221, at p. 241 ("the precautionary principle has indeed crystallised into a norm of customary international law"). The Supreme Court of India considers the precautionary principle to be "part of the Customary International Law" (A.P. Pollution Control Board v. Nayudu, 1999 S.O.L. Case No. 53, at para. 27). See also Vellore Citizens Welfare Forum v. Union of India, [1996] Supp. 5 S.C.R. 241. In the context of the precautionary principle's tenets, the Town's concerns about pesticides fit well under their rubric of preventive action.
2001	McKinley v. BC Tel	6/28/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1876/index.do	McKinley v. BC Tel, [2001] 2 S.C.R. 161, 2001 SCC 38	IACOBUCCI J.	unanimous	British Columbia	Labour law Torts	C	referred to	Laws v. London Chronicle, Ltd., [1959] 2 All E.R. 285	lower-level court	UK	31 A similar analysis was undertaken in subsequent decisions dealing with this issue. For instance, in Laws v. London Chronicle, Ltd., [1959] 2 All E.R. 285, the English Court of Appeal stated the following at p. 287: [S]ince a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it follows that, if summary dismissal is claimed to be justifiable, the question must be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service. [Emphasis added.] As such, Lord Evershed, M.R., held that a single act of disobedience justified dismissal only if it demonstrated that the servant had repudiated the contract or one of its essential conditions. In this way, the ruling in Laws indicated that an analysis of whether an employee's misconduct warrants dismissal requires an assessment of its degree and surrounding circumstances.
2001	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.	6/7/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1874/index.do	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc., [2001] 2 S.C.R. 100, 2001 SCC 36	MAJOR J.	unanimous	Federal Court of Appeal	Administrative law Customs and excise	C	referred to	E.C. McAfee Co. v. United States, 842 F.2d 314 (1988)	lower-level court	US	38 In E.C. McAfee Co. v. United States, 842 F.2d 314 (Fed. Cir. 1988), the Court of Appeal held that "a sale need not be to purchasers located in the United States to provide the basis for valuation" (p. 318). 40 McAfee and Nissho Iwai are largely consistent with Noël J.'s decision (as he then was) in Minister of National Revenue v. Harbour Sales (Windsor) Inc. (1995), 90 F.T.R. 317, where he concluded that "[r]esidency is a concept that is totally foreign to the determination of value for duty under the Customs Act " (p. 318) and that "nothing in fact or in law prevents goods from being 'sold for export to Canada' to a purchaser who does not reside in Canada" (p. 318).
2001	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.	6/7/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1874/index.do	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc., [2001] 2 S.C.R. 100, 2001 SCC 36	MAJOR J.	unanimous	Federal Court of Appeal	Administrative law Customs and excise	C	referred to	Nissho Iwai American Corp. v. United States, 982 F.2d 505 (1992)	lower-level court	US	39 Similarly, in Nissho Iwai American Corp. v. United States, 982 F.2d 505 (Fed. Cir. 1992), the Court of Appeal held that the price an intermediary pays to a foreign manufacturer may constitute the value for duty of imported goods "when the goods are clearly destined for export to the United States and when the manufacturer and the middleman deal with each other at arm's length, in the absence of any non-market influences that affect the legitimacy of the sales price" (p. 509).
2001	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.	6/7/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1874/index.do	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc., [2001] 2 S.C.R. 100, 2001 SCC 36	MAJOR J.	unanimous	Federal Court of Appeal	Administrative law Customs and excise	C	referred to	Swan and Finch Co. v. United States, 190 U.S. 143 (1903)	SC	US	43 Where goods are not transported into Canada, a sale between two foreign companies cannot generally constitute an export. It may be the first sale in a chain that ultimately leads to a sale for export but it cannot generally be a sale for export. In The King v. Gooderham & Worts, Ltd., [1928] 3 D.L.R. 109 (Ont. S.C., App. Div.), Grant J.A. held that "one does not speak of 'exporting' goods from Toronto to Montreal" (p. 116). In Swan and Finch Co. v. United States, 190 U.S. 143 (1903), Brewer J. held that "the word 'export' as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country" (p. 145).

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2001	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.	6/7/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1874/index.do	Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc., [2001] 2 S.C.R. 100, 2001 SCC 36	MAJOR J.	unanimous	Federal Court of Appeal	Administrative law Customs and excise	R		19 U.S.C. § 1401a.(b)(1).	statute	US	37 U.S. courts have considered whether a sale for export to the U.S. requires that the purchaser be located in the U.S. In the United States, the transaction value of imported merchandise "is the price actually paid or payable for the merchandise when sold for exportation to the United States" (19 U.S.C. § 1401a.(b)(1)). The provision is similar to s. 48(4) of the Customs Act , which looks to "the price paid or payable for the goods when the goods are sold for export to Canada".
2001	Therrien (Re)	6/7/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1872/index.do	Therrien (Re), [2001] 2 S.C.R. 3, 2001 SCC 35	The Court	unanimous	Quebec	Administrative law Appeal Constitutional law Courts Criminal law	C	distinguished	Thomas v. The Queen, [1980] A.C. 125	SC	UK (PC)	45 There is also the recent decision of this Court in R. v. Kelly, [2001] 1 S.C.R. 741, 2001 SCC 25, to which I also wish to return. In that case, Major J., for the majority, held that the opinion given by the Ontario Court of Appeal under the referral process set out in s. 690 (c) of the Criminal Code, R.S.C. 1985, c. C-46 , for the purpose of determining whether certain evidence was admissible as fresh evidence, was no more than an opinion and not a judgment from which an appeal to this Court is available. That decision contains a number of points in common with the decision of the Privy Council in Thomas v. The Queen, [1980] A.C. 125, cited by the respondents, which was a reference by the Governor-General to the Court of Appeal of New Zealand regarding whether a convicted person should be pardoned. Although these two decisions may bear some prima facie resemblance to the present appeal, I believe that the fact situations were different. As I mentioned earlier, the report of the Quebec Court of Appeal has broader effect. Unlike s. 690(c) of the Code, it is not optional, but essential to the process of removing a judge and the administration of justice in general. Furthermore, the fact that it is judicial and in the nature of a decision is fundamental to the constitutionality of the proceeding as a whole. These considerations do not apply to applications for the mercy of the Crown under s. 690(c) of the Code
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Wik Peoples v. Queensland (1996), 187 C.L.R. 1	SC	Australia	147 The High Court of Australia has reached a similar conclusion with respect to the legal regime governing Australian aboriginal people: Mabo v. Queensland (1992), 175 C.L.R. 1, per Brennan J., for the majority, at pp. 55-57, and Toohey J., at p. 184. See also Wik Peoples v. Queensland (1996), 187 C.L.R. 1.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Mabo v. Queensland (1992), 175 C.L.R. 1	SC	Australia	147 The High Court of Australia has reached a similar conclusion with respect to the legal regime governing Australian aboriginal people: Mabo v. Queensland (1992), 175 C.L.R. 1, per Brennan J., for the majority, at pp. 55-57, and Toohey J., at p. 184. See also Wik Peoples v. Queensland (1996), 187 C.L.R. 1.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	United States v. Garrow, 88 F.2d 318 (1937)	lower-level court	US	87 The respondent contended that the Mohawks of Akwesasne are entitled to purchase goods on the U.S. side of the boundary and move those goods into Canada without payment of customs dues or other levies, including GST, for personal consumption, commercial trade at Akwesasne, or for trade with other First Nations in Canada. (A claim by Akwesasne Mohawks from St. Regis to carry goods duty free into the United States was rejected in United States v. Garrow, 88 F.2d 318 (C.C.P.A. 1937).) 168 As to the position of Mohawks in Canada seeking to trade into the United States, see United States v. Garrow, supra, which involved "a full-blooded Indian woman of the Canadian St. Regis Tribe of Iroquois Indians" (p. 318) who resided in Canada near the international boundary line. She entered the United States at the village of Hogansburg, New York, carrying 24 baskets for sale in the United States. She was charged duty under the Tariff Act of 1930. She launched a protest, claiming that as she was an aboriginal person she could bring the baskets into the United States free of duty under Article III of the Jay Treaty. Her claim was rejected, the court stating at p. 324: There being neither any treaty exemption of appellee's goods from duty, nor any statutory exemption thereof, it follows that they are dutiable, as claimed by the collector. See also Akins v. United States, 551 F.2d 1222 (C.C.P.A. 1977).
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)	SC	US	112 The respondent is understandably proud of the Mohawk heritage. The Iroquois Confederacy is thought to have been formed around 1450. The evidence accepted by the trial judge at p. 26 was that at their height ... the Iroquois had achieved for themselves the most remarkable civil organization in the New World excepting only Mexico and Peru. The respondent's 17th century ancestors were no doubt unaware that some of the Kings in distant Europe were laying claim to sovereignty over Mohawk territory. As Marshall C.J. of the United States Supreme Court observed in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), at p. 543: It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied....
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Oyekan v. Adele, [1957] 2 All E.R. 785	SC	UK (PC)	144 Reference has already been made to the fact that one of several sources of the concept of aboriginal rights, now significantly modified by the more generous principles of constitutional interpretation, is traditional British colonial law. Many of the cases decided by the Judicial Committee of the Privy Council were concerned with rights of property created under a former regime. In Amodu Tijani v. Southern Nigeria (Secretary), [1921] 2 A.C. 399, at p. 407, it was confirmed that "A mere change in sovereignty is not to be presumed as meant to disturb rights of private owners" (emphasis added). More recently, Lord Denning, speaking for the Privy Council in Oyekan v. Adele, [1957] 2 All E.R. 785, at p. 788, said: "In inquiring ... what rights are recognised, there is one guiding principle. It is this: The courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected" (emphasis added). As with the modern law of aboriginal rights, the law of sovereign succession was intended to reconcile the interests of the local inhabitants across the empire to a change in sovereignty.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Almeida-Sanchez v. United States, 413 U.S. 266 (1973)	SC	US	160 Control over the mobility of persons and goods into one country is, and always has been, a fundamental attribute of sovereignty. It is commonly accepted that sovereign states have the right to control both who and what enters their boundaries. For the general welfare of the nation the state is expected to perform this role. [Emphasis added.] (R. v. Simmons, [1988] 2 S.C.R. 495, at p. 528, per Dickson C.J.) See also R. v. Jacques, [1996] 3 S.C.R. 312, at paras. 15 and 18, per Gonthier J.; Almeida-Sanchez v. United States, 413 U.S. 266 (1973), at p. 279; and United States v. Ramsey, 431 U.S. 606 (1977). In other words, not only does authority over the border exist as an incident of sovereignty, the state is expected to exercise it in the public interest. The duty cannot be abdicated to the vagaries of an earlier regime whose sovereignty has been eclipsed (Cain, supra, at pp. 545-46).

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2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Chae Chan Ping v. United States, 130 U.S. 581 (1889)	SC	US	162 The courts of the United States, being in this case the country of export, also view border controls as incidental to territorial sovereignty. In Chae Chan Ping v. United States, 130 U.S. 581 (1889), it was said by Field J., for the United States Supreme Court, at pp. 603-4: Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. In Ekiu v. United States, 142 U.S. 651 (1892), at p. 659, the United States Supreme Court stated: It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Ekiu v. United States, 142 U.S. 651 (1892)	SC	US	162 The courts of the United States, being in this case the country of export, also view border controls as incidental to territorial sovereignty. In Chae Chan Ping v. United States, 130 U.S. 581 (1889), it was said by Field J., for the United States Supreme Court, at pp. 603-4: Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. In Ekiu v. United States, 142 U.S. 651 (1892), at p. 659, the United States Supreme Court stated: It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Fong Yue Ting v. United States, 149 U.S. 698 (1893)	SC	US	162 The courts of the United States, being in this case the country of export, also view border controls as incidental to territorial sovereignty. In Chae Chan Ping v. United States, 130 U.S. 581 (1889), it was said by Field J., for the United States Supreme Court, at pp. 603-4: Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. In Ekiu v. United States, 142 U.S. 651 (1892), at p. 659, the United States Supreme Court stated: It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831)	SC	US	165 In reaching that conclusion, however, I do not wish to be taken as either foreclosing or endorsing any position on the compatibility or incompatibility of internal self-governing institutions of First Nations with Crown sovereignty, either past or present. I point out in this connection that the sovereign incompatibility principle has not prevented the United States (albeit with its very different constitutional framework) from continuing to recognize forms of internal aboriginal self-government which it considers to be expressions of residual aboriginal sovereignty. The concept of a "domestic dependent nation" was introduced by Marshall C.J. in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831), at p. 17, as follows: ... it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations

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2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Akins v. United States, 551 F.2d 1222 (1977)	lower-level court	US	168 As to the position of Mohawks in Canada seeking to trade into the United States, see United States v. Garrow, supra, which involved "a full-blooded Indian woman of the Canadian St. Regis Tribe of Iroquois Indians" (p. 318) who resided in Canada near the international boundary line. She entered the United States at the village of Hogansburg, New York, carrying 24 baskets for sale in the United States. She was charged duty under the Tariff Act of 1930. She launched a protest, claiming that as she was an aboriginal person she could bring the baskets into the United States free of duty under Article III of the Jay Treaty. Her claim was rejected, the court stating at p. 324: There being neither any treaty exemption of appellee's goods from duty, nor any statutory exemption thereof, it follows that they are dutiable, as claimed by the collector. See also Akins v. United States, 551 F.2d 1222 (C.C.P.A. 1977). 169 I refer to the U.S. law only to alleviate any concern that addressing aspects of the sovereignty issue in the context of a claim to an international trading and mobility right would prejudice one way or the other a resolution of the much larger and more complex claim of First Nations in Canada to internal self-governing institutions. The United States has lived with internal tribal self-government within the framework of external relations determined wholly by the United States government without doctrinal difficulties since Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823), was decided
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Binnie J.	concurring	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823)	SC	US	169 I refer to the U.S. law only to alleviate any concern that addressing aspects of the sovereignty issue in the context of a claim to an international trading and mobility right would prejudice one way or the other a resolution of the much larger and more complex claim of First Nations in Canada to internal self-governing institutions. The United States has lived with internal tribal self-government within the framework of external relations determined wholly by the United States government without doctrinal difficulties since Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823), was decided almost 170 years ago.
2001	Mitchell v. M.N.R.	5/24/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1869/index.do	Mitchell v. M.N.R., [2001] 1 S.C.R. 911, 2001 SCC 33	Mclachlin	majority	Federal Court of Appeal	Constitutional law Evidence	C	referred to	Mabo v. Queensland (1992), 175 C.L.R. 1	SC	Australia	10 Accordingly, European settlement did not terminate the interests of aboriginal peoples arising from their historical occupation and use of the land. To the contrary, aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, and were absorbed into the common law as rights, unless (1) they were incompatible with the Crown's assertion of sovereignty, (2) they were surrendered voluntarily via the treaty process, or (3) the government extinguished them: see B. Slattery, "Understanding Aboriginal Rights" (1987), 66 Can. Bar Rev. 727. Barring one of these exceptions, the practices, customs and traditions that defined the various aboriginal societies as distinctive cultures continued as part of the law of Canada: see Calder v. Attorney-General of British Columbia, [1973] S.C.R. 313, and Mabo v. Queensland (1992), 175 C.L.R. 1, at p. 57 (per Brennan J.), pp. 81-82 (per Deane and Gaudron JJ.), and pp. 182-83 (per Toohey J.).
2001	Trinity Western University v. British Columbia College of Teachers	5/17/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do	Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772, 2001 SCC 31	L'Heureux-Dubé J.	dissenting	British Columbia	Administrative law	C	D	Bob Jones University v. United States, 461 U.S. 574 (1983)	SC	US	70 As another preliminary matter, I would emphasize the relevance of the United States Supreme Court's decision in Bob Jones University v. United States, 461 U.S. 574 (1983). In that case, the court denied tax-exempt status to a religious institution that at the time prohibited interracial dating and marriage based on apparently sincerely held religious beliefs. Burger C.J. for the court wrote that "there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice" (p. 592). He added that "Bob Jones University . . . contends that it is not racially discriminatory. It emphasizes that it now allows all races to enroll, subject only to its restrictions on the conduct of all students, including its prohibitions of association between men and women of different races, and of interracial marriage" (p. 605). This American case provides an example, namely a ban on interracial dating and marriage, that is difficult to distinguish in a principled way from the ban on homosexual behaviour at issue here. In my view, to paraphrase Burger C.J., there can no longer be any doubt that sexual orientation discrimination in education violates deeply and widely accepted views of elementary justice. 71 It was not Bob Jones University faculty or students' religious beliefs that led to the American Supreme Court decision, but rather a disciplinary rule of conduct prohibiting interracial dating and marriage. Similarly, in this case, where the salient difference is the ground of discrimination, namely sexual orientation, it is the Code of Community Standards that is at issue. See B. MacDougall, "Silence in the Classroom: Limits on Homosexual Expression and Visibility in Education and the Privileging of Homophobic Religious Ideology" (1998), 61 Sask. L. Rev. 41, at p. 78: "Once the religious characterization is removed from an issue of racial or gender discrimination, the issue becomes much more straightforward. So it should be with homosexuality." I thus find it alarmist for my colleagues to suggest that "if TWU's Community Standards could be sufficient in themselves to justify denying accreditation, it is difficult to see how the same logic would not result in the denial of accreditation to members of a particular church" (para. 33).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Martin, [1989] 1 All E.R. 652	lower-level court	UK	68 The English common law formulation of the defence of duress now appears generally similar to its Canadian counterpart. Since the 1980s, the English Court of Appeal has recognized two species of duress: "duress by threats" and "duress of circumstances" (J. C. Smith, Smith & Hogan: Criminal Law (9th ed. 1999), at p. 242). Nevertheless, the jurisprudence views the assessment of both forms of duress as being essentially the same (R. v. Martin, [1989] 1 All E.R. 652 (C.A.)). Duress by threats is applicable where an accused is threatened by someone to commit a crime or else risk being physically injured or killed. Duress of circumstances, which is analogous to our defence of necessity, is available where an accused commits a crime to avert death or serious injury, but no person is demanding that he do so. The Court of Appeal's recent decision in R. v. Abdul-Hussain, [1998] E.W.J. No. 4183 (QL), indicates that the same principles apply to both varieties of duress (see also Re A (Children), also known as the Siamese Twins Decision, [2000] E.W.J. No. 4875 (QL) (C.A.), at para. 203 (per Lord Justice Ward)).

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2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Abdul-Hussain, [1998] E.W.J. No. 4183 (QL)	lower-level court	UK	68 The English common law formulation of the defence of duress now appears generally similar to its Canadian counterpart. Since the 1980s, the English Court of Appeal has recognized two species of duress: "duress by threats" and "duress of circumstances" (J. C. Smith, Smith & Hogan: Criminal Law (9th ed. 1999), at p. 242). Nevertheless, the jurisprudence views the assessment of both forms of duress as being essentially the same (R. v. Martin, [1989] 1 All E.R. 652 (C.A.)). Duress by threats is applicable where an accused is threatened by someone to commit a crime or else risk being physically injured or killed. Duress of circumstances, which is analogous to our defence of necessity, is available where an accused commits a crime to avert death or serious injury, but no person is demanding that he do so. The Court of Appeal's recent decision in R. v. Abdul-Hussain, [1998] E.W.J. No. 4183 (QL), indicates that the same principles apply to both varieties of duress (see also Re A (Children), also known as the Siamese Twins Decision, [2000] E.W.J. No. 4875 (QL) (C.A.), at para. 203 (per Lord Justice Ward)).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	Re A (Children) (Siamese Twins Decision), [2000] E.W.J. No. 4875 (QL)	lower-level court	UK	68 The English common law formulation of the defence of duress now appears generally similar to its Canadian counterpart. Since the 1980s, the English Court of Appeal has recognized two species of duress: "duress by threats" and "duress of circumstances" (J. C. Smith, Smith & Hogan: Criminal Law (9th ed. 1999), at p. 242). Nevertheless, the jurisprudence views the assessment of both forms of duress as being essentially the same (R. v. Martin, [1989] 1 All E.R. 652 (C.A.)). Duress by threats is applicable where an accused is threatened by someone to commit a crime or else risk being physically injured or killed. Duress of circumstances, which is analogous to our defence of necessity, is available where an accused commits a crime to avert death or serious injury, but no person is demanding that he do so. The Court of Appeal's recent decision in R. v. Abdul-Hussain, [1998] E.W.J. No. 4183 (QL), indicates that the same principles apply to both varieties of duress (see also Re A (Children), also known as the Siamese Twins Decision, [2000] E.W.J. No. 4875 (QL) (C.A.), at para. 203 (per Lord Justice Ward)).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Howe, [1987] 1 All E.R. 771	SC	UK (HL)	69 The defence is available in respect of all crimes except murder, whether as a principal or as an aider/abettor (R. v. Howe, [1987] 1 All E.R. 771 (H.L.)), attempted murder (R. v. Gotts, [1992] 1 All E.R. 832 (H.L.)), and most forms of treason (Lynch v. Director of Public Prosecutions for Northern Ireland, [1975] 1 All E.R. 913 (H.L.), and Gotts). In extreme circumstances, the defence may be available even to a charge of murder (see the Siamese Twins Decision, supra, at para. 348-58, per Lord Justice Brooke). The threat must be of death or serious physical harm to the accused or to a family member (Martin, supra; Abdul-Hussain, at para. 46). No modern case asserts that a threat of harm to an accused's property is enough to invoke the defence.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Gotts, [1992] 1 All E.R. 832	SC	UK (HL)	69 The defence is available in respect of all crimes except murder, whether as a principal or as an aider/abettor (R. v. Howe, [1987] 1 All E.R. 771 (H.L.)), attempted murder (R. v. Gotts, [1992] 1 All E.R. 832 (H.L.)), and most forms of treason (Lynch v. Director of Public Prosecutions for Northern Ireland, [1975] 1 All E.R. 913 (H.L.), and Gotts). In extreme circumstances, the defence may be available even to a charge of murder (see the Siamese Twins Decision, supra, at para. 348-58, per Lord Justice Brooke). The threat must be of death or serious physical harm to the accused or to a family member (Martin, supra; Abdul-Hussain, at para. 46). No modern case asserts that a threat of harm to an accused's property is enough to invoke the defence.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	Lynch v. Director of Public Prosecutions for Northern Ireland, [1975] 1 All E.R. 913	SC	UK (HL)	69 The defence is available in respect of all crimes except murder, whether as a principal or as an aider/abettor (R. v. Howe, [1987] 1 All E.R. 771 (H.L.)), attempted murder (R. v. Gotts, [1992] 1 All E.R. 832 (H.L.)), and most forms of treason (Lynch v. Director of Public Prosecutions for Northern Ireland, [1975] 1 All E.R. 913 (H.L.), and Gotts). In extreme circumstances, the defence may be available even to a charge of murder (see the Siamese Twins Decision, supra, at para. 348-58, per Lord Justice Brooke). The threat must be of death or serious physical harm to the accused or to a family member (Martin, supra; Abdul-Hussain, at para. 46). No modern case asserts that a threat of harm to an accused's property is enough to invoke the defence.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Lewis (1992), 96 Cr. App. R. 412; R. v. Heath, [1999] E.W.J. No. 5092 (QL)	lower-level court	UK	70 Like s. 17 of the Criminal Code , the English jurisprudence has precluded resort to the defence where the threats are made by a criminal organization which the accused voluntarily joined and knew might pressure him to engage in criminal activity (R. v. Lewis (1992), 96 Cr. App. R. 412 ; R. v. Heath, [1999] E.W.J. No. 5092 (QL)).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Heath, [1999] E.W.J. No. 5092 (QL)	lower-level court	UK	70 Like s. 17 of the Criminal Code , the English jurisprudence has precluded resort to the defence where the threats are made by a criminal organization which the accused voluntarily joined and knew might pressure him to engage in criminal activity (R. v. Lewis (1992), 96 Cr. App. R. 412 ; R. v. Heath, [1999] E.W.J. No. 5092 (QL)).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Graham, [1982] 1 All E.R. 801	lower-level court	UK	71 The House of Lords recently confirmed that the test for duress is an objective one: did the accused reasonably believe that the threat would be carried out if he did not commit the crime, and would a person of "reasonable firmness sharing the [accused's] characteristics" have succumbed to the threat? (Howe, supra, per Lord Mackay, at p. 800, where he endorses the English Court of Appeal's decision in R. v. Graham, [1982] 1 All E.R. 801, at p. 806). This test is arguably more stringent than s. 17 of the Criminal Code , which is entirely subjective and does not require that the accused's belief be reasonable. It is also arguably more stringent than the common law formulation of the defence in Canada, which results in an objective-subjective standard, as in the case of the defence of necessity. As in Canada, the accused bears an evidential burden of laying a factual foundation for the defence of duress (if no such foundation may be inferred from the Crown's case). Once the factual foundation is established, the Crown has the onus of disproving duress (Smith & Hogan: Criminal Law, supra, at p. 242).
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Hudson, [1971] 2 Q.B. 202	lower-level court	UK	72 The appellant and respondent voiced conflicting views about the existence of any immediacy requirement in the English law of duress. English courts seem to have opted for a flexible test that requires that there be a close temporal connection between threat and harm. The threat need not operate instantly, but must be a present one in the sense that it creates an immediate pressure to act (see R. v. Hudson, [1971] 2 Q.B. 202 (C.A.), at pp. 206-7). Until now, that flexible test has never been set aside. In Abdul-Hussain, supra, and in the Siamese Twins Decision, supra, it was reiterated that, although there must be an imminent peril of death or injury, this requirement does not require that the threat be of immediate harm. The common law accepts that there could be a lapse in time between the threat and its execution, provided it neutralizes effectively the will of the accused. 79 Much like in English jurisprudence, some controversy arose about the relevancy, definition and function of the immediacy requirement in Australian law. The Full Supreme Court of Victoria in Hurley and Murray asserted that the threat of harm must be "present and continuing, imminent and impending" (p. 543). Since then, however, three state appellate courts have specifically endorsed the ruling in Hudson that threats of future harm may suffice: the Full Supreme Court of South Australia in Palazoff, supra, at p. 109, and R. v. Brown (1986), 43 S.A.S.R. 33; the Full Supreme Court of Victoria in Dawson, supra; and the New South Wales Court of Criminal Appeal in R. v. Williamson, [1972] 2 N.S.W.L.R. 281, at pp. 283 and 300. 86 This review of the common law defence of duress confirms that, although the common law is not unanimous in the United States, a substantial consensus has grown in Canada, England and Australia to the effect that the strict criterion of immediacy is no longer a generally accepted component of the defence. A requirement that the threat be "imminent" has been interpreted and applied in a more flexible manner. The English Court of Appeal held in Hudson that depending on the circumstances, threats of future harm are sufficient to invoke the defence. Hudson remains good law in England and has been adopted by the courts in three Australian states and one territory. However, it is clear from the English cases that there must be a close temporal link between the threat of harm and the commission of the offence. The operative test in the English and Australian cases is whether the threat was effective to overbear the accused's will at the moment he committed the crime. Moreover, the safe avenue of escape test and the proportionality principle also appear to be key elements of the defence.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Hurley and Murray, [1967] V.R. 526; R. v. McCafferty, [1974] 1 N.S.W.L.R. 89	lower-level court	Australia	75 Overall, the state courts appear to have followed quite closely the English courts' approach to the defence. (See R. v. Hurley and Murray, [1967] V.R. 526 (S.C.), at p. 543, adopted by some other state courts – e.g., R. v. McCafferty, [1974] 1 N.S.W.L.R. 89 (S.C.), at p. 90, and R. v. Dawson, [1978] V.R. 536 (S.C.), at p. 537.) 77 The defence of duress is not available to a charge of murder in any of the Australian states. (See D. O'Connor and P. A. Fairall, Criminal Defences (3rd ed. 1996), at pp. 154-55.) As in England, an accused who has voluntarily joined a criminal enterprise or organization that she knows might pressure her by violent means into participating in criminal activity may not raise that defence. (See Hurley and Murray, supra, at p. 533; R. v. Lawrence, [1980] 1 N.S.W.L.R. 122 (C.A.), at p. 130. See also O'Connor and Fairall, supra, at p. 160.) 79 Much like in English jurisprudence, some controversy arose about the relevancy, definition and function of the immediacy requirement in Australian law. The Full Supreme Court of Victoria in Hurley and Murray asserted that the threat of harm must be "present and continuing, imminent and impending" (p. 543). Since then, however, three state appellate courts have specifically endorsed the ruling in Hudson that threats of future harm may suffice: the Full Supreme Court of South Australia in Palazoff, supra, at p. 109, and R. v. Brown (1986), 43 S.A.S.R. 33; the Full Supreme Court of Victoria in Dawson, supra; and the New South Wales Court of Criminal Appeal in R. v. Williamson, [1972] 2 N.S.W.L.R. 281, at pp. 283 and 300.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. McCafferty, [1974] 1 N.S.W.L.R. 89	lower-level court	Australia	75 Overall, the state courts appear to have followed quite closely the English courts' approach to the defence. (See R. v. Hurley and Murray, [1967] V.R. 526 (S.C.), at p. 543, adopted by some other state courts – e.g., R. v. McCafferty, [1974] 1 N.S.W.L.R. 89 (S.C.), at p. 90, and R. v. Dawson, [1978] V.R. 536 (S.C.), at p. 537.)
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Dawson, [1978] V.R. 536	lower-level court	Australia	75 Overall, the state courts appear to have followed quite closely the English courts' approach to the defence. (See R. v. Hurley and Murray, [1967] V.R. 526 (S.C.), at p. 543, adopted by some other state courts – e.g., R. v. McCafferty, [1974] 1 N.S.W.L.R. 89 (S.C.), at p. 90, and R. v. Dawson, [1978] V.R. 536 (S.C.), at p. 537.) 79 Much like in English jurisprudence, some controversy arose about the relevancy, definition and function of the immediacy requirement in Australian law. The Full Supreme Court of Victoria in Hurley and Murray asserted that the threat of harm must be "present and continuing, imminent and impending" (p. 543). Since then, however, three state appellate courts have specifically endorsed the ruling in Hudson that threats of future harm may suffice: the Full Supreme Court of South Australia in Palazoff, supra, at p. 109, and R. v. Brown (1986), 43 S.A.S.R. 33; the Full Supreme Court of Victoria in Dawson, supra; and the New South Wales Court of Criminal Appeal in R. v. Williamson, [1972] 2 N.S.W.L.R. 281, at pp. 283 and 300.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Abusafiah (1991), 24 N.S.W.L.R. 531	lower-level court	Australia	76 The accused must have been compelled to commit the crime under a threat of death or serious bodily harm. Also, the accused must have had no safe means of preventing the execution of the threat. The case law suggests that a threat to a third party also qualifies. (See R. v. Abusafiah (1991), 24 N.S.W.L.R. 531 (C.A.), at pp. 544-45; R. v. Palazoff (1986), 43 S.A.S.R. 99 (S.C.), at p. 106.) The accused must have "reasonably apprehended" that the threat would be executed. The circumstances must be such that a person of ordinary firmness would have succumbed to the threat. That reasonable person shall be considered as sharing the personal characteristics of the accused, such as age, sex and background. (See Palazoff, supra, at p. 109.)
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Palazoff (1986), 43 S.A.S.R. 99	lower-level court	Australia	76 The accused must have been compelled to commit the crime under a threat of death or serious bodily harm. Also, the accused must have had no safe means of preventing the execution of the threat. The case law suggests that a threat to a third party also qualifies. (See R. v. Abusafiah (1991), 24 N.S.W.L.R. 531 (C.A.), at pp. 544-45; R. v. Palazoff (1986), 43 S.A.S.R. 99 (S.C.), at p. 106.) The accused must have "reasonably apprehended" that the threat would be executed. The circumstances must be such that a person of ordinary firmness would have succumbed to the threat. That reasonable person shall be considered as sharing the personal characteristics of the accused, such as age, sex and background. (See Palazoff, supra, at p. 109.) 79 Much like in English jurisprudence, some controversy arose about the relevancy, definition and function of the immediacy requirement in Australian law. The Full Supreme Court of Victoria in Hurley and Murray asserted that the threat of harm must be "present and continuing, imminent and impending" (p. 543). Since then, however, three state appellate courts have specifically endorsed the ruling in Hudson that threats of future harm may suffice: the Full Supreme Court of South Australia in Palazoff, supra, at p. 109, and R. v. Brown (1986), 43 S.A.S.R. 33; the Full Supreme Court of Victoria in Dawson, supra; and the New South Wales Court of Criminal Appeal in R. v. Williamson, [1972] 2 N.S.W.L.R. 281, at pp. 283 and 300.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Lawrence, [1980] 1 N.S.W.L.R. 122	lower-level court	Australia	77 The defence of duress is not available to a charge of murder in any of the Australian states. (See D. O'Connor and P. A. Fairall, Criminal Defences (3rd ed. 1996), at pp. 154-55.) As in England, an accused who has voluntarily joined a criminal enterprise or organization that she knows might pressure her by violent means into participating in criminal activity may not raise that defence. (See Hurley and Murray, supra, at p. 533; R. v. Lawrence, [1980] 1 N.S.W.L.R. 122 (C.A.), at p. 130. See also O'Connor and Fairall, supra, at p. 160.)
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	R. v. Williamson, [1972] 2 N.S.W.L.R. 281	lower-level court	Australia	79 Much like in English jurisprudence, some controversy arose about the relevancy, definition and function of the immediacy requirement in Australian law. The Full Supreme Court of Victoria in Hurley and Murray asserted that the threat of harm must be "present and continuing, imminent and impending" (p. 543). Since then, however, three state appellate courts have specifically endorsed the ruling in Hudson that threats of future harm may suffice: the Full Supreme Court of South Australia in Palazoff, supra, at p. 109, and R. v. Brown (1986), 43 S.A.S.R. 33; the Full Supreme Court of Victoria in Dawson, supra; and the New South Wales Court of Criminal Appeal in R. v. Williamson, [1972] 2 N.S.W.L.R. 281, at pp. 283 and 300.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	Osborne v. Goddard (1978), 21 A.L.R. 189	lower-level court	Australia	80 Akin to the English Court of Appeal's decision in Abdul-Hussain, at least one of the Australian cases suggests that proportionality is a component of the defence of duress. In Osborne v. Goddard (1978), 21 A.L.R. 189, at p. 195, the full Supreme Court of South Australia intimated that the severity of the crime is an important consideration in determining whether the accused's failure to pursue a safe avenue of escape was reasonable.
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	United States v. Jennell, 749 F.2d 1302 (1984)	lower-level court	US	81 The appellant referred to some American authorities on the nature of the common law defence of duress, which according to him demonstrate that this defence is subject to stricter constraints in the United States, and in particular that a threat of future harm will not allow an accused to raise a defence of duress. (See W. R. LaFave and A. W. Scott, Substantive Criminal Law (1986), vol. 1, at pp. 618-19; United States v. Jennell, 749 F.2d 1302 (9th Cir. 1984), at p. 1305; United States v. Contento-Pachon, 723 F.2d 691 (9th Cir. 1984), at pp. 693-94; United States v. Marenghi, 893 F. Supp. 85 (D. Me. 1995), at p. 92; J. Hall, General Principles of Criminal Law (2nd ed. 1960), at p. 447.)
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	United States v. Contento-Pachon, 723 F.2d 691 (1984)	lower-level court	US	81 The appellant referred to some American authorities on the nature of the common law defence of duress, which according to him demonstrate that this defence is subject to stricter constraints in the United States, and in particular that a threat of future harm will not allow an accused to raise a defence of duress. (See W. R. LaFave and A. W. Scott, Substantive Criminal Law (1986), vol. 1, at pp. 618-19; United States v. Jennell, 749 F.2d 1302 (9th Cir. 1984), at p. 1305; United States v. Contento-Pachon, 723 F.2d 691 (9th Cir. 1984), at pp. 693-94; United States v. Marenghi, 893 F. Supp. 85 (D. Me. 1995), at p. 92; J. Hall, General Principles of Criminal Law (2nd ed. 1960), at p. 447.) 83 Even the cases which the appellant has cited do not all suggest a strict criterion of immediacy in the context of duress. For instance, consider the decision of the United States Court of Appeals for the Ninth Circuit in Contento-Pachon, supra. The facts giving rise to that case were similar to the facts in the case at bar. The accused had been coerced by an individual in Colombia to smuggle cocaine into the United States. He was told that if he did not comply, his wife and child in Colombia would be harmed. The accused complied with the request and did not seek police assistance in Colombia because he believed police there were corrupt. We realize that even though the accused claimed he was being watched during the whole trip by his threatener's accomplice, the threat could not, as in the case at bar, be considered immediate in the strict sense. Indeed, had the accused not complied with the order, the accomplice would have had to take the time to contact the threatener in Colombia. Then, the threatener would have had to get to the accused's house and eventually carry out the threat. There was therefore no more immediacy in Contento-Pachon than in the case at bar, where Mirkovic would have had to be contacted by his accomplice from the restaurant in Toronto if the heroin was not delivered by the accused as expected. He would then have had to get to the accused's mother and eventually carry out the threat. 84 In Contento-Pachon, the trial judge found that since the alleged threat was not immediate, the defence of duress could not be submitted to the jury. The Court of Appeals reversed by stating a more flexible criterion (at p. 694): [t]he element of immediacy requires that there be some evidence that the threat of injury was present, immediate, or impending" (emphasis added). Right after, the court adds, citing Rhode Island Recreation Center v. Aetna Casualty & Surety Co., 177 F.2d 603 (1st Cir. 1949), at p. 605, that immediacy means that a "veiled threat of future unspecified harm" (emphasis added) will not be sufficient to invoke duress. Finally, holding that the criterion was satisfied, the court wrote (at p. 694): Evidence presented on this issue indicated that the defendant was dealing with a man who was deeply involved in the exportation of illegal substances. Large sums of money were at stake and, consequently, Contento-Pachon had reason to believe that Jorge would carry out his threats. Jorge had gone to the trouble to discover that Contento-Pachon was married, that he had a child, the names of his wife and child, and the location of his residence. These were not vague threats of possible future harm. According to the defendant, if he had refused to cooperate, the consequences would have been
2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	United States v. Marenghi, 893 F. Supp. 85 (1995)	lower-level court	US	81 The appellant referred to some American authorities on the nature of the common law defence of duress, which according to him demonstrate that this defence is subject to stricter constraints in the United States, and in particular that a threat of future harm will not allow an accused to raise a defence of duress. (See W. R. LaFave and A. W. Scott, Substantive Criminal Law (1986), vol. 1, at pp. 618-19; United States v. Jennell, 749 F.2d 1302 (9th Cir. 1984), at p. 1305; United States v. Contento-Pachon, 723 F.2d 691 (9th Cir. 1984), at pp. 693-94; United States v. Marenghi, 893 F. Supp. 85 (D. Me. 1995), at p. 92; J. Hall, General Principles of Criminal Law (2nd ed. 1960), at p. 447.)
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2001	R. v. Ruzic	4/20/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1861/index.do	R. v. Ruzic, [2001] 1 S.C.R. 687, 2001 SCC 24	LEBEL J.	unanimous	Ontario	Constitutional law Criminal law	C	referred to	People v. Harmon, 232 N.W.2d 187 (1975)	lower-level court	US	82 It must be noted, however, that the situation is far from being as clear as what the appellant suggests. In fact, several American cases have displayed a flexible view of the temporal criterion in the context of duress. For instance in the case of Esquibel v. State, 576 P.2d 1129 (N.M. 1978), it was held that a threat which had occurred 48 to 72 hours before the commission of the offence was sufficient to trigger the application of the defence in the particular circumstances of that case. The court underlined the need to analyse closely the facts of each case when assessing duress, rather than adopting a strict criterion of "immediacy", in order to determine whether the accused's actions were dictated by the threat when he committed the crime (see also People v. Harmon, 232 N.W.2d 187 (Mich. 1975); State v. Toscano, 378 A.2d 755 (N.J. 1977)).
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2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Furman v. Georgia, 408 U.S. 238 (1972);	SC	US	33 The authority of the Minister under s. 25 is predicated on the existence of an extradition treaty (s. 3). The extradition treaty in question here was concluded by Canada and the United States in 1971 at a time when Canada still retained the death penalty, although no executions had been carried out since 1962. In the United States executions, which had occurred at the rate of about 50 per year in the late 1950s, "slowed to a trickle and then stopped" in the 1960s (W. S. White, "Capital Punishment's Future" (1993), 91 Mich. L. Rev. 1429, at p. 1429). A de facto moratorium occurred commencing June 2, 1967. This was reinforced five years later when the Supreme Court of the United States, in Furman v. Georgia, 408 U.S. 238 (1972), declared the death penalty regime of the State of Georgia to be unconstitutional. By 1976, the year in which the extradition treaty was ratified and came into force, there had been a realignment of positions. Canada had abolished the death penalty for all but a few military crimes (Criminal Law Amendment Act (No. 2), 1976, S.C. 1974-75-76, c. 105). In the same year the United States Supreme Court declared that the death penalty could be constitutional if appropriate procedural safeguards are put in place: Gregg v. Georgia, 428 U.S. 153 (1976). Executions resumed on January 17, 1977 when Gary Gilmore was shot by a firing squad in Utah (H. H. Haines, Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972-1994 (1996), at p. 211). In recognition, perhaps, of this fluid state of affairs the parties agreed that the extradition treaty should include Article 6 in respect of seeking assurances. As set out above, Article 6 provides as follows: When the offense for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offense, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed. 110 Finally, we should note the recent Columbia University study by Professor James Liebman and others which concludes that 2 out of 3 death penalty sentences in the United States were reversed on appeal: A Broken System: Error Rates in Capital Cases, 1973-1995 (June 12, 2000). The authors gathered and analyzed all of the available cases from the period of 1973 to 1995, the former being the year that states began to enact new death penalty statutes following the United States Supreme Court's decision in Furman, supra, invalidating the existing regimes. Collection of the data for the study began in 1991, the year Kindler and Ng were decided. In their executive summary, the authors report that "the overall rate of prejudicial error in the American capital punishment system was 68%." These errors were detected at one of three stages of appeal in the American legal system. The authors say that with "so many mistakes that it takes three judicial inspections to catch them" there must be "grave doubt about whether we do catch them all" (emphasis in original). The authors point out in footnote 81 that "[b]etween 1972 and the beginning of 1998, 68 people were released from death row on the grounds that their convictions were faulty, and there was too little evidence to retry the prisoner" and as of May 2000 "the number of inmates released from death row as factually or legally innocent apparently has risen to 87, including nine released in 1999 alone." For an abridged version of the Liebman study, see "Capital Attrition:
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Gregg v. Georgia, 428 U.S. 153 (1976)	SC	US	33 The authority of the Minister under s. 25 is predicated on the existence of an extradition treaty (s. 3). The extradition treaty in question here was concluded by Canada and the United States in 1971 at a time when Canada still retained the death penalty, although no executions had been carried out since 1962. In the United States executions, which had occurred at the rate of about 50 per year in the late 1950s, "slowed to a trickle and then stopped" in the 1960s (W. S. White, "Capital Punishment's Future" (1993), 91 Mich. L. Rev. 1429, at p. 1429). A de facto moratorium occurred commencing June 2, 1967. This was reinforced five years later when the Supreme Court of the United States, in Furman v. Georgia, 408 U.S. 238 (1972), declared the death penalty regime of the State of Georgia to be unconstitutional. By 1976, the year in which the extradition treaty was ratified and came into force, there had been a realignment of positions. Canada had abolished the death penalty for all but a few military crimes (Criminal Law Amendment Act (No. 2), 1976, S.C. 1974-75-76, c. 105). In the same year the United States Supreme Court declared that the death penalty could be constitutional if appropriate procedural safeguards are put in place: Gregg v. Georgia, 428 U.S. 153 (1976). Executions resumed on January 17, 1977 when Gary Gilmore was shot by a firing squad in Utah (H. H. Haines, Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972-1994 (1996), at p. 211). In recognition, perhaps, of this fluid state of affairs the parties agreed that the extradition treaty should include Article 6 in respect of seeking assurances. As set out above, Article 6 provides as follows: When the offense for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offense, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or if imposed, shall not be executed
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Eur. Court H.R., Soering case, judgment of 7 July 1989, Series A No. 161	international	ECHR	53 There is some support for this view in the decision of the European Court of Human Rights in Soering (Eur. Court H.R., Soering case, judgment of 7 July 1989, Series A No. 161, at para. 91): In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 [of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is equivalent to section 12 of our Charter], and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. 119 These statistics are comparable to the degree of delay on "death row" that concerned the European Court of Human Rights in Soering, supra. The evidence was that if Soering were to be sentenced to death under Virginia law he would face an average of six to eight years on death row. The European Court commented on the serious human rights consequences of holding a convict under the threat of death for a prolonged length of time at para. 106: However well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death. 137 In Soering, supra, the European Court of Human Rights held that, in the circumstances of that case, extradition of a West German national from the United Kingdom to face possible execution in the United States would violate the European Convention on Human Rights. West Germany was willing to try Soering in Germany on the basis of his nationality. The European Court ruled that the option of a trial of Soering in West Germany was a "circumstance of relevance for the overall assessment under Article 3 in that it goes to the search for the requisite fair balance of interests and to the proportionality of the contested extradition decision in the particular case" (para. 110) and that "[a] further consideration of relevance is that in the particular instance the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration" (para. 111). By "another means", the court had in mind the trial of Soering in West Germany. In the present appeal as well, "the legitimate purpose of extradition could be achieved by another means", namely extradition with assurances, in perfect conformity with Canada's commitment to international comity.

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2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Pratt v. Attorney General for Jamaica, [1993] 4 All E.R. 769	SC	UK (PC)	94 Other factors that weigh against extradition without assurances include the growing awareness of the rate of wrongful convictions in murder cases, and concerns about the "death row phenomenon", aptly described by Lord Griffiths in Pratt v. Attorney General for Jamaica, [1993] 4 All E.R. 769 (P.C.), at p. 783: There is an instinctive revulsion against the prospect of hanging a man after he has been held under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity: we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time. As these factors call for extended treatment, they will be dealt with separately under the headings which follow. 10. An Accelerating Concern About Potential Wrongful Convictions Is a Factor of Increased Weight Since Kindler and Ng Were Decided 120 In Pratt v. Attorney General for Jamaica, supra, at p. 783, the Judicial Committee of the Privy Council ruled against the decision of the Jamaican government which sought to carry out death sentences against two appellants who had been on death row for over 14 years. Lord Griffiths for the Committee stated at p. 786: In their Lordships' view a state that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	R. v. Bentley (Deceased), [1998] E.W.J. No. 1165 (QL)	lower-level court	UK	114 In R. v. Bentley (Deceased), [1998] E.W.J. No. 1165 (QL) (C.A.), the court posthumously quashed the murder conviction of Derek Bentley who was executed on January 28, 1953. The Crown had alleged that Bentley and an accomplice had embarked upon "a warehouse-breaking expedition" during which a police officer was killed. It was argued that the trial judge had erred in summing up to the jury. It was also argued that fresh evidence made the conviction unsafe. The Lord Chief Justice, Lord Bingham, said about the summing up in this case (at para. 78): It is with genuine diffidence that the members of this court direct criticism towards a trial judge widely recognised as one of the outstanding criminal judges of this century [Lord Goddard C.J.]. But we cannot escape the duty of decision. In our judgment the summing up in this case was such as to deny the appellant that fair trial which is the birthright of every British citizen. After quashing the conviction on this basis, Lord Bingham C.J. said (at para. 95): It must be a matter of profound and continuing regret that this mistrial occurred and that the defects we have found were not recognised at the time. It does not appear that the Court of Appeal gave much weight to the fresh evidence, though one component of this evidence (dealing with the taking of the appellant's statement) was said to provide "additional support" (para. 130) for the conclusion that the conviction was unsafe. 116 The U.K. experience is relevant for the obvious reason that these men might be free today if the state had not taken their lives. But there is more. These convictions were quashed not on the basis of sophisticated DNA evidence but on the basis of frailties that perhaps may never be eliminated from our system of criminal justice. It is true, as the English Court of Appeal noted in Mattan, that the present rules require far more disclosure on the part of the Crown. And it is true that there was some blood on the shoes of Mattan that could now be shown by DNA testing not to have belonged to the victim. But there is always the potential that eyewitnesses will get it wrong, either innocently or, as it appears in the case of Mattan, purposefully in order to shift the blame onto another. And there is always the chance that the judicial system will fail an accused, as it apparently did in Bentley. These cases demonstrate that the concern about wrongful convictions is unlikely to be resolved by advances in the forensic sciences, welcome as those advances are

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2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Solesbee v. Balkcom, 339 U.S. 9 (1950)	SC	US	122 There is now, however, as is shown in the report of Chief Justice Guy of Washington State, supra, a widening acceptance amongst those closely associated with the administration of justice in retentionist states that the finality of the death penalty, combined with the determination of the criminal justice system to satisfy itself fully that the conviction is not wrongful, seems inevitably to provide lengthy delays, and the associated psychological trauma. It is apposite to recall in this connection the observation of Frankfurter J. of the United States Supreme Court, dissenting, in Solesbee v. Balkcom, 339 U.S. 9 (1950), at p. 14, that the "onset of insanity while awaiting execution of a death sentence is not a rare phenomenon". Related concerns have been expressed by Breyer J., dissenting from decisions not to issue writs of certiorari in Elledge v. Florida, 119 S. Ct. 366 (1998), and Knight v. Florida, 120 S. Ct. 459 (1999). In the latter case, Breyer J. cited a Florida study of inmates which showed that 35 percent of those committed to death row attempted suicide.
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2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	C	referred to	Knight v. Florida, 120 S. Ct. 459 (1999)	SC	US	122 There is now, however, as is shown in the report of Chief Justice Guy of Washington State, supra, a widening acceptance amongst those closely associated with the administration of justice in retentionist states that the finality of the death penalty, combined with the determination of the criminal justice system to satisfy itself fully that the conviction is not wrongful, seems inevitably to provide lengthy delays, and the associated psychological trauma. It is apposite to recall in this connection the observation of Frankfurter J. of the United States Supreme Court, dissenting, in Solesbee v. Balkcom, 339 U.S. 9 (1950), at p. 14, that the "onset of insanity while awaiting execution of a death sentence is not a rare phenomenon". Related concerns have been expressed by Breyer J., dissenting from decisions not to issue writs of certiorari in Elledge v. Florida, 119 S. Ct. 366 (1998), and Knight v. Florida, 120 S. Ct. 459 (1999). In the latter case, Breyer J. cited a Florida study of inmates which showed that 35 percent of those committed to death row attempted suicide.
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	R		Criminal Appeal Act 1995 (U.K.), 1995, c. 35.	statute	UK	112 Countries other than Canada and the United States have also experienced their share of disclosure of wrongful convictions in recent years. In the United Kingdom, in 1991, the then Home Secretary announced the establishment of a Royal Commission on Criminal Justice (the Runciman Commission) to examine the effectiveness of the criminal justice system in securing the conviction of the guilty and the acquittal of the innocent. In making the announcement, the Home Secretary referred to such cases as the "Birmingham Six" which had seriously undermined public confidence in the administration of criminal justice. The report of the Commission, pointing to potential sources of miscarriage of justice, was presented to the British Parliament in 1993. The new Criminal Appeal Act, adopted in 1995, created the Criminal Cases Review Commission, an independent body responsible for investigating suspected miscarriages of criminal justice in England, Wales and Northern Ireland and referring appropriate cases to the Court of Appeal.
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	R		Wash. Rev. Code Ann. §§10.95.030 [am. 1993, c. 479 §1], 10.95.040, 10.95.070 [am. idem, §2], 10.95.180 [am. 1996, c. 251 §1] (West 1990 & Supp. 1999).	lower-level statute	US	13 The respondents were arrested in British Columbia and a committal order was issued for their extradition pending the decision of the Minister of Justice on surrender. The then Minister, Allan Rock, signed an unconditional Order for Surrender to have both of the respondents extradited to the State of Washington to stand trial without assurances in respect of the death penalty. If found guilty, the respondents will face either life in prison without the possibility of parole or the death penalty. Washington State provides for execution by lethal injection unless the condemned individual elects execution by hanging (Revised Code of Washington §10.95.180(1)). VI. Revised Code of Washington 27 10.95.030. Sentences for aggravated first degree murder (1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program. (2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. . . . 10.95.040. Special sentencing proceeding – Notice – Filing – Service (1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient
2001	United States v. Burns	2/15/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1842/index.do?q=portugal	United States v. Burns, [2001] 1 S.C.R. 283, 2001 SCC 7	The Court	unanimous	British Columbia	Constitutional law	R		law in general		Portugal	4 The abolitionist view is shared by some, but not a majority, of the United States. Michigan, Rhode Island and Wisconsin in fact abolished the death penalty for murder in the 1840s and 1850s, years before the first European state, Portugal, did so, and over a century before Canada did. At present, 12 states are abolitionist while 38 states retain the death penalty. The State of Washington, in which the respondents are wanted for trial on charges of aggravated first degree murder, is a retentionist state.

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2001	R. v. Sharpe	1/26/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do	R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2	L'Heureux-Dubé, Gonthier and Bastarache JJ.	concurring	British Columbia	Constitutional law Criminal law	C	referred to	United States v. Hilton, 167 F.3d 61 (1999)	lower-level court	US	180 Domestic legislation in a number of countries criminalizes the possession of child pornography, regardless of whether the possessor has an intent to disseminate; see, for example, Australia: Classification (Publications, Films and Computer Games) Act 1995 (Cth.), and state and territorial legislation in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia, which classify and prohibit various forms of child pornography; Belgium : art. 383bis of the Criminal Code , which proscribes private possession of figures, things, films, photos, slides or other visual representations of sexual acts or positions involving persons under 16 that are characterized as pornographic; England: Protection of Children Act 1978 (U.K.), 1978, c. 37, ss. 1 and 7; Criminal Justice Act 1988 (U.K.), 1988, c. 33, s. 160, and Criminal Justice and Public Order Act 1994 (U.K.), 1994, c. 33, ss. 84 to 86), which target private possession of photographs and pseudo-photographs of persons under 16 or who appear to be under 16; Ireland: Child Trafficking and Pornography Act, 1998, ss. 2 and 6, which defines child as a person under the age of 17, bans the private possession of (1) any visual representation that shows a person who is or is depicted as a child engaged in or witnessing explicit sexual activity and any visual representation whose dominant characteristic is the depiction of the genital or anal region of a child for sexual purposes; (2) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity; (3) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence; and (4) any visual representation or description of or information relating to a child that indicates or implies that the child is available to be used for the purposes of sexual exploitation; New Zealand: Films, Videos, and Publications Classification Act 1993, ss. 2, 3 and 131, which proscribes private possession of publications that describe, depict, express or otherwise deal with matters such as sex, horror, crime, cruelty, or violence such that the availability of the publication is likely to be injurious to the public good in that it promotes, supports or tends to promote or support the exploiting of children or young persons, for sexual purposes; and the United States: 18 U.S.C. §§ 2252(a)(4)(B) and 2256 (1994 & Supp. IV 1998), which targets photographs, film, video or pictures, computer or computer-generated images or pictures of sexually explicit conduct involving a person who is under 18 or who appears to be under 18. This statute has been interpreted as including only those visual images which are easily mistaken for that of a real child; see, for example, United States v. Hilton, 167 F.3d 61 (1st Cir. 1999), at p. 72. Therefore, drawings, sculptures and paintings are not proscribed.

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2001	R. v. Sharpe	1/26/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do	R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2	L'Heureux-Dubé, Gonthier and Bastarache JJ.	concurring	British Columbia	Constitutional law Criminal law	C	referred to	Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973)	SC	UK	201 The testimony of Dr. Collins illustrates that there is indeed a link between the possession of child pornography and harmful attitudes about the willingness of children to engage in sexual activity with adults. The statement of Ms. Monica Rainey from Citizens Against Child Exploitation before the Standing Committee on Justice and the Solicitor General explains the potentially distortional effect of child pornography: It is ludicrous to believe that child pornography has no effect on those who watch it. If that were true, why do we have advertisers selling billions of dollars of advertising for 90-second commercials? If 90 seconds work in advertising, we are fools to believe that 90 minutes of viewing adult sex with children will have no negative influence on those who are already addicted to children. (House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Justice and the Solicitor General, Issue No. 105, June 10, 1993, at p. 105:21) However, there is a dearth of empirical research which addresses whether these types of attitudes actually cause sexual abuse. The difficulty in obtaining empirical proof of a link between the possession of pornography and criminal behaviour was described in the Badgley Report, supra, vol. 2, which cited the U.K. Report of the Committee on Obscenity and Film Censorship (1979), as follows, at p. 1273: Since criminal and anti-social behaviour cannot itself, for both practical and ethical reasons, be experimentally produced or controlled, the observations must be made on some surrogate or related behaviour . . . The fundamental issue in this field concerns the relations that hold between reactions aroused in a subject by a represented, artificial, or fantasy scene, and his behaviour in reality . . . We can only express surprise at the confidence that some investigators have shown in supposing that they can investigate this problem through experimental set-ups in which reality is necessarily replaced by fantasy. [Emphasis added in Badgley Report.] This difficulty, however, should not serve as a bar to prohibiting the possession of child pornography. In this regard, the comments of Burger C.J. in Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973), at pp. 60-61, on obscene material are apposite:
2001	R. v. Sharpe	1/26/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do	R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2	L'Heureux-Dubé, Gonthier and Bastarache JJ.	concurring	British Columbia	Constitutional law Criminal law	C	referred to	Osborne v. Ohio, 495 U.S. 103 (1990)	SC	UK	209 As discussed by McLachlin C.J., the final link identified by the Crown, the abuse of children in the production of pornography, is conclusive (at para. 92). The prohibition of the possession of child pornography is intended to reduce the market for it. If consumption is reduced, presumably production will also be reduced. This fact was recognized by the United States Supreme Court in Osborne v. Ohio, 495 U.S. 103 (1990), at pp. 109-10. Parliament had additional evidence before it that the prohibition of private possession of child pornography would protect children from the harm of being used in its production. The hearings before the Fraser Committee revealed that the private preparation of child pornography was the major mode of resorting to the material. It urged Parliament to recognize that much, if not most, of the exploitation of children in pornography would occur in private (vol. 2, at p. 584). Similarly, the Badgley Committee found that privately produced material was a major source of child pornography (vol. 2, at p. 1197).
2001	R. v. Sharpe	1/26/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do	R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2	L'Heureux-Dubé, Gonthier and Bastarache JJ.	concurring	British Columbia	Constitutional law Criminal law	C	referred to	United States v. Knox, 32 F.3d 733 (1994)	lower-level court	UK	218 With respect to visual representations which depict children engaged in explicit sexual activity, and visual representations where the dominant characteristic is the depiction, for a sexual purpose, of a sexual organ or the anal region of a child, the focus must be on the harm of their message and not on the intent or identity of their creator. McLachlin C.J. is of the view that Parliament's concern with "explicit sexual activity" is limited to "visual representations near the extreme end of the spectrum" (para. 47). She implies that "nudity or intimate sexual activity" (para. 49) is required for material to be caught by the law. In our view, this approach is not consistent with an interpretation which focusses on the purpose of the legislation, which is to prevent the harms that arise from the possession of child pornography. To ensure that Parliament's purpose is fulfilled, when deciding on the correct interpretation of the terms in s. 163.1(1) , it is of overriding import to consider the content of the material which will fall just outside the scope of the prohibition. For example, this consideration motivated the decision in United States v. Knox, 32 F.3d 733 (3rd Cir. 1994), which refused to create "an absolute immunity for pornographers who pander to pedophiles by using as their subjects children whose genital areas are barely covered" (p. 752).
2001	R. v. Sharpe	1/26/2001	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do	R. v. Sharpe, [2001] 1 S.C.R. 45, 2001 SCC 2	L'Heureux-Dubé, Gonthier and Bastarache JJ.	concurring	British Columbia	Constitutional law Criminal law	R		Criminal Justice Act 1988 (U.K.), 1988, c. 33, s. 160.	statute	UK	180 Domestic legislation in a number of countries criminalizes the possession of child pornography, regardless of whether the possessor has an intent to disseminate; see, for example, Australia: Classification (Publications, Films and Computer Games) Act 1995 (Cth.), and state and territorial legislation in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia, which classify and prohibit various forms of child pornography; Belgium : art. 383bis of the Criminal Code , which proscribes private possession of figures, things, films, photos, slides or other visual representations of sexual acts or positions involving persons under 16 that are characterized as pornographic; England: Protection of Children Act 1978 (U.K.), 1978, c. 37, ss. 1 and 7; Criminal Justice Act 1988 (U.K.), 1988, c. 33, s. 160, and Criminal Justice and Public Order Act 1994 (U.K.), 1994, c. 33, ss. 84 to 86), which target private possession of photographs and pseudo-photographs of persons under 16 or who appear to be under 16; Ireland: Child Trafficking and Pornography Act, 1998, ss. 2 and 6, which defines child as a person under the age of 17, bans the private possession of (1) any visual representation that shows a person who is or is depicted as a child engaged in or witnessing explicit sexual activity and any visual representation whose dominant characteristic is the depiction of the genital or anal region of a child for sexual purposes; (2) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity; (3) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence; and (4) any visual representation or description of or information relating to a child that indicates or implies that the child is available to be used for the purposes of sexual exploitation; New Zealand: Films, Videos, and Publications Classification Act 1993, ss. 2, 3 and 131, which proscribes private possession of publications that describe, depict, express or otherwise deal with matters such as sex, horror, crime, cruelty, or violence such that the availability of the publication is likely to be injurious to the public good in that it promotes, supports or tends to promote or support the exploiting of children or young persons, for sexual purposes; and the United States: 18 U.S.C. §§ 2252(a)(4)(B) and 2256 (1994 & Supp. IV 1998), which targets photographs, film, video or pictures, computer or computer-generated images or pictures of sexually explicit conduct involving a person who is under 18 or who appears to be under 18. This statute has been interpreted as including only those visual images which are easily mistaken for that of a real child; see, for example, United States v. Hilton, 167 F.3d 61 (1st Cir. 1999), at p. 72. Therefore, drawings, sculptures and paintings are not proscribed.
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2000	Free World Trust v. Électro Santé Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1832/index.do	Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024	BINNIE J.	unanimous	Quebec	Intellectual property	C	referred to	General Tire & Rubber Co. v. Firestone Tyre & Rubber Co., [1972] R.P.C. 457	lower-level court	UK	26 The Solov'eva article was drawn to the respondents' attention by the appellant who cited it as prior art in the specification of the '361 patent itself. The legal question is whether the Solov'eva article contains sufficient information to enable a person of ordinary skill and knowledge in the field to understand, without access to the two patents, "the nature of the invention and carry it into practical use without the aid of inventive genius but purely by mechanical skill" (H. G. Fox, The Canadian Law and Practice Relating to Letters Patent for Inventions (4th ed. 1969), at pp. 126-27). In other words, was the information given by Solov'eva "for [the] purpose of practical utility, equal to that given in the patents in suit"? (Consolboard Inc. v. MacMillan Bloedel (Sask.) Ltd., [1981] 1 S.C.R. 504, per Dickson J. at p. 534), or as was memorably put in General Tire & Rubber Co. v. Firestone Tyre & Rubber Co., [1972] R.P.C. 457 (Eng. C.A.), at p. 486: A signpost, however clear, upon the road to the patentee's invention will not suffice. The prior inventor must be clearly shown to have planted his flag at the precise destination before the patentee. The test for anticipation is difficult to meet: One must, in effect, be able to look at a prior, single publication and find in it all the information which, for practical purposes, is needed to produce the claimed invention without the exercise of any inventive skill. The prior publication must contain so clear a direction that a skilled person reading and following it would in every case and without possibility of error be led to the claimed invention. (Beloit Canada Ltd. v. Valmet OY (1986), 8 C.P.R. (3d) 289 (F.C.A.), per Hugessen J.A., at p. 297)
2000	Free World Trust v. Électro Santé Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1832/index.do	Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024	BINNIE J.	unanimous	Quebec	Intellectual property	C	referred to	Graver Tank & Mfg. Co. v. Linde Air Products Co., 339 U.S. 605 (1950)	SC	US	28 The appeal in this Court was essentially directed to the infringement issues. It has been established, at least since Grip Printing and Publishing Co. of Toronto v. Butterfield (1885), 11 S.C.R. 291, that a patent owner has a remedy against an alleged infringer who does not take the letter of the invention but nevertheless appropriates its substance (or "pith and marrow"). This extended protection of the patentee is recognized in Anglo-Canadian law, and also finds expression in modified form in the United States under the doctrine of equivalents, which is said to be available against the producer of a device that performs substantially the same function in substantially the same way to obtain substantially the same result: Graver Tank & Mfg. Co. v. Linde Air Products Co., 339 U.S. 605 (1950), at p. 608. 37 With respect to the United States, I mentioned earlier the seminal Graver Tank case in 1950. More recently, the United States Supreme Court revisited the doctrine of equivalents in Warner-Jenkinson Co. v. Hilton Davis Chemical Co., 520 U.S. 17 (1997), and concluded, per Thomas J., at pp. 28-29: We do, however, share the concern of the dissenters below that the doctrine of equivalents, as it has come to be applied since Graver Tank, has taken on a life of its own, unbounded by the patent claims. There can be no denying that the doctrine of equivalents, when applied broadly, conflicts with the definitional and public-notice functions of the statutory claiming requirement
2000	Free World Trust v. Électro Santé Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1832/index.do	Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024	BINNIE J.	unanimous	Quebec	Intellectual property	C	referred to	Warner-Jenkinson Co. v. Hilton Davis Chemical Co., 520 U.S. 17 (1997)	SC	US	37 With respect to the United States, I mentioned earlier the seminal Graver Tank case in 1950. More recently, the United States Supreme Court revisited the doctrine of equivalents in Warner-Jenkinson Co. v. Hilton Davis Chemical Co., 520 U.S. 17 (1997), and concluded, per Thomas J., at pp. 28-29: We do, however, share the concern of the dissenters below that the doctrine of equivalents, as it has come to be applied since Graver Tank, has taken on a life of its own, unbounded by the patent claims. There can be no denying that the doctrine of equivalents, when applied broadly, conflicts with the definitional and public-notice functions of the statutory claiming requirement

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2000	Free World Trust v. Électro Santé Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1832/index.do	Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024	BINNIE J.	unanimous	Quebec	Intellectual property	C	referred to	Dyson Appliances Ltd. v. Hoover Ltd., [2000] E.W.J. No. 4994 (QL)	lower-level court	UK	53 The date of publication continues to be the critical date in England: Terrell, supra, at p. 106, although Lord Hoffmann (as he now is) has observed that "there is an important difference between the 1949 [Patent Act] and the 1977 [Patent Act]" which requires the date of application (or priority date) to become the critical date for certain purposes: Biogen Inc. v. Medeva PLC, [1997] R.P.C. 1 (H.L.), at p. 54. In that case the court was dealing with the sufficiency of disclosure, but some English judges have taken the cue to construe claims as of the date of application as well, e.g., Dyson Appliances Ltd. v. Hoover Ltd., [2000] E.W.J. No. 4994 (QL)(Pat. Ct.), at para. 48 (k). In Canada, Reed J. advocated a similar position in AT & T Technologies, Inc. v. Mitel Corp. (1989), 26 C.P.R. (3d) 238 (F.C.T.D.), at p. 260, even in the absence of these statutory changes. While there may be some advantages to the establishment of a single critical date for multiple purposes including obviousness, sufficiency and claims construction, my view is that Canadian law does not support the date of application as the critical date for claims construction.
2000	Free World Trust v. Électro Santé Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1832/index.do	Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 1024	BINNIE J.	unanimous	Quebec	Intellectual property	C	referred to	Lovell Manufacturing Co. v. Beatty Bros. Ltd. (1962), 23 Fox Pat. C. 112	lower-level court	UK	64 The use of file wrapper estoppel in Canada was emphatically rejected by Thorson P. in Lovell Manufacturing Co. v. Beatty Bros. Ltd. (1962), 23 Fox Pat. C. 112 (Ex. Ct.), and our Federal Court has in general confirmed over the years the exclusion of file wrapper materials tendered for the purpose of construing the claims: see, e.g., P.L.G. Research Ltd. v. Jannock Steel Fabricating Co. (1991), 35 C.P.R. (3d) 346 (F.C.T.D.), at p. 349. No distinction is drawn in this regard between cases involving allegations of literal infringement and those involving substantive infringement.
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971)	Sc	US	241 I disagree with the suggestion that a less intrusive system is difficult to envision. A less intrusive scheme is clearly possible. One obvious option is that of expeditious judicial determination, which is favoured in the United States. The United States Supreme Court held, in Freedman v. Maryland, 380 U.S. 51 (1965), at p. 58, that: "[B]ecause only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint". The court went even further in United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971), where it considered a Customs regime that provided for immediate referral to a federal district court of any material suspected of being obscene. The court held that such proceedings must be instituted within 14 days, and completed within 60 days of commencement. Such expeditious review was essential to ensure that "administrative delay does not in itself become a form of censorship" (p. 367).
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts, 383 U.S. 413 (1966)	Sc	US	195 On this latter point, however, I wish to emphasize Binnie J.'s holding that it will be "very difficult to make the case of obscenity against a book, which is a medium perhaps less likely to be conducive to harm and more likely to be protected by the artistic merit or 'inherent necessities' defence" (para. 65). This is borne out by the fact that relatively few books have been held to be obscene in Canada: see, e.g., Brodie v. The Queen, [1962] S.C.R. 681 (Lady Chatterley's Lover by D. H. Lawrence not obscene), and R. v. C. Coles Co., [1965] 1 O.R. 557 (C.A.) (Fanny Hill -- Memoirs of a Woman of Pleasure by John Cleland not obscene – a similar result was reached by the U.S. Supreme Court in A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts, 383 U.S. 413 (1966)). As Porter C.J.O. stated for the majority in C. Coles Co., at p. 563: The freedom to write books, and thus to disseminate ideas, opinions, and concepts of the imagination -- the freedom to treat with complete candour of an aspect of human life and the activities, aspirations and failings of human beings -- these are fundamental to progress in a free society. In my view of the law, such freedom should not, except in extreme circumstances, be curtailed.
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	Near v. Minnesota, 283 U.S. 697 (1931)	SC	US	234 Similarly, in his Commentaries on the Laws of England (4th ed. 1770), Book IV, at pp. 151-52, Blackstone equates prior restraints with the death of free speech: The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. [Italics in original; underlining added.] Interpreting this common law history as incorporated into the First Amendment to the United States Constitution, former United States Chief Justice Hughes wrote in Near v. Minnesota, 283 U.S. 697 (1931), at p. 713, that the "chief purpose" of the right to free speech is "to prevent previous restraints upon publication".
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	Times Film Corp. v. City of Chicago, 365 U.S. 43 (1961)	SC	US	235 I would stop short of asserting, like Blackstone, that any prior restraint is necessarily destructive of freedom of the press. As the respondent Attorney General of British Columbia points out, this Court has not universally adhered to a rule against prior restraints: see, e.g., Canada (Human Rights Commission) v. Taylor, [1990] 3 S.C.R. 892. (The same is true of the United States Supreme Court: see Times Film Corp. v. City of Chicago, 365 U.S. 43 (1961).) However, we have demanded that prior restraint only be used where necessary to vindicate the societal interests at stake. For example, in Dagenais, supra, the Court put constitutional limits on the use of publication bans. The Court placed the burden of proof on the party seeking the ban; required the trial judge to consider all reasonable alternatives to a ban; directed the trial judge to limit the scope of the ban as much as possible; and permitted a ban only where the privacy rights at stake outweighed the right to free speech (at pp. 881 and 890-91). In short, a prior restraint was permitted only when it was necessary, and when it was as narrowly tailored as possible. Similarly, in Taylor, supra, the prior restraint was only imposed after the appellants had been held in contempt of a prior order to cease and desist disseminating hate speech. Moreover, neither of these cases involved a pure prior restraint on speech. In both cases, the bans were enforced by subsequent punishment, not by a requirement, like the one in the Customs legislation, to submit materials for approval.

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2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	Freedman v. Maryland, 380 U.S. 51 (1965)	SC	US	241 I disagree with the suggestion that a less intrusive system is difficult to envision. A less intrusive scheme is clearly possible. One obvious option is that of expeditious judicial determination, which is favoured in the United States. The United States Supreme Court held, in Freedman v. Maryland, 380 U.S. 51 (1965), at p. 58, that: "[B]ecause only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint". The court went even further in United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971), where it considered a Customs regime that provided for immediate referral to a federal district court of any material suspected of being obscene. The court held that such proceedings must be instituted within 14 days, and completed within 60 days of commencement. Such expeditious review was essential to ensure that "administrative delay does not in itself become a form of censorship" (p. 367).
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Iacobucci J.	dissenting	British Columbia	SubjectsConstitutional law Customs and excise	C	D	West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)	SC	US	271 Given the remedy adopted by Binnie J., Parliament will not, strictly speaking, have to amend the current legislation. However, Parliament is not restricted to acting only when this Court tells it to. Even accepting my colleague's conclusion in this appeal, I would quote the wise words of Frankfurter J., dissenting, in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), at p. 670: Our constant preoccupation with the constitutionality of legislation rather than with its wisdom tends to preoccupation of the . . . mind with a false value. The tendency of focussing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. The constitutional is not always synonymous with the optimal: R. v. Lippé, [1991] 2 S.C.R. 114, at p. 142, per Lamer C.J. Sometimes "constitutionality" means only that an unimpressive, minimal threshold has been met. I hope that Parliament, recognizing this truth, will address the problems identified in this appeal even without an order from this Court.
2000	Little Sisters Book and Art Emporium v. Canada (Minister of Justice)	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1835/index.do	Little Sisters Book and Art Emporium v. Canada (Minister of Justice), [2000] 2 S.C.R. 1120	Binnie J.	majority	British Columbia	SubjectsConstitutional law Customs and excise	C	referred to	United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971)	Sc	US	94 The trial judge found (at para. 113) that some requests for re-determination under s. 63 took more than a year for decision. Such a delay is not in accordance with the Act. It must be remembered that these stages of administrative re-determination are internal procedures with no opportunity given to the importer to be heard or to adduce evidence. They were put in place, as Minister George Nowlan told the House of Commons, to deal with "cabbages and cucumbers" (see para. 15, supra). They are not in any sense "hearings" on the merits. Their purpose is to afford the departmental hierarchy the opportunity to reverse a first stage determination if it is not prepared to defend it. "[A]ll due dispatch" means that now, after the recent amendment, an importer should have a final departmental decision within 30 days after it seeks a review of the initial determination that Customs "deems" the imported publication to be obscene. This compares favourably with the 60-day limit stipulated in United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971), referred to by Iacobucci J. at para. 241.
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	applied	Catnic Components Ltd. v. Hill & Smith Ltd., [1982] R.P.C. 183	SC	UK (HL)	39 The source of the error in the courts below, according to the appellants, is the approach to claims construction which the Federal Court has developed based initially on a misunderstanding and misapplication of the "purposive construction" approach formulated by the House of Lords in Catnic Components Ltd. v. Hill & Smith Ltd., [1982] R.P.C. 183. The appellants say the Catnic decision "has had a detrimental impact throughout the Commonwealth jurisdictions, and in particular to a proper understanding of the common law of claim construction in Canada". The appellants invite the Court to reject the Catnic approach, and to overrule the Federal Court cases that follow it, particularly O'Hara Manufacturing Ltd. v. Eli Lilly & Co. (1989), 26 C.P.R. (3d) 1 (F.C.A.). In this respect, however, I agree with the observation of William L. Hayhurst, Q.C., that "[p]urposive construction is nothing new, though Lord Diplock is credited with first using the expression in patent cases" (see Hayhurst, "The Art of Claiming and Reading a Claim" in Patent Law of Canada (1994), edited by G. F. Henderson, Q.C., at p. 193).
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	McPhar Engineering Co. of Canada v. Sharpe Instruments Ltd., [1956-60] Ex. C.R. 467	lower-level court	UK	46 To the same effect is the judgment of Thorson P. in McPhar Engineering Co. of Canada v. Sharpe Instruments Ltd., [1956-60] Ex. C.R. 467, at p. 525: Thus it is established law that if a person takes the substance of an invention he is guilty of infringement and it does not matter whether he omits a feature that is not essential to it or substitutes an equivalent for it. [Emphasis added.]
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Birmingham Sound Reproducers Ld. v. Collaro Ld., [1956] R.P.C. 232;	lower-level court	UK	47 The "essential" elements approach was established in earlier English cases such as Marconi v. British Radio Telegraph and Telephone Co. (1911), 28 R.P.C. 181 (Ch. D.), at p. 217, referred to by Duff C.J. in J. K. Smit, supra, and more recent pre-Catnic decisions in that country such as Birmingham Sound Reproducers Ld. v. Collaro Ld., [1956] R.P.C. 232 (Eng. C.A.), and C. Van Der Lely N.V. v. Bamfords Ltd., [1963] R.P.C. 61 (H.L.), where Lord Reid, dissenting on the result, said at p. 76: "you cannot avoid infringement by substituting an obvious equivalent for an unessential integer" (emphasis added).
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	C. Van Der Lely N.V. v. Bamfords Ltd., [1963] R.P.C. 61	SC	UK (HL)	47 The "essential" elements approach was established in earlier English cases such as Marconi v. British Radio Telegraph and Telephone Co. (1911), 28 R.P.C. 181 (Ch. D.), at p. 217, referred to by Duff C.J. in J. K. Smit, supra, and more recent pre-Catnic decisions in that country such as Birmingham Sound Reproducers Ld. v. Collaro Ld., [1956] R.P.C. 232 (Eng. C.A.), and C. Van Der Lely N.V. v. Bamfords Ltd., [1963] R.P.C. 61 (H.L.), where Lord Reid, dissenting on the result, said at p. 76: "you cannot avoid infringement by substituting an obvious equivalent for an unessential integer" (emphasis added).
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Ernest Scragg & Sons Ltd. v. Leesona Corp. (1964), 26 Fox Pat. C. 1	lower-level court	UK	55 I say "at the date of issuance of the '803 patent" because some cases suggest that the claims ought to be construed in light of the relevant knowledge at the earlier date of the invention: Ernest Scragg & Sons Ltd. v. Leesona Corp. (1964), 26 Fox Pat. C. 1 (Ex. Ct.), per Thorson P., at p. 43, or on the date the patent application was filed: AT&T Technologies, Inc. v. Mitel Corp. (1989), 26 C.P.R. (3d) 238 (F.C.T.D.), at p. 260. The possible choices of the priority date (where a Canadian application is based on a foreign filing), the Canadian filing date, the publication date or the issuance (or "grant") date, have created some uncertainty: Abbott Laboratories, Ltd. v. Nu-Pharm Inc. (1998), 78 C.P.R. (3d) 38 (F.C.T.D.), at p. 50. In the case of pre-October 1989 patent filings in Canada, one at least had the comfort of knowing that the date of publication and the date of issue were the same. For the reasons given in the accompanying decision in Free World Trust v. Électro Santé Inc., [2000] 2 S.C.R. 000, 2000 SCC 66, at para. 54, my view is that the language of a patent should be construed as of the date of publication, which in the case of this pre-1989 patent was, to repeat, the date of issue: Western Electric, supra, at p. 582, per Duff C.J.; Burton Parsons, supra, per Pigeon J., at p. 560 ("la date de la délivrance du brevet" in the more specific French language text); Consolboard, supra, at p. 523; Fox, supra, at pp. 206-7. The critical date is important here because the appellants' double patenting argument presupposes that when the '734 patent was issued on February 17, 1981 it was obvious and uninventive to substitute flex vanes for rigid vanes on a dual action agitator. The obviousness argument would have been more tenuous as of the date of the invention almost 7 years earlier ("at least as early as June 5, 1974"), or even the date of the filing of the '734 patent application in Canada (May 27, 1977).
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Lovell Manufacturing Co. v. Beatty Bros. Ltd. (1962), 23 Fox Pat. C. 112	lower-level court	UK	64 The Federal Court of Appeal has adopted the test that the claims must be "identical or conterminous": Beecham Canada Ltd. v. Procter & Gamble Co. (1982), 61 C.P.R. (2d) 1, at p. 22. This verbal formulation derives from an editorial comment by Dr. H. G. Fox, Q.C., on Lovell Manufacturing Co. v. Beatty Bros. Ltd., reported at (1962), 23 Fox Pat. C. 112, at pp. 116-17: Letters patent are not granted at pleasure, but for a term of years and the grant of a second patent with respect to the same subject-matter would be void under this statute [6 Henry VIII, c. 15, 1514] and by the Statute of Monopolies, as well as at common law and by the terms of section 28(1)(b) of the Canadian Patent Act. But for this purpose the subject-matter of the two grants must be identical. A subsequent claim cannot be invalidated on the ground of prior claiming unless the two claims are precisely conterminous.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2000	Whirlpool Corp. v. Camco Inc.	12/15/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1833/index.do	Whirlpool Corp. v. Camco Inc., [2000] 2 S.C.R. 1067	Binnie J.	unanimous	Federal Court of Appeal	Intellectual property	C	referred to	Beloit Technologies Inc. v. Valmet Paper Machinery Inc., [1997] R.P.C. 489	lower-level court	UK	70 The trial judge initially accepted the evidence of the appellants' expert, Mr. John Mellinger (whose testimony the trial judge found "enlightening and trustworthy" (p. 158)) that there would be no novelty in the use of flex vanes instead of rigid vanes but in the end rejected it because of Mr. Mellinger's lack of "dual action" experience. The trial judge said (at pp. 178, 184-85 and 196): The evidence of Mr. Mellinger is that, since Maytag's unitary action agitators with flex vanes were already on the market with commercial success, their use on the lower oscillating portion of a dual action agitator could not be considered a novel use. . . . I must concede that, at first, I was convinced, on the basis of Maytag's positive experience with flex vanes, that it would have been obvious to appropriate Maytag's flex vanes for use on a dual action agitator. . . . Mr. Mellinger admittedly had no experience with dual action agitators. Mr. Pielemeier had a lot, and was involved in product development at the time of their invention. Whose opinion evidence as to what the notional skilled technician would have thought about flex vanes on dual action agitators is to be preferred? Why, Mr. Pielemeier's is, as he has the knowledge that would better support an opinion about dual action agitation. Mr. Mellinger's opinion, though very interesting, clearly is not supported by knowledge about dual action agitation. Mr. Pielemeier was an engineer who had been employed by the respondent Whirlpool Corporation for 15 to 20 years at the material time. He had laboured in the respondent's product development department, and had "worked with the inventors of the patents before this Court" (trial judgment, at p. 158). Someone with Mr. Pielemeier's connection to the respondents, burdened as he is with inside information, is not a very satisfactory proxy for the
2000	Pacific National Investments Ltd. v. Victoria (City)	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1829/index.do	Pacific National Investments Ltd. v. Victoria (City), [2000] 2 S.C.R. 919	Bastarache J.	dissenting	British Columbia	Municipal law Property law	C	D	Dowty Boulton Paul Ltd. v. Wolverhampton Corp., [1971] 2 All E.R. 277	lower-level court	UK	117 The decision of the New Brunswick Supreme Court, Appeal Division in Attorney-General for New Brunswick v. Saint John, [1948] 3 D.L.R. 693, points out the significance between indirect and direct fettering of a municipal council's power. I cannot agree with my colleague that the ratio of this case is unclear. In Saint John, the city gave the New Brunswick Power Co. the right to operate buses in the city for a period of six years. The contract provided that if city council in the first six years gave another company a franchise to operate buses or compelled the Power Co. to end its operations, the city would indemnify it against the capital loss arising from the initial purchase of the buses. It was argued that the city had fettered its discretion to grant a franchise to another entity because of the liability which it would incur to the Power Co. under the contract. At p. 707, Harrison J. found that the indemnification of the Power Co. was not ultra vires: This clause in the agreement cannot therefore be objected to because it creates a legal obstacle to the performance by the city of its statutory duties. It is merely a question of good business, and as the city were asking the Power Company to purchase motor buses and go to a large expense in providing this equipment, the agreement to compensate the company, should this service be discontinued by reason of the city's action, does not appear unreasonable. The same reasoning was adopted in First City Development Corp. v. Durham (Regional Municipality) (1989), 41 M.P.L.R. 241 (Ont. H.C.), at p. 270, and is consistent with English case law on the issue; see Stourcliffe Estates Co. v. Bournemouth Corp., [1908-10] All E.R. 785 (C.A.); Dowty Boulton Paul Ltd. v.
2000	Pacific National Investments Ltd. v. Victoria (City)	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1829/index.do	Pacific National Investments Ltd. v. Victoria (City), [2000] 2 S.C.R. 919	LeBel J.	majority	British Columbia	Municipal law Property law	C	referred to	Dowty Boulton Paul Ltd. v. Wolverhampton Corp., [1971] 2 All E.R. 277	lower-level court	UK	65 Contracts related to a municipality's business and proprietary functions might well affect the resources available to it and thereby hinder its legislative discretion (or bring hindrances of another kind, as in Dowty Boulton Paul Ltd. v. Wolverhampton Corp., [1971] 2 All E.R. 277 (Ch. D.)). But they simply do not inject the same kind of outside consideration into the legislative process. The distinction between direct and indirect fettering, as PNI conceives it, is simply not a useful distinction. The distinction between legislative powers, adjudicative powers, and business or proprietary powers, accepted elsewhere in our Court's jurisprudence (e.g., Shell Canada Products Ltd. v. Vancouver (City), [1994] 1 S.C.R. 231, at p. 273; Nanaimo, supra, at paras. 28 and 31), is the sole distinction that should apply (William Cory & Son Ltd. v. London Corp., [1951] 2 K.B. 476 (C.A.), at p. 486). Unless there is legislation expressing a public policy permitting it to do so, a municipality may engage in business and proprietary contracts, but it cannot agree to terms that fetter its legislative power.
2000	Pacific National Investments Ltd. v. Victoria (City)	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1829/index.do	Pacific National Investments Ltd. v. Victoria (City), [2000] 2 S.C.R. 919	LeBel J.	majority	British Columbia	Municipal law Property law	C	referred to	William Cory & Son Ltd. v. London Corp., [1951] 2 K.B. 476	lower-level court	UK	65 Contracts related to a municipality's business and proprietary functions might well affect the resources available to it and thereby hinder its legislative discretion (or bring hindrances of another kind, as in Dowty Boulton Paul Ltd. v. Wolverhampton Corp., [1971] 2 All E.R. 277 (Ch. D.)). But they simply do not inject the same kind of outside consideration into the legislative process. The distinction between direct and indirect fettering, as PNI conceives it, is simply not a useful distinction. The distinction between legislative powers, adjudicative powers, and business or proprietary powers, accepted elsewhere in our Court's jurisprudence (e.g., Shell Canada Products Ltd. v. Vancouver (City), [1994] 1 S.C.R. 231, at p. 273; Nanaimo, supra, at paras. 28 and 31), is the sole distinction that should apply (William Cory & Son Ltd. v. London Corp., [1951] 2 K.B. 476 (C.A.), at p. 486). Unless there is legislation expressing a public policy permitting it to do so, a municipality may engage in business and proprietary contracts, but it cannot agree to terms that fetter its legislative power.
2000	R. v. Araujo	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1830/index.do	R. v. Araujo, [2000] 2 S.C.R. 992	LEBEL J.	unanimous	British Columbia	Criminal law	C	referred to	Berger v. New York, 388 U.S. 41 (1967)	SC	US	32 Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 (1994 & Supp. IV 1998), implements the standards for the use of electronic surveillance as required by the Fourth Amendment, according to the United States Supreme Court decisions in Berger v. New York, 388 U.S. 41 (1967), and Katz v. U.S., 389 U.S. 347 (1967). This legislation includes a necessity requirement not unlike that found in s. 186(1) . A judge may issue a court order authorizing a wiretap only if he or she has determined "on the basis of the facts submitted by the applicant that . . . normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous": 18 U.S.C. § 2518(3)(c).
2000	R. v. Araujo	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1830/index.do	R. v. Araujo, [2000] 2 S.C.R. 992	LEBEL J.	unanimous	British Columbia	Criminal law	C	referred to	Katz v. U.S., 389 U.S. 347 (1967)	SC	US	32 Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2522 (1994 & Supp. IV 1998), implements the standards for the use of electronic surveillance as required by the Fourth Amendment, according to the United States Supreme Court decisions in Berger v. New York, 388 U.S. 41 (1967), and Katz v. U.S., 389 U.S. 347 (1967). This legislation includes a necessity requirement not unlike that found in s. 186(1) . A judge may issue a court order authorizing a wiretap only if he or she has determined "on the basis of the facts submitted by the applicant that . . . normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous": 18 U.S.C. § 2518(3)(c).
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2000	R. v. Araujo	12/14/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1830/index.do	R. v. Araujo, [2000] 2 S.C.R. 992	LEBEL J.	unanimous	British Columbia	Criminal law	C	referred to	U.S. v. Green, 40 F.3d 1167 (1994)	lower-level court	US	33 Recent jurisprudence has confirmed that such language is to be interpreted in a practical commonsense fashion, so that courts may issue wiretap orders even when the government has not pursued all other investigative techniques. Courts have found a variety of grounds for allowing that normal investigative techniques are unlikely to succeed. These include: a showing by the government that those techniques would not reveal key information (U.S. v. London, 66 F.3d 1227 (1st Cir. 1995), at p. 1237); when it can be shown that those techniques are ineffective against a large-scale crime organization (U.S. v. Torres, 901 F.2d 205 (2d Cir. 1990), at p. 232; U.S. v. Commito, 918 F.2d 95 (9th Cir. 1990), at p. 98), a close-knit family (U.S. v. Guerra-Marez, 928 F.2d 665 (5th Cir. 1991), at p. 670) or a drug conspiracy (U.S. v. Milton, 153 F.3d 891 (8th Cir. 1998), at pp. 897-98); or when counter-surveillance methods employed by the defendants made such methods unlikely to succeed (U.S. v. Smith, 31 F.3d 1294 (4th Cir. 1994), at p. 1299; U.S. v. Green, 40 F.3d 1167 (11th Cir. 1994), at p. 1172).
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2000	Martel Building Ltd. v. Canada	11/30/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1825/index.do	Martel Building Ltd. v. Canada, [2000] 2 S.C.R. 860	IACOBUCCI AND MAJOR JJ.	unanimous	Federal Court of Appeal	Contract Torts	C	applied	Anns v. Merton London Borough Council, [1978] A.C. 728	SC	UK (HL)	46 Canadian jurisprudence has consistently applied the flexible two-stage analysis of Anns v. Merton London Borough Council, [1978] A.C. 728 (H.L.), originally adopted in Kamloops, supra, in determining whether to extend a duty of care in a given case. The Anns approach has been applied in this manner to each of the first four categories of economic loss. See, for example, Hercules Managements Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165, at para. 19 (negligent misrepresentation); Winnipeg Condominium, supra, at para. 32 (negligent supply of shoddy goods or structures); and B.D.C. Ltd. v. Hofstrand Farms Ltd., [1986] 1 S.C.R. 228 (negligent performance of a service). It is likely that any extension to the categorical exceptions of contractual relational economic loss also would be considered under the same analysis. See Bow Valley, supra, at paras. 52-56, per McLachlin J., and para. 113, per Iacobucci J. 47 The Anns approach is equally applicable when, as in this appeal, the claim alleges a duty of care in an area not previously categorized. The respondent's submission has to be considered within that framework. 53 We conclude that the circumstances of this case satisfy the first stage of Anns and raise a prima facie duty of care. Although the Department is a government actor, in its negotiations with Martel, it was exercising an operational rather than a policy function. As such, this finding of a prima facie duty of care is not precluded by the appellant claiming to have exercised a bona fide discretionary policy decision. See Kamloops, supra, at p. 35, and Just v. British Columbia, [1989] 2 S.C.R. 1228. 54 In the wake of a finding of proximity, the second question in Anns arises: Are there any policy considerations that serve to negative or limit (a) the scope of the prima facie duty of care (b) the class of persons to whom it is owed or (c) the damages to which a breach of it may give rise? 55 Notwithstanding our finding of proximity above, there are compelling policy reasons to conclude that one commercial party should not have to be mindful of another commercial party's legitimate interests in an arm's length negotiation. 56 As noted by McLachlin J. in Norsk, supra, at pp. 1154-55: While proximity is critical to establishing the right to recover pure economic loss in tort, it does not always indicate liability. It is a necessary but not

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2000	Musqueam Indian Band v. Glass	11/9/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1816/index.do	Musqueam Indian Band *v* . Glass, [2000] 2 S.C.R. 633	Gonthier J.	majority	Federal Court of Appeal	Aboriginal law	C	referred to	Security-First National Bank of Los Angeles, 325 P.2d 185 (1958)	lower-level court	US	38 Market value generally is the exchange value of land, rather than its use value to the lessee. This distinction was articulated in Bullock's, Inc. v. Security-First National Bank of Los Angeles, 325 P.2d 185 (Cal. Dist. Ct. App. 1958), at p. 188, where the lease "calls for a determination of the value of the land, not the value of the use of the land for any particular purpose". Land is valued without regard to the tenant's interest in it, for it does not reduce the land's exchange value if the tenant chooses not to use the land for its highest use. This case has been cited in Canada (e.g., Revenue Properties, supra) and the principle is part of Canadian law. It was applied in Gulf Oil Canada Ltd. v. National Harbours Board, F.C.T.D., No. T-1478-71, September 15, 1972, at p. 19, which was followed in Burrard Dry Dock Co. v. Canada, [1974] F.C.J. No. 417 (QL) (T.D.), at para. 9. Most recently, in No. 100 Sail View Ventures Ltd. v. Janwest Equities Ltd. (1993), 84 B.C.L.R. (2d) 273, leave to appeal refused [1994] 2 S.C.R. viii, the majority of the British Columbia Court of Appeal held at p. 281 that the specific terms of a lease were not relevant when determining "fair market value of the Leased Premises as bare land" (emphasis added) for a rent review
2000	R. v. J.-L.J.	11/9/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1815/index.do	R. v. J.-L.J., [2000] 2 S.C.R. 600	Binnie J.	unanonimous	Quebec	Criminal law	C	referred to	Frye v. United States, 293 F. 1013 (1923)	lower-level court	US	33 Mohan kept the door open to novel science, rejecting the "general acceptance" test formulated in the United States in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), and moving in parallel with its replacement, the "reliable foundation" test more recently laid down by the U.S. Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). While Daubert must be read in light of the specific text of the Federal Rules of Evidence, which differs from our own procedures, the U.S. Supreme Court did list a number of factors that could be helpful in evaluating the soundness of novel science (at pp. 593-94): (1) whether the theory or technique can be and has been tested: Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry. (2) whether the theory or technique has been subjected to peer review and publication: [S]ubmission to the scrutiny of the scientific community is a component of "good science," in part because it increases the likelihood that substantive flaws in methodology will be detected. (3) the known or potential rate of error or the existence of standards; and, (4) whether the theory or technique used has been generally accepted: A "reliability assessment does not require, although it does permit, explicit identification of a relevant scientific community and an express determination of a particular degree of acceptance within that community."
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2000	Winnipeg Child and Family Services v. K.L.W.	10/13/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1812/index.do	Winnipeg Child and Family Services v. K.L.W., [2000] 2 S.C.R. 519	L'Heureux-Dubé J.	majority	Manitoba	Constitutional law Family law	C	referred to	Wallis v. Spencer, 202 F.3d 1126 (2000)	lower-level court	US	89 The appellant concedes that in "emergency" situations, the principles of fundamental justice dictate that a hearing occur subsequent to the child's removal. This concession is clearly based on the recognition that in cases of imminent danger, the child's right to life and health, and the state's duty to intervene to protect that right, are so compelling as to justify post facto assessment of state action: B. (R.), supra, at para. 92; see also Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000), at pp. 1136-37; Dietz v. Damas, 932 F.Supp. 431 (E.D.N.Y. 1996), at p. 444. For this reason, no provincial or territorial child protection legislation requires any form of notice or prior judicial authorization of apprehension in "emergency" situations.
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2000	Winnipeg Child and Family Services v. K.L.W.	10/13/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1812/index.do	Winnipeg Child and Family Services v. K.L.W., [2000] 2 S.C.R. 519	L'Heureux-Dubé J.	majority	Manitoba	Constitutional law Family law	C	referred to	Miller v. City of Philadelphia, 174 F.3d 368 (1999)	lower-level court	US	115 Madam Justice Arbour adds at para. 41 that: "An ex parte application to an independent and impartial judicial officer would provide some assurance to families experiencing a dramatic disruption to their lives at the hands of the state that this disruption is being conducted in a manner that is procedurally fair and constitutionally sound" (emphasis added). Although Madam Justice Arbour argues at para. 17 on behalf of the nemo debet esse judex in propria causa principle (no one ought to be a judge in his or her own cause), she does not consider how minimal the assurance would be for families denied the opportunity to be heard in the ex parte proceeding. In the ex parte procedure, another fundamental principle, audi alteram partem (hear the other side), cannot, by definition, be respected. Indeed, some case law suggests that far from being given "some assurance" by an ex parte proceeding, families can be deeply frustrated and angered by knowing that a judicial deliberation is taking place, or has taken place, from which they are, properly, excluded. For example, the facts of a recent Alberta Court of Appeal case, Director of Child Welfare, supra, concern a mother who was in a courthouse with her counsel and was excluded from an ex parte proceeding concerning the apprehension of her baby son. See also Miller v. City of Philadelphia, 174 F.3d 368 (3rd Cir. 1999), where a mother and her attorney, despite being on site and available, were denied participation in an emergency hearing that led to the removal of two of her children
2000	Blencoe v. British Columbia (Human Rights Commission)	10/5/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1808/index.do	Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307	LeBel J.	dissenting	British Columbia	Administrative law Constitutional law	C	D	R. v. Secretary of State for the Home Department, Ex parte Phansopkar, [1976] 1 Q.B. 606	lower-level court	UK	151 English case law began in the last decades to bring these old streams of the common law together. In R. v. Secretary of State for the Home Department, Ex parte Phansopkar, [1976] Q.B. 606, the English Court of Appeal was prepared to act against unreasonable delay based on the Magna Carta itself, as reinforced by the European Convention on Human Rights. In Re Preston, [1985] A.C. 835, the House of Lords made clear that there could be judicial review of any delay amounting to an abuse of power or breach of natural justice. In R. v. Chief Constable of the Merseyside Police, Ex parte Calveley, [1986] 1 Q.B. 424, the English Court of Appeal applied this to a lengthy delay in notifying police officers of disciplinary charges against them. In the judgment of May L.J., at pp. 439-40, this was abusive and a breach of fairness because it disregarded the possibility of prejudice accruing to the officers on account of the delay. Unreasonable delay in administrative processes triggers the ancient rights of individuals who suffer prejudice as a result, and it gives the courts good reason to intervene against injustice. The modern English position, stated by W. Wade and C. Forsyth, Administrative Law (7th ed. 1994), at p. 649, is clear: "A statutory duty must be performed without unreasonable delay, and this may be enforced by mandamus" (emphasis added)

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2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Arbour J.	dissenting	Nova Scotia	Criminal law	C	D	R. v. Murray, [1951] 1 K.B. 391	lower-level court	UK	140 Where, as here, the accused's confession is intertwined with a "failed" polygraph test, he is presented with an impossible dilemma at trial. See R. v. Amyot (1990), 58 C.C.C. (3d) 312 (Que. C.A.), at p. 325; see also R. v. L.E.W., [1996] O.J. No. 753 (QL) (Gen. Div.), at para. 26. On the one hand, if the accused wishes to repudiate his confession, as he is entitled to do, he must be able to inform the trier of fact of all of the circumstances in which the confession was made. See DeClercq v. The Queen, [1968] S.C.R. 902, at p. 921; L.E.W., supra, at para. 21; J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at §§ 8.83-8.84. As indicated by the Court of Appeal, in the case at bar this would include: "all of the circumstances leading up to the taking of the test, the examination itself, the manner in which the failure of the test was conveyed, as well as the subsequent interrogation": R. v. Oickle (1998), 164 N.S.R. (2d) 342 (C.A.), at para. 50. The trier of fact cannot otherwise properly appreciate whether the confession may be untrue and accept the accused's repudiation of his out-of-court statement. See L.E.W., supra, at para. 26; see also Sopinka, Lederman and Bryant, supra, at § 8.84 (quoting R. v. Murray, [1951] 1 K.B. 391, at p. 393); R. v. Charrette, [1994] O.J. No. 2509 (QL) (Gen. Div.), at para. 28; R. v. Whalen, [1999] O.J. No. 3488 (QL) (C.J.), at para. 26
2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Arbour J.	dissenting	Nova Scotia	Criminal law	C	D	R. v. Guidice, [1964] W.A.R. 128	lower-level court	UK	141 A confession has often been referred to as "the highest and most satisfactory proof of guilt": Bigaouette v. The King (1926), 46 C.C.C. 311 (Que. K.B.), at p. 320 (quoting R. v. Lambe (1791), 2 Leach 552, 168 E.R. 379); see also R. v. Hodgson, [1998] 2 S.C.R. 449, at paras. 14 and 17; DeClercq, supra, at p. 922; R. v. Warickshall (1783), 1 Leach 263, 168 E.R. 234, at p. 235; R. v. Hardy (1794), 24 St. Tr. 199, at pp. 1093-94; R. v. Baldry (1852), 2 Den. 430, 169 E.R. 568, at p. 574; R. v. Guidice, [1964] W.A.R. 128 (Ct. Crim. App.), at p. 130; Wigmore on Evidence (Chadbourn rev. 1970), vol. 3, §§ 820b-820c, at pp. 301-6. As Wigmore explains, § 820b, at p. 303, this is because [t]he confession of a crime is usually as much against a man's permanent interests as anything well can be; ... no innocent man can be supposed ordinarily to be willing to risk life, liberty, or property by a false confession. Assuming the confession as an undoubted fact, it carries a persuasion which nothing else does, because a fundamental instinct of human nature teaches each one of us its significance. Where, as here, the confession has been recorded, there can be little doubt that it was made. The only remaining issue for the jury is whether it is reliable as proof of guilt. It is because of its "conclusive effect with respect to guilt" that the criminal standard of proof beyond a reasonable doubt is applied to the question of voluntariness, whereas proof on a balance of probabilities is the relevant standard with respect to the admissibility of evidence generally. See R. v. Egger, [1993] 2 S.C.R. 451, at p. 474; Sopinka, Lederman and Bryant, supra, at § 8.87. Given the overwhelming weight that jurors are likely to attribute to confessions, as a simple matter of human intuition, and, relatedly, given the skepticism and suspicion with which they will normally approach the proposition that a person may, absent torture, falsely confess to a serious crime, it must be open to the accused to exhaustively explain any
2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Iacobucci J.	majority	Nova Scotia	Criminal law	C	referred to	Commissioners of Customs and Excise v. Harz, [1967] 1 A.C. 760	SC	UK (HL)	52 McIntyre J.A. offered, as examples of improper inducements, telling a mother that her daughter would not be charged with shoplifting if the mother confessed to a similar offence (see Commissioners of Customs and Excise v. Harz, [1967] 1 A.C. 760 (H.L.), at p. 821), or a sergeant-major keeping a company on parade until he learned who was responsible for a stabbing (see R. v. Smith, [1959] 2 Q.B. 35). In Jackson, by contrast, the accused had merely known Winn for a year in prison. The offence occurred a few days after their release. Neither testified to a relationship such that "the immunity of one was of such vital concern to the other that he would untruthfully confess to preserve it" (p. 39). The confession was therefore admissible.
2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Iacobucci J.	majority	Nova Scotia	Criminal law	C	referred to	R. v. Smith, [1959] 2 Q.B. 35	lower-level court	UK	52 McIntyre J.A. offered, as examples of improper inducements, telling a mother that her daughter would not be charged with shoplifting if the mother confessed to a similar offence (see Commissioners of Customs and Excise v. Harz, [1967] 1 A.C. 760 (H.L.), at p. 821), or a sergeant-major keeping a company on parade until he learned who was responsible for a stabbing (see R. v. Smith, [1959] 2 Q.B. 35). In Jackson, by contrast, the accused had merely known Winn for a year in prison. The offence occurred a few days after their release. Neither testified to a relationship such that "the immunity of one was of such vital concern to the other that he would untruthfully confess to preserve it" (p. 39). The confession was therefore admissible.
2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Iacobucci J.	majority	Nova Scotia	Criminal law	C	referred to	Blackburn v. Alabama, 361 U.S. 199 (1960)	SC	US	70 Wigmore perhaps summed up the point best when he said that voluntariness is "shorthand for a complex of values": Wigmore on Evidence (Chadbourn rev. 1970), vol. 3, § 826, at p. 351. I also agree with Warren C.J. of the United States Supreme Court, who made a similar point in Blackburn v. Alabama, 361 U.S. 199 (1960), at p. 207: [N]either the likelihood that the confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake. As we said just last Term, "The abhorrence of society to the use of involuntary confessions . . . also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." . . . Thus a complex of values underlies the stricture against use by the state of confessions which, by way of convenient shorthand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case. See Hebert, supra. While the "complex of values" relevant to voluntariness in Canada is obviously not identical to that in the United States, I agree with
2000	R. v. Oickle	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1801/index.do	R. v. Oickle, [2000] 2 S.C.R. 3	Iacobucci J.	majority	Nova Scotia	Criminal law	R		Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, s. 76(8).	statute	UK	62 England has also recognized the role of oppression. Section 76(8) of the Police and Criminal Evidence Act 1984 (U.K.), 1984, c. 60, states that a confession must not be the product of "oppression", which is defined to include "torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)". The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers goes on to offer examples of what may amount to oppression, which are similar to what I described above.

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2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	L'Heureux-Dubé J.	dissenting	Manitoba	Criminal law	C	D	Myers v. Director of Public Prosecutions, [1965] A.C. 1001	SC	UK	32 Our reform of the hearsay rules began in Ares v. Venner, [1970] S.C.R. 608, when we refused to follow the House of Lords' position that the hearsay rule was frozen in time subject to reform only through the initiative of Parliament: see Myers v. Director of Public Prosecutions, [1965] A.C. 1001. In Ares, at p. 624, we adopted the minority position of Lord Donovan in Myers that "[t]he common law is moulded by the judges and it is still their province to adapt it from time to time so as to make it serve the interests of those it binds." What is at issue in this appeal is whether Khan and its progeny have followed Lord Donovan's imperative to "adapt" the common law from time to time or whether this Court has embarked upon an entirely different course and revolutionized the law of hearsay in this country.
2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	L'Heureux-Dubé J.	dissenting	Manitoba	Criminal law	C	D	Mutual Life Insurance Co. v. Hillmon, 145 U.S. 285 (1892)	SC	US	69 Statements of intention may be admissible despite the fact that they refer to a joint act: see the leading cases of Mutual Life Insurance Co. v. Hillmon, 145 U.S. 285 (1892), at p. 296; United States v. Pheaster, 544 F.2d 353 (9th Cir. 1976), at pp. 374-80; People v. Alcalde, 148 P.2d 627 (Cal. 1944), at pp. 631-33. Alcalde presented a situation similar to the one before us: the deceased declarant had said that she "was going out with Frank" that evening. The California Supreme Court, over the dissent of Traynor J., held that the statement was admissible to show the decedent's intent that evening. Generally, this sort of evidence is admissible as an indication of the declarant's intention at the time he or she spoke. The inferences to be drawn from the evidence are for the jury, properly cautioned.
2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	L'Heureux-Dubé J.	dissenting	Manitoba	Criminal law	C	D	United States v. Pheaster, 544 F.2d 353 (1976)	lower-level court	US	69 Statements of intention may be admissible despite the fact that they refer to a joint act: see the leading cases of Mutual Life Insurance Co. v. Hillmon, 145 U.S. 285 (1892), at p. 296; United States v. Pheaster, 544 F.2d 353 (9th Cir. 1976), at pp. 374-80; People v. Alcalde, 148 P.2d 627 (Cal. 1944), at pp. 631-33. Alcalde presented a situation similar to the one before us: the deceased declarant had said that she "was going out with Frank" that evening. The California Supreme Court, over the dissent of Traynor J., held that the statement was admissible to show the decedent's intent that evening. Generally, this sort of evidence is admissible as an indication of the declarant's intention at the time he or she spoke. The inferences to be drawn from the evidence are for the jury, properly cautioned.
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2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	McLachlin C.J.	dissenting	Manitoba	Criminal law	C	D	Mutual Life Insurance Co. v. Hillmon, 145 U.S. 285 (1892)	SC	US	7 The reason statements of present intention are generally reliable indicators of the speaker's "present" or contemporaneous state of mind was captured by Gray J. in Mutual Life Insurance Co. v. Hillmon, 145 U.S. 285 (1892), at p. 299, quoting Beasley C.J. in Hunter v. State, 40 N.J.L.: In the ordinary course of things, it was the usual information that a man about leaving home would communicate, for the convenience of his family, the information of his friends, or the regulation of his business. At the time it was given, such declarations could, in the nature of things, mean harm to no one; he who uttered them was bent on no expedition of mischief or wrong, and the attitude of affairs at the time entirely explodes the idea that such utterances were intended to serve any purpose but that for which they were obviously designed. . . . At the time the words were uttered. . . the reference to the companion who was to go with him was nothing more, as matters then stood, than an indication of an additional circumstance of his going.
2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	Iacobucci J.	majority	Manitoba	Criminal law	C	referred to	R. v. Sharp, [1988] 1 W.L.R. 7	SC	UK (HL)	161 Cross on Evidence (7th ed. 1990) describes the hearsay rule in the following terms, at p. 42: . . . an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. [Emphasis in original.] It is of interest to note that the above formulation was adopted as correct by the House of Lords in R. v. Sharp, [1988] 1 W.L.R. 7, at p. 11. Though formulated differently, the definition of hearsay promulgated by the United States Federal Rule of Evidence 801 is similar: "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted". "Statement" is defined as "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion". The most recent edition of Professor McCormick's treatise on evidence (McCormick on Evidence (5th ed. 1999), vol. 2, at § 246) has adopted this definition.
2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	Iacobucci J.	majority	Manitoba	Criminal law	C	referred to	Giles v. United States, 432 A.2d 739 (1981)	lower-level court	US	171 First, I can find no support in Canadian jurisprudence for the proposition that statements of intention are admissible against someone other than the declarant, apart from the one comment by Doherty J. noted above. Any other interpretation focusses on the exception and ignores the rule. In support of the proposition quoted above, Doherty J. cited three U.S. cases. All three had held that statements about joint acts were only admissible to prove the state of mind of the declarant: see Giles v. United States, 432 A.2d 739 (D.C. App. 1981), at pp. 745-46; United States v. Brown, 490 F.2d 758 (D.C. Cir. 1973); People v. Madson, 638 P.2d 18 (Colo. 1981). See also Shepard v. United States, 290 U.S. 96 (1933), at pp. 105-6; D. Kiesel, "One Person's Thoughts, Another Person's Acts: How the Federal Circuit Courts Interpret the Hillmon Doctrine" (1984), 33 Cath. U. L. Rev. 699, at pp. 738-39; and J. M. Maguire, "The Hillmon Case -- Thirty-Three Years After" (1925), 38 Harv. L. Rev. 709, at p. 721.
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2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	Iacobucci J.	majority	Manitoba	Criminal law	C	referred to	Shepard v. United States, 290 U.S. 96 (1933)	SC	US	171 First, I can find no support in Canadian jurisprudence for the proposition that statements of intention are admissible against someone other than the declarant, apart from the one comment by Doherty J. noted above. Any other interpretation focusses on the exception and ignores the rule. In support of the proposition quoted above, Doherty J. cited three U.S. cases. All three had held that statements about joint acts were only admissible to prove the state of mind of the declarant: see Giles v. United States, 432 A.2d 739 (D.C. App. 1981), at pp. 745-46; United States v. Brown, 490 F.2d 758 (D.C. Cir. 1973); People v. Madson, 638 P.2d 18 (Colo. 1981). See also Shepard v. United States, 290 U.S. 96 (1933), at pp. 105-6; D. Kiesel, "One Person's Thoughts, Another Person's Acts: How the Federal Circuit Courts Interpret the Hillmon Doctrine" (1984), 33 Cath. U. L. Rev. 699, at pp. 738-39; and J. M. Maguire, "The Hillmon Case -- Thirty-Three Years After" (1925), 38 Harv. L. Rev. 709, at p. 721.
2000	R. v. Starr	9/29/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1804/index.do	R. v. Starr, [2000] 2 S.C.R. 144	Iacobucci J.	majority	Manitoba	Criminal law	C	referred to	Idaho v. Wright, 497 U.S. 805 (1990);	SC	US	217 At the stage of hearsay admissibility the trial judge should not consider the declarant's general reputation for truthfulness, nor any prior or subsequent statements, consistent or not. These factors do not concern the circumstances of the statement itself. Similarly, I would not consider the presence of corroborating or conflicting evidence. On this point, I agree with the Ontario Court of Appeal's decision in R. v. C. (B.) (1993), 12 O.R. (3d) 608; see also Idaho v. Wright, 497 U.S. 805 (1990). In summary, under the principled approach a court must not invade the province of the trier of fact and condition admissibility of hearsay on whether the evidence is ultimately reliable. However, it will need to examine whether the circumstances in which the statement was made lend sufficient credibility to allow a finding of threshold reliability.
2000	F.N. (Re)	7/20/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1798/index.do	F.N. (Re), [2000] 1 S.C.R. 880	BINNIE J.	unanimous	Newfoundland and Labrador	Criminal law	C	referred to	Smith, Judge v. Daily Mail Publishing Co., 443 U.S. 97 (1979)	SC	US	14 Stigmatization or premature "labelling" of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence. Lamer C.J., in Dagenais v. Canadian Broadcasting Corp., [1994] 3 S.C.R. 835, pointed out in another context that non-publication is designed to "maximize the chances of rehabilitation for 'young offenders'" (p. 883). A concern about stigma was also emphasized by Rehnquist J. (as he then was) of the United States Supreme Court in Smith, Judge v. Daily Mail Publishing Co., 443 U.S. 97 (1979), at pp. 107-8: This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and "bury them in the graveyard of the forgotten past". . . . The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State. . . . Publication of the names of juvenile offenders may seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public. [Citations omitted.]

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2000	Friedmann Equity Developments Inc. v. Final Note Ltd.	7/20/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1797/index.do	Friedmann Equity Developments Inc. v. Final Note Ltd., [2000] 1 S.C.R. 842	BASTARACHE J.	unanimous	Ontario	Contract	C	referred to	Nalbandian v. Hanson Restaurant & Lounge, Inc., 338 N.E.2d 335 (1975)	lower-level court	US	19 The practice of sealing documents is one which is centuries old and which predates much of our modern legal history. Originally, it was used as a means of authenticating a document when most individuals were unable to sign their names. However, as time passed, the seal became a symbol of the solemnity of a promise and began to serve an evidentiary function. The seal rendered the terms of the underlying transaction indisputable, and thus rendered additional evidence unnecessary: see L. Fuller, "Consideration and Form" (1941), 41 Colum. L. Rev. 799, at p. 802. A contract under seal derived, and still derives, its validity from the form of the document itself: see, e.g., Nalbandian v. Hanson Restaurant & Lounge, Inc., 338 N.E.2d 335 (Mass. 1975), at p. 337; Ontario Law Reform Commission, Report on Amendment of the Law of Contract (1987), at p. 35; Law Reform Commission of British Columbia, Report on Deeds and Seals (1988), at p. 8.
2000	Friedmann Equity Developments Inc. v. Final Note Ltd.	7/20/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1797/index.do	Friedmann Equity Developments Inc. v. Final Note Ltd., [2000] 1 S.C.R. 842	BASTARACHE J.	unanimous	Ontario	Contract	C	referred to	McMullen v. McMullen, 145 So.2d 568 (1962)	lower-level court	US	51 The abolition of the sealed contract rule could also have far-reaching effects on existing contractual relationships. The sealed contract rule has provided a valid means for undisclosed principals to avoid personal liability and has most probably been invoked in transaction after transaction. To abolish the rule could expose such undisclosed principals to potential liability for as long as twenty years. In the United States, some of the courts that were asked to abolish the sealed contract rule refused to do so for this very reason. For example, in Crowley v. Lewis, 146 N.E. 374 (1925), the Court of Appeals of New York found that it was not at liberty to change the sealed contract rule, which was so well understood and so often enforced. Andrews J. stated as follows, at p. 374: Thousands of sealed instruments must have been executed in reliance upon the authority of Briggs v. Partridge. Many times the seal must have been used for the express purpose of relieving the undisclosed principal from personal liability. It may not be unwise to preserve the distinction for this especial purpose. But whether wise or unwise the distinction now exists. Similar reasoning led both the District Court of Appeal of Florida in McMullen v. McMullen, 145 So.2d 568 (1962), and the Supreme Court of Pennsylvania in Toll v. Pioneer Sample Book Co., 94 A.2d 764 (1953), to conclude that the sealed contract rule should not be abolished. I agree with the reasoning of these three decisions. The abolition of the sealed contract rule would have the unfair result of creating uncertainty for those who had relied on the rule in executing their contracts. To avoid uncertainty and any unfairness to those parties who have structured their commercial relationships in accordance with the sealed contract rule, any change to the law should operate prospectively. Only the Legislature has the power to create a prospective change in
2000	Friedmann Equity Developments Inc. v. Final Note Ltd.	7/20/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1797/index.do	Friedmann Equity Developments Inc. v. Final Note Ltd., [2000] 1 S.C.R. 842	BASTARACHE J.	unanimous	Ontario	Contract	C	referred to	Toll v. Pioneer Sample Book Co., 94 A.2d 764 (1953)	lower-level court	US	51 The abolition of the sealed contract rule could also have far-reaching effects on existing contractual relationships. The sealed contract rule has provided a valid means for undisclosed principals to avoid personal liability and has most probably been invoked in transaction after transaction. To abolish the rule could expose such undisclosed principals to potential liability for as long as twenty years. In the United States, some of the courts that were asked to abolish the sealed contract rule refused to do so for this very reason. For example, in Crowley v. Lewis, 146 N.E. 374 (1925), the Court of Appeals of New York found that it was not at liberty to change the sealed contract rule, which was so well understood and so often enforced. Andrews J. stated as follows, at p. 374: Thousands of sealed instruments must have been executed in reliance upon the authority of Briggs v. Partridge. Many times the seal must have been used for the express purpose of relieving the undisclosed principal from personal liability. It may not be unwise to preserve the distinction for this especial purpose. But whether wise or unwise the distinction now exists. Similar reasoning led both the District Court of Appeal of Florida in McMullen v. McMullen, 145 So.2d 568 (1962), and the Supreme Court of Pennsylvania in Toll v. Pioneer Sample Book Co., 94 A.2d 764 (1953), to conclude that the sealed contract rule should not be abolished. I agree with the reasoning of these three decisions. The abolition of the sealed contract rule would have the unfair result of creating uncertainty for those who had relied on the rule in executing their contracts. To avoid uncertainty and any unfairness to those parties who have structured their commercial relationships in accordance with the sealed contract rule, any change to the law should operate prospectively. Only the Legislature has the power to create a prospective change in
2000	Granovsky v. Canada (Minister of Employment and Immigration)	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1791/index.do	Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 S.C.R. 703	BINNIE J.	unanimous	Federal Court of Appeal	Constitutional law	C	referred to	Sutton v. United Airlines, Inc., 119 S.Ct. 2139 (1999)	SC	US	36 Not all physical or mental impairments (first aspect) give rise to functional limitations (second aspect). This Court recently addressed a number of related employment complaints under s. 10 of the Quebec Charter of Human Rights and Freedoms, including an instance where an employer quite erroneously attributed to an applicant for a job as gardener-horticulturalist functional limitations which did not in fact arise from her physical condition, though the employer subsequently resiled from this position: Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montreal (City), [2000] 1 S.C.R. 665, 2000 SCC 27. Where functional limitations do exist, they may be so minor as to be immaterial. An individual who is slightly colour blind, for example, may not notice any functional limitations, unless he or she chooses to undertake employment where an ability to differentiate colours precisely is important, a home decorator for example, or a commercial airline pilot. In other cases, technology has eliminated any functional limitation that would otherwise exist, as in the case of the short-sighted individual who wears corrective eyeglasses. Does a person whose physical impairment continues but whose functional limitations have been eliminated continue to be a person with disabilities? The United States Supreme Court takes the view that such individuals cease to be disabled for the purpose of the Americans with Disabilities Act; see Sutton v. United Airlines, Inc., 119 S.Ct. 2139 (1999). The same result would not necessarily follow under our jurisprudence, as discussed below.
2000	Granovsky v. Canada (Minister of Employment and Immigration)	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1791/index.do	Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 S.C.R. 703	BINNIE J.	unanimous	Federal Court of Appeal	Constitutional law	C	referred to	Cleburne v. Cleburne Living Centre, Inc., 473 U.S. 432 (1985)	SC	US	59 In Law, supra, Iacobucci J. emphasized the importance of approaching the third stage of the s. 15 analysis by considering a range of contextual factors. (Although Law also dealt with the CPP , the benefit at issue in that case was a widow's survivor pension, which raises a quite different context than the disability pension provisions at issue here.) Context is important. As Marshall J. said, dissenting in part, in Cleburne v. Cleburne Living Centre, Inc., 473 U.S. 432 (1985), at pp. 468-69, "[a] sign that says 'men only' looks very different on a bathroom door than a courthouse door". 73 While this Court refused to read into s. 15 a presumption in favour of inclusion in the mainstream (on the basis that inclusion might be contrary to the best interest of a person with severe disabilities because the application of the presumption might compel a bad placement in some cases), Sopinka J. nevertheless clearly stated that, viewed in human rights terms, "[i]ntegration [of Emily in the mainstream environment] was the preferred accommodation" (para. 68). Reference might be made here to the similar sentiment of Marshall J., dissenting in part, in Cleburne, supra, at p. 461, that exclusion "deprives the [disabled] of much of what makes for human freedom and fulfillment – the ability to form bonds and take part in the life of a community".
2000	R. v. Jolivet	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1792/index.do	R. v. Jolivet, [2000] 1 S.C.R. 751	BINNIE J.	unanimous	Quebec	Courts Criminal law	C	referred to	Graves v. United States, 150 U.S. 118 (1893)	SC	US	27 The party in question may have no special access to the potential witness. On the other hand, the "missing proof" may lie in the "peculiar power" of the party against whom the adverse inference is sought to be drawn: Graves v. United States, 150 U.S. 118 (1893), at p. 121. In the latter case there is a stronger basis for an adverse inference.
2000	R. v. Jolivet	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1792/index.do	R. v. Jolivet, [2000] 1 S.C.R. 751	BINNIE J.	unanimous	Quebec	Courts Criminal law	C	referred to	United States v. Hines, 470 F.2d 225 (1972), certiorari denied, 410 U.S. 968 (1973)	lower-level court	US	28 One must also be precise about the exact nature of the "adverse inference" sought to be drawn. In J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at p. 297, § 6.321, it is pointed out that the failure to call evidence may, depending on the circumstances, amount "to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it" (emphasis added), as stated in the civil case of Murray v. Saskatoon, [1952] 2 D.L.R. 499 (Sask. C.A.), at p. 506. The circumstances in which trial counsel decide not to call a particular witness may restrict the nature of the appropriate "adverse inference". Experienced trial lawyers will often decide against calling an available witness because the point has been adequately covered by another witness, or an honest witness has a poor demeanour, or other factors unrelated to the truth of the testimony. Other jurisdictions also recognize that in many cases the most that can be inferred is that the testimony would not have been helpful to a party, not necessarily that it would have been adverse: United States v. Hines, 470 F.2d 225 (3rd Cir. 1972), at p. 230, certiorari denied, 410 U.S. 968 (1973); and the Australian cases of Duke Group Ltd. (in Liquidation) v. Pilmer & Ors, [1998] A.S.O.U. 6529 (QL); and O'Donnell v. Reichard, [1975] V.R. 916 (S.C.), at p. 929.
2000	R. v. Jolivet	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1792/index.do	R. v. Jolivet, [2000] 1 S.C.R. 751	BINNIE J.	unanimous	Quebec	Courts Criminal law	C	referred to	Duke Group Ltd. (in Liquidation) v. Pilmer & Ors, [1998] A.S.O.U. 6529 (QL	lower-level court	Australia	28 One must also be precise about the exact nature of the "adverse inference" sought to be drawn. In J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at p. 297, § 6.321, it is pointed out that the failure to call evidence may, depending on the circumstances, amount "to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it" (emphasis added), as stated in the civil case of Murray v. Saskatoon, [1952] 2 D.L.R. 499 (Sask. C.A.), at p. 506. The circumstances in which trial counsel decide not to call a particular witness may restrict the nature of the appropriate "adverse inference". Experienced trial lawyers will often decide against calling an available witness because the point has been adequately covered by another witness, or an honest witness has a poor demeanour, or other factors unrelated to the truth of the testimony. Other jurisdictions also recognize that in many cases the most that can be inferred is that the testimony would not have been helpful to a party, not necessarily that it would have been adverse: United States v. Hines, 470 F.2d 225 (3rd Cir. 1972), at p. 230, certiorari denied, 410 U.S. 968 (1973); and the Australian cases of Duke Group Ltd. (in Liquidation) v. Pilmer & Ors, [1998] A.S.O.U. 6529 (QL); and O'Donnell v. Reichard, [1975] V.R. 916 (S.C.), at p. 929.

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2000	R. v. Jolivet	5/18/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1792/index.do	R. v. Jolivet, [2000] 1 S.C.R. 751	BINNIE J.	unanimous	Quebec	Courts Criminal law	C	referred to	O'Donnell v. Reichard, [1975] V.R. 916	lower-level court	Australia	28 One must also be precise about the exact nature of the "adverse inference" sought to be drawn. In J. Sopinka, S. N. Lederman and A. W. Bryant, The Law of Evidence in Canada (2nd ed. 1999), at p. 297, § 6.321, it is pointed out that the failure to call evidence may, depending on the circumstances, amount "to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it" (emphasis added), as stated in the civil case of Murray v. Saskatoon, [1952] 2 D.L.R. 499 (Sask. C.A.), at p. 506. The circumstances in which trial counsel decide not to call a particular witness may restrict the nature of the appropriate "adverse inference". Experienced trial lawyers will often decide against calling an available witness because the point has been adequately covered by another witness, or an honest witness has a poor demeanour, or other factors unrelated to the truth of the testimony. Other jurisdictions also recognize that in many cases the most that can be inferred is that the testimony would not have been helpful to a party, not necessarily that it would have been adverse: United States v. Hines, 470 F.2d 225 (3rd Cir. 1972), at p. 230, certiorari denied, 410 U.S. 968 (1973); and the Australian cases of Duke Group Ltd. (in Liquidation) v. Pilmer & Ors, [1998] A.S.O.U. 6529 (QL), and O'Donnell v. Reichard, [1975] V.R. 916 (S.C.), at p. 929.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	State Farm Fire and Casualty Co. v. Williams, 355 N.W.2d 421 (1984)	lower-level court	US	109 In summary, I would advance the following basic propositions. For there to be a duty to defend, there must be the possibility of a duty to indemnify. In the context of the pleadings in this case raising in substance a sexual assault through a sexual battery, the issue of consent produces two possible results for the purposes of the duty to defend, both of which are unfavourable to the appellant. If the consent of the plaintiff was present, then no claim of sexual battery is made out since the conduct of the appellant would not be regarded objectively as being harmful or offensive, and therefore the duty to indemnify would not arise because the plaintiff's claim has no possibility of success. See State Farm Fire and Casualty Co. v. Williams, 355 N.W.2d 421 (Minn. 1984), at p. 424. On the other hand, if consent of the plaintiff is absent, the conduct of the appellant would be actionable as an intentional tort of sexual battery. As I will discuss, infra, in such a case an intent to harm is inferred, the exclusion clause would apply, and there would be no duty to indemnify. There being no state of affairs in which there could be a duty to indemnify, the duty to defend does not apply. 122 While there is more of a divergence of opinion when it comes to assaults on adults, some U.S. courts have also inferred an intent to harm in these cases. For example, in State Farm Fire and Casualty Co. v. Williams, supra, the court denied insurance coverage to someone who had sexually assaulted a man with cerebral palsy who was confined to a wheelchair. The court first examined cases involving assaults on minors, and concluded as follows, at p. 424: Does the fact that Williams, the victim, was an adult distinguish this case? We think not. Neither the insured nor the insurer in entering into the insurance contract contemplated coverage against claims arising out of non-consensual sexual assaults. On the other hand, if the sexual contacts were consensual, as asserted by respondent Keller, there would be no assault and hence no claim for recovery. See also Houg, supra; Altena v. United Fire and Casualty Co., 422 N.W.2d 485 (Iowa 1988); and D. S. Florig, "Insurance Coverage for Sexual Abuse or
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	H. v. R., [1996] 1 N.Z.L.R. 299	SC	New Zealand	108 The New Zealand High Court came to the same conclusion in H. v. R., [1996] 1 N.Z.L.R. 299, at p. 305: In sexual abuse cases, a conceptual difficulty with the tort has been as to whether an absence of consent is an element of the tort, or a defence. It seems to me that to the extent that it has always been necessary for the plaintiff to prove a hostile intent to ground this tort, the burden of demonstrating a lack of consent must be surmounted by the plaintiff, of course on the civil standard. I[f] that is so, lack of consent has always been, strictu sensu, an element of the offence. In short, the appellant's attempt to convert an intentional tort into negligence because of the possibility that he lacked a subjective intent to injure must fail. Consent, in so far as it is concerned with whether something is harmful or offensive, is an objective standard. If the plaintiff can prove that the appellant failed to meet this standard, the latter is liable for intentional sexual battery, not negligence.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Freeman v. Home Office, [1983] 3 All E.R. 589, aff'd [1984] 1 All E.R. 1036	lower-level court	UK	107 In England, courts have concluded that "[t]he absence of consent is so inherent in the notion of a tortious invasion of interests in the person that the absence of consent must be established by the plaintiff": Street on Torts (10th ed. 1999), at p. 32. This issue was decided by Freeman v. Home Office, [1983] 3 All E.R. 589 (Q.B.), aff'd [1984] 1 All E.R. 1036 (C.A.), where the court held that a prisoner suing for battery because of therapeutic drug injections had the burden of proving non-consent. While it is not necessary in this appeal to decide whether the burden of proving non-consent will always rest on the plaintiff, I believe that it should for sexual battery. To repeat, sexual contact is only "harmful or offensive" when it is non-consensual. To succeed in an action for intentional battery, one must prove both that (a) the defendant intended to do the action; and (b) the reasonable person would have perceived that action as being harmful or offensive. For sexual activity, an action is harmful or offensive if it is non-consensual. Therefore in sexual battery, the trier of fact must be satisfied that the defendant intended to engage in sexual activity which a reasonable person would have perceived to be non-consensual.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Conner v. Transamerica Insurance Co., 496 P.2d 770 (1972)	lower-level court	US	75 McLachlin J. also provided two policy reasons in support of this conclusion, and in so doing refuted the contrary arguments made in the American case Conner v. Transamerica Insurance Co., 496 P.2d 770 (Okla. 1972). First, the insurer would have to pay defence costs for claims outside the policy's scope. This raised "policy questions of whether others in the insurance pool should be taxed with providing defences for matters outside the purview of the policy": Nichols, supra, at pp. 811-12. Second, an independent duty to defend raises conflict of interest problems. If the insurer is defending claims for which it owes no duty to indemnify, there is a strong incentive simply to settle the claim as quickly as possible. At the very least, the insurer has an incentive to try to prove only that the insured is liable for claims falling outside coverage. There would be little incentive to establish that the insured was entirely without blame. McLachlin J. therefore concluded, at p. 812, that considerations relat[ing] to insurance law and practice, as well as the authorities, overwhelmingly support the view that the duty to defend should, unless the contract of insurance indicates otherwise, be confined to the defence of claims which may be argued to fall under the policy. That said, the widest latitude should be given to the allegations in the pleadings in determining whether they raise a claim within the policy.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (1997)	lower-level court	US	78 This conclusion is consistent with the majority of American courts, which have concluded that the "duty to defend arises when the underlying complaint alleges any facts that might fall within the coverage of the policy": Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (Colo. Ct. App. 1997), at p. 912. See also, e.g., Aerojet-General Corp. v. Transport Indemnity Co., 948 P.2d 909 (Cal. 1997), at p. 921; Lawyers Title Insurance Corp. v. Knopf, 674 A.2d 65 (Md. Ct. Spec. App. 1996), at p. 70; Allstate Insurance Co. v. Patterson, 904 F. Supp. 1270 (D. Utah 1995); Allstate Insurance Co. v. Brown, 834 F. Supp. 854 (E.D. Pa. 1993). To the contrary, see Gray v. Zurich Insurance Co., 419 P.2d 168 (Cal. 1966). 88 The court had little difficulty in finding that this allegation of negligence did not raise the duty to defend, because "[a]ny negligent counseling is so intertwined with [the insured]'s sexual exploitation of a psychologically dependent person as to be inseparable" (Houg, supra, at p. 397). To use the approach I have set out above, the negligent counselling claim was merely derivative of the sexual assault. The fact that there may have been negligent aspects of the priest's conduct will not change the essentially intentional nature of his conduct, for the purpose of the exclusion clause. To similar effect are: Linebaugh v. Berdish, 376 N.W.2d 400 (Mich. Ct. App. 1985) (denying a claim for "negligent" child molestation, which was "a transparent attempt to trigger insurance coverage by characterizing allegations of tortious conduct under the guise of 'negligent' activity" (p. 406)); Horace Mann Insurance Co. v. Leeber, 376 S.E.2d 581 (W. Va. 1988) (alleged negligent seduction of a child by a teacher (p. 587)); Allstate Insurance Co. v. Troelstrup, 789 P.2d 415 (Colo. 1990) (same (p. 418, n. 7)); Nationwide Mutual Fire Insurance Co. v. Lajoie, 661 A.2d 85 (Vt. 1995) (agreeing with the trial judge that "labeling [the insured]'s conduct as negligent 'is simply a disingenuous attempt to create a factual dispute'" (p. 86)); Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, supra ("[T]he only facts recited in the complaint concern the repeated acts of sexual assault. There are no factual allegations provided in the complaint to substantiate a negligence theory" (p. 912)).

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2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Lawyers Title Insurance Corp. v. Knopf, 674 A.2d 65 (1996)	lower-level court	US	78 This conclusion is consistent with the majority of American courts, which have concluded that the "duty to defend arises when the underlying complaint alleges any facts that might fall within the coverage of the policy": Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (Colo. Ct. App. 1997), at p. 912. See also, e.g., Aerojet-General Corp. v. Transport Indemnity Co., 948 P.2d 909 (Cal. 1997), at p. 921; Lawyers Title Insurance Corp. v. Knopf, 674 A.2d 65 (Md. Ct. Spec. App. 1996), at p. 70; Allstate Insurance Co. v. Patterson, 904 F. Supp. 1270 (D. Utah 1995); Allstate Insurance Co. v. Brown, 834 F. Supp. 854 (E.D. Pa. 1993). To the contrary, see Gray v. Zurich Insurance Co., 419 P.2d 168 (Cal. 1966).
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2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Gray v. Zurich Insurance Co., 419 P.2d 168 (1966)	lower-level court	US	76 While this is obiter dictum, I find McLachlin J.'s arguments compelling. Absent specific language to the contrary, the duty to defend is broader than the duty to indemnify only in so far as it extends to groundless, false, or fraudulent claims. Given the historical evolution of the duty to defend as a way for insurers to protect their interests when they will be forced to pay any resulting judgment (see J. M. Fischer, "Broadening the Insurer's Duty to Defend: How Gray v. Zurich Insurance Co. Transformed Liability Insurance Into Litigation Insurance" (1991), 25 U.C. Davis L. Rev. 141, at pp. 146-57; E. S. Pryor, "The Tort Liability Regime and the Duty to Defend" (1999), 58 Md. L. Rev. 1), it makes little sense to presume an independent duty to defend absent express language: see B. Vail, "'My Mistake, Your Problem': The Duty to Defend Liability Claims in Canada" (1996), 6 C.I.L.R. 201, at p. 207, and Fischer, supra. To hold otherwise would convert indemnity insurance into litigation insurance. In my opinion, such an interpretation would violate the reasonable expectations of the parties absent express language to that effect. 78 This conclusion is consistent with the majority of American courts, which have concluded that the "duty to defend arises when the underlying complaint alleges any facts that might fall within the coverage of the policy": Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, 934 P.2d 909 (Colo. Ct. App. 1997), at p. 912. See also, e.g., Aerojet-General Corp. v. Transport Indemnity Co., 948 P.2d 909 (Cal. 1997), at p. 921; Lawyers Title Insurance Corp. v. Knopf, 674 A.2d 65 (Md. Ct. Spec. App. 1996), at p. 70; Allstate Insurance Co. v. Patterson, 904 F. Supp. 1270 (D. Utah 1995); Allstate Insurance Co. v. Brown, 834 F. Supp. 854 (E.D. Pa. 1993). To the contrary, see Gray v. Zurich Insurance Co., 419 P.2d 168 (Cal. 1966).
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2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Houg v. State Farm Fire and Casualty Co., 481 N.W.2d 393 (1992)	lower-level court	US	87 These concepts may seem rather complicated in the abstract, but they are more straightforward to apply in practice. While this issue is relatively new to Canadian law, it has been extensively canvassed in the United States, where courts have denied insurance coverage for claims of negligent battery, negligent misrepresentation, negligent infliction of emotional distress, negligent interference with familial relations, and any other claim of "negligence" where it is derivative of an intentional sexual assault. For example, in Houg v. State Farm Fire and Casualty Co., 481 N.W.2d 393 (Minn. Ct. App. 1992), a parishioner sued a priest who had been counselling her for sexual assault. In addition to intentional sexual battery, the plaintiff alleged negligent counselling by the defendant.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Linebaugh v. Berdish, 376 N.W.2d 400 (1985)	lower-level court	US	88 The court had little difficulty in finding that this allegation of negligence did not raise the duty to defend, because "[a]ny negligent counseling is so intertwined with [the insured]'s sexual exploitation of a psychologically dependent person as to be inseparable" (Houg, supra, at p. 397). To use the approach I have set out above, the negligent counselling claim was merely derivative of the sexual assault. The fact that there may have been negligent aspects of the priest's conduct will not change the essentially intentional nature of his conduct, for the purpose of the exclusion clause. To similar effect are: Linebaugh v. Berdish, 376 N.W.2d 400 (Mich. Ct. App. 1985) (denying a claim for "negligent" child molestation, which was "a transparent attempt to trigger insurance coverage by characterizing allegations of tortious conduct under the guise of 'negligent' activity" (p. 406)); Horace Mann Insurance Co. v. Leeber, 376 S.E.2d 581 (W. Va. 1988) (alleged negligent seduction of a child by a teacher (p. 587)); Allstate Insurance Co. v. Troelstrup, 789 P.2d 415 (Colo. 1990) (same (p. 418, n. 7)); Nationwide Mutual Fire Insurance Co. v. Lajoie, 661 A.2d 85 (Vt. 1995) (agreeing with the trial judge that "labeling [the insured]'s conduct as negligent 'is simply a disingenuous attempt to create a factual dispute'" (p. 86)); Colorado Farm Bureau Mutual Insurance Co. v. Snowbarger, supra ("[T]he only facts recited in the complaint concern the repeated acts of sexual assault. There are no factual allegations provided in the complaint to substantiate a negligence theory" (p. 912)). 121 In the considerable jurisprudence on the point, most U.S. courts have reached the same conclusion. The majority of these cases have involved sexual assaults of children. Courts have had little difficulty in concluding that defendants in these cases are presumed to intend harm to their victims -- notwithstanding the fact that "males who are involved in such activities do not expect or intend that the females will sustain any injury": CNA Insurance Co. v. McGinnis, 666 S.W.2d 689 (Ark. 1984), at p. 690. See also B.B. v. Continental Insurance Co., 8 F.3d 1288 (8th Cir. 1993); J.C. Penney Casualty Insurance Co. v. M.K., 804 P.2d 689 (Cal. 1991); Horace Mann Insurance Co. v. Leeber, supra; State Farm Fire & Casualty Co. v. D.T.S., 867 S.W.2d 642 (Mo. Ct. App. 1993); Amercian States Insurance Co. v. Borbor, 826 F.2d 888 (9th Cir. 1987); Troelstrup v. District Court, 712 P.2d 1010 (Colo. 1986) (en banc); Rodriguez v. Williams, 729 P.2d 627 (Wash. 1986) (en banc); Linebaugh v. Berdish, supra; Horace Mann Insurance Co. v. Independent School District No. 656, 355 N.W.2d 413 (Minn. 1984). These cases are obviously much easier than the present appeal. It is difficult to imagine someone successfully arguing that they intended no harm from sex with someone too young to consent to sexual activity. 130 Assuming without deciding that negligent misrepresentation has been properly pleaded here, I find that these claims are entirely derivative of the intentional sexual battery, and are thus subsumed into the latter for the purposes of the exclusion clause. The statement of claim alleges that the misrepresentations were designed to seduce the plaintiff, and convince her to engage in sexual activity with the appellant. As such, they were entirely subservient to the sexual battery. They arise from the same actions and cause the same harm. Indeed, para. 111 of the plaintiff's statement of claim alleges that the appellant "made the Scalera Representations intending to persuade [the plaintiff] to submit to the Scalera sexual acts". The West Virginia Supreme Court of Appeals reached the same conclusion in Horace Mann Insurance Co. v. Leeber, supra, at p. 587, where an exclusion clause applied in spite of allegations of negligent seduction of a student by a teacher. The court concluded that the allegations of "negligence" in the complaint were a transparent attempt to trigger insurance coverage by characterizing allegations of [intentional] tortious conduct under the guise of 'negligent' activity. [Insertion in Leeber; quoting Linebaugh, supra, at p. 406.] I reach the same conclusion in this appeal. While courts must be careful not to restrict pleading in the alternative unduly and should only subsume allegations of negligence that are clearly derivative of the intentional tort, I conclude that this is one of those cases. The plaintiff has clearly alleged

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2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	Iacobucci J.	concurring	British Columbia	Insurance Torts	C	referred to	Rodriguez by Brennan v. Williams, 713 P.2d 135 (1986)	lower-level court	US	134 In particular, it is consistent with the reasonable expectations of the parties. In this respect, I agree with the Iowa Supreme Court in Altena, supra, at p. 490, where the court quoted the following passage from Rodriguez by Brennan v. Williams, 713 P.2d 135 (Wash. Ct. App. 1986), at pp. 137-38: . . . [t]he average person purchasing homeowner's insurance would cringe at the very suggestion that [the person] was paying for such coverage. And certainly [the person] would not want to share that type of risk with other homeowner's policy holders. [Insertions added in Altena.] Similarly, in Horace Mann Insurance Co. v. Leeber, supra, at pp. 586-87, the court said the following: The majority rule rejecting an alleged duty to defend or to pay in sexual misconduct liability insurance cases is consistent with the "doctrine of reasonable expectations." ... [W]e simply believe that the insured under a homeowner's insurance policy does not reasonably expect the insurer to defend an action against the insured for, and to pay for, damages alleged to have been caused by the sexual misconduct of the insured.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	Collins v. Wilcock, [1984] 3 All E.R. 374	lower-level court	UK	2 As Goff L.J. (as he then was) stated in Collins v. Wilcock, [1984] 3 All E.R. 374 (Q.B.), at p. 378, "[t]he fundamental principle, plain and incontestable, is that every person's body is inviolate". The law of battery protects this inviolability, and it is for those who violate the physical integrity of others to justify their actions. Accordingly, in my respectful view, the plaintiff who alleges sexual battery makes her case by tendering evidence of force applied directly to her. "Force", in the context of an allegation of sexual battery, simply refers to physical contact of a sexual nature, and is neutral in the sense of not necessarily connoting a lack of consent. If the defendant does not dispute that the contact took place, he bears the burden of proving that the plaintiff consented or that a reasonable person in his position would have thought that she consented. My reasons for so concluding are the following. 106 That the "harmful or offensive" standard is a familiar one in tort law is shown by Wiffin v. Kincard (1807), 2 Bos. & Pul. (N.R.) 471, 127 E.R. 713 (C.P.), and Coward v. Baddeley (1859), 4 H. & N. 478, 157 E.R. 927 (Ex.). In those cases, the courts determined that touching someone on the shoulder to get their attention is not a battery, even if the recipient objected to the contact. As Linden, supra, at p. 44, points out: A line must be drawn between those contacts which are regarded as normal everyday events, which people must put up with in a crowded world, and those which are considered to be offensive and, therefore, unacceptable. Klar, supra, at pp. 43-44, elaborates on this point: The distinction between "hostile" and "friendly" contact seems to depend upon the standard of generally acceptable conduct in society. The test is objective: what would the reasonable person consider to be acceptable? Two recent English cases demonstrate this proposition. In the first, Collins v. Wilcock, [1984] 1 W.L.R. 1172 (Q.B.), the act of a police officer in taking hold of someone's arm to restrain her from walking off was deemed to constitute a battery. The test suggested by Goff L.J. was this: "whether the physical conduct so persisted in has in the circumstances gone beyond generally acceptable standards of conduct." Ibid., at 1178. . . . In the second case, Wilson v. Pringle, [1986] 2 All E.R. 440 (C.A.), a schoolboy playfully pulled the schoolbag off the plaintiff's shoulder, causing him injury. In deciding whether this was a hostile touching and consequently a battery, Croom-Johnson L.J. . . . agreed that certain conduct must be judged as "acceptable in the ordinary conduct of everyday life." [Emphasis added.]
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	Fowler v. Lanning, [1959] 1 Q.B. 426	lower-level court	UK	9 Some critics have suggested that this rule should be altered. They suggest that tort must always be fault-based. This means the plaintiff must prove fault as part of her case, by showing either: (1) that the defendant intended to harm; (2) that the defendant failed to take reasonable care or was "negligent"; or (3) that the tort is one of strict liability, i.e. legally presumed fault. On a practical level, some, like F. L. Sharp, argue that the traditional approach confers an unfair advantage on the plaintiff by easing her burden of proof: "Negligent Trespass in Canada: A Persistent Source of Embarrassment" (1977-78), 1 Advocates' Q. 311, at pp. 312-14 and 326. It is suggested that the law has moved in this direction in England: see Fowler v. Lanning, [1959] 1 Q.B. 426, approved in obiter in Letang v. Cooper, [1965] 1 Q.B. 232 (C.A.). In the spirit of these comments, my colleague Iacobucci J. proposes to alter the traditional rule, at least for sexual battery, to require the plaintiff to prove fault, i.e. that the defendant either knew or ought to have known that she was not consenting.

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2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	Letang v. Cooper, [1965] 1 Q.B. 232	lower-level court	UK	9 Some critics have suggested that this rule should be altered. They suggest that tort must always be fault-based. This means the plaintiff must prove fault as part of her case, by showing either: (1) that the defendant intended to harm; (2) that the defendant failed to take reasonable care or was "negligent"; or (3) that the tort is one of strict liability, i.e. legally presumed fault. On a practical level, some, like F. L. Sharp, argue that the traditional approach confers an unfair advantage on the plaintiff by easing her burden of proof: "Negligent Trespass in Canada: A Persistent Source of Embarrassment" (1977-78), 1 Advocates' Q. 311, at pp. 312-14 and 326. It is suggested that the law has moved in this direction in England: see Fowler v. Lanning, [1959] 1 Q.B. 426, approved in obiter in Letang v. Cooper, [1965] 1 Q.B. 232 (C.A.). In the spirit of these comments, my colleague Iacobucci J. proposes to alter the traditional rule, at least for sexual battery, to require the plaintiff to prove fault, i.e. that the defendant either knew or ought to have known that she was not consenting.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	In re F., [1990] 2 A.C. 1	SC	UK (HL)	19 The idea that battery is confined to conduct that is "harmful or offensive" finds root in the old cases involving trivial contacts. While the law of battery traditionally has held that the defendant, not the plaintiff, bears the onus of proving consent, it has also held that not every trivial contact suffices to establish battery. The classic example is being jostled in a crowd. A person who enters a crowd cannot sue for being jostled; such contact is not "offensive". Two theories have been put forward to explain this wrinkle on the general rule that all a plaintiff in a battery action must prove is direct contact. The first is implied consent: Salmond and Heuston on the Law of Torts (21st ed. 1996), at p. 121. The second sees these cases as "a general exception embracing all physical contact which is generally acceptable in the ordinary conduct of everyday life": In re F., [1990] 2 A.C. 1 (H.L.), at p. 73, per Lord Goff.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	Freeman v. Home Office, [1983] 3 All E.R. 589, aff'd [1984] 1 All E.R. 1036	lower-level court	UK	23 Only two cases, one in England concerning therapeutic administration of drugs and one in New Zealand concerning sexual assault, are cited in favour of the proposition that the plaintiff must show harm by proving a lack of consent as an element of the tort of battery: see Freeman v. Home Office, [1983] 3 All E.R. 589 (Q.B.), aff'd [1984] 1 All E.R. 1036 (C.A.), H. v. R., [1996] 1 N.Z.L.R. 299 (H.C.). The proposition that the plaintiff must prove a lack of consent, on the basis that she must prove that the impugned contact was harmful, is not supported by the law of battery, which has traditionally been confined to acts which are inherently harmful, like hitting, shooting or stabbing someone. Rather, its focus is on the protection of one's bodily integrity from any unwanted contact. Many of the older cases concern contacts devoid of any real harm apart from the violation of bodily integrity: Pursell v. Horn (1838), 8 AD. & E. 602, 112 E.R. 966 (pouring water on a person); Green v. Goddard (1704), 2 Salkeld 641, 91 E.R. 540 (forcibly taking an object held by another); Humphries v. Connor (1864), 17 Ir. Com. L. Rep. 1 (Q.B.) (taking flower worn by plaintiff), and Forde v. Skinner (1830), 4 Car. & P. 239, 172 E.R. 687 (cutting a person's hair). In more modern times, the same is true of medical battery cases. Like sexual acts, medical interventions may incidentally produce physical and psychological harm which may go to damages, but the basic "offence" or "harm" upon which the tort rests is the violation of the plaintiff's bodily integrity. As I discuss below, Canadian courts do not require plaintiffs alleging medical battery to prove that the defendant medical practitioner knew or ought to have known that the plaintiff did not consent to the medical contact.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	H. v. R., [1996] 1 N.Z.L.R. 299	SC	New Zealand	23 Only two cases, one in England concerning therapeutic administration of drugs and one in New Zealand concerning sexual assault, are cited in favour of the proposition that the plaintiff must show harm by proving a lack of consent as an element of the tort of battery: see Freeman v. Home Office, [1983] 3 All E.R. 589 (Q.B.), aff'd [1984] 1 All E.R. 1036 (C.A.), H. v. R., [1996] 1 N.Z.L.R. 299 (H.C.). The proposition that the plaintiff must prove a lack of consent, on the basis that she must prove that the impugned contact was harmful, is not supported by the law of battery, which has traditionally been confined to acts which are inherently harmful, like hitting, shooting or stabbing someone. Rather, its focus is on the protection of one's bodily integrity from any unwanted contact. Many of the older cases concern contacts devoid of any real harm apart from the violation of bodily integrity: Pursell v. Horn (1838), 8 AD. & E. 602, 112 E.R. 966 (pouring water on a person); Green v. Goddard (1704), 2 Salkeld 641, 91 E.R. 540 (forcibly taking an object held by another); Humphries v. Connor (1864), 17 Ir. Com. L. Rep. 1 (Q.B.) (taking flower worn by plaintiff), and Forde v. Skinner (1830), 4 Car. & P. 239, 172 E.R. 687 (cutting a person's hair). In more modern times, the same is true of medical battery cases. Like sexual acts, medical interventions may incidentally produce physical and psychological harm which may go to damages, but the basic "offence" or "harm" upon which the tort rests is the violation of the plaintiff's bodily integrity. As I discuss below, Canadian courts do not require plaintiffs alleging medical battery to prove that the defendant medical practitioner knew or ought to have known that the plaintiff did not consent to the medical contact.
2000	Non-Marine Underwriters, Lloyd's of London v. Scalera	5/3/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1786/index.do	Non-Marine Underwriters, Lloyd's of London v. Scalera, [2000] 1 S.C.R. 551	McLachlin J.	majority	British Columbia	Insurance Torts	C	referred to	State Farm Fire and Casualty Co. v. Williams, 355 N.W.2d 421 (1984)	lower-level court	US	39 This presumption of intent to harm does not depend on requiring the plaintiff to prove that the defendant knew or ought to have known that the plaintiff was not consenting to the sexual contact. Rather, the presumption flows from the allegation in the pleadings of battery of a sexual nature. American cases, like State Farm Fire and Casualty Co. v. Williams, 355 N.W.2d 421 (Minn. 1984), do not turn on the plaintiff's bearing the burden of showing the defendant either knew or ought to have known she did not consent. The logic is simply that either the act must have been consensual or not consensual. If it was not consensual, the policy does not apply because neither the insured nor the insurer contemplated coverage for non-consensual sexual activities. If it was consensual, then there is no battery and no claim for recovery. In either case, the policy does not apply. As stated in Williams, at p. 424: Does the fact that Williams, the victim, was an adult distinguish this case? We think not. Neither the insured nor the insurer in entering into the insurance contract contemplated coverage against sexual abuse arising out of non-consensual sexual acts.
2000	R. v. G.D.B.	4/27/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1784/index.do	R. v. G.D.B., [2000] 1 S.C.R. 520	MAJOR J.	unanimous	Alberta	Criminal law	C	referred to	Strickland v. Washington, 466 U.S. 668 (1984)	SC	US	26 The approach to an ineffectiveness claim is explained in Strickland v. Washington, 466 U.S. 668 (1984), per O'Connor J. The reasons contain a performance component and a prejudice component. For an appeal to succeed, it must be established, first, that counsel's acts or omissions constituted incompetence and second, that a miscarriage of justice resulted. 29 In those cases where it is apparent that no prejudice has occurred, it will usually be undesirable for appellate courts to consider the performance component of the analysis. The object of an ineffectiveness claim is not to grade counsel's performance or professional conduct. The latter is left to the profession's self-governing body. If it is appropriate to dispose of an ineffectiveness claim on the ground of no prejudice having occurred, that is the course to follow (Strickland, supra, at p. 697).
2000	R. v. Molodowic	4/13/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1778/index.do	R. v. Molodowic, [2000] 1 S.C.R. 420	ARBOUR J.	unanimous	Manitoba	Criminal law	C	referred to	Addington v. Texas, 441 U.S. 418 (1979)	SC	US	15 The appreciation of the import of expert psychiatric evidence must be a realistic and reasonable one. Expert evidence, be it in the field of psychiatry or some other field, does not always provide a dispositive answer to questions of fact raised in an adjudicative legal context. In Addington v. Texas, 441 U.S. 418 (1979), in rejecting the "beyond a reasonable doubt" standard as inappropriate in civil commitment proceedings, the United States Supreme Court said (at p. 430): The subtleties and nuances of psychiatric diagnosis render certainties virtually beyond reach in most situations. The reasonable-doubt standard of criminal law functions in its realm because there the standard is addressed to specific, knowable facts. Psychiatric diagnosis, in contrast, is to a large extent based on medical "impressions" drawn from subjective analysis and filtered through the experience of the diagnostician. This process often makes it very difficult for the expert physician to offer definite conclusions about any particular patient. See Re Robinson and Hislop (1980), 114 D.L.R. (3d) 620 (B.C.S.C.), at p. 629; Re Hoskins and Hislop (1981), 121 D.L.R. (3d) 337 (B.C.S.C.), at p. 342; R. v. Carleton (1981), 32 A.R. 181 (C.A.), at p. 199. The nature and limits of psychiatric expertise must be kept in mind in assessing whether the appellant discharged his burden to establish the defence of mental disorder on a balance of probabilities essentially through expert evidence.

Year	Name	Date	Link	Citation	Judge citing	Opinion	On appeal from	Subjects	Cited: Case/Regulation/General	Case's role	Cases	Type	Jurisdiction	Quotes
2000	Ingles v. Tutkaluk Construction Ltd.	3/2/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1773/index.do	Ingles v. Tutkaluk Construction Ltd., [2000] 1 S.C.R. 298	BASTARACHE J.	unanimous	Ontario	Municipal law Torts	C	applied	Anns v. Merton London Borough Council, [1977] 2 All E.R. 492	SC	UK (HL)	16 This Court recently affirmed in Ryan v. Victoria (City), [1999] 1 S.C.R. 201, that the test set in Anns v. Merton London Borough Council, [1977] 2 All E.R. 492 (H.L.), adopted by this Court in Kamloops v. Nielsen (the "Anns/Kamloops" test) is the appropriate test for determining whether a private or public actor owes a duty of care. These cases provide the basis for determining whether the law can impose on a public authority a private law duty towards individuals, enabling individuals to sue the authority in a civil suit, and for determining whether a duty of care is owed by a public authority in particular circumstances. To determine whether a private law duty of care exists, two questions must be asked. These questions are set out by Wilson J. at pp. 10-11 of the decision in Kamloops v. Nielsen as follows: (1) is there a sufficiently close relationship between the parties (the local authority and the person who has suffered the damage) so that, in the reasonable contemplation of the authority, carelessness on its part might cause damage to that person? If so, (2) are there any considerations which ought to negative or limit (a) the scope of the duty and (b) the class of persons to whom it is owed or (c) the damages to which a breach of it may give rise? 19 While I have stated above that a government agency will not be liable for those decisions made at the policy level, I must emphasize that, where inspection is provided for by statute, a government agency cannot immunize itself from liability by simply making a policy decision never to inspect. The decisions in Anns v. Merton London Borough Council, supra, and Kamloops v. Nielsen, supra, establish that in reaching a policy decision pertaining to inspection, the government agency must act in a reasonable manner which constitutes a bona fide exercise of discretion. In the context of a municipal inspection scheme, we must bear in mind that municipalities are creatures of statute which have clear responsibilities for health and safety in their area. A policy decision as to whether or not to inspect must accord with this statutory purpose; see, for example, Kamloops v. Nielsen, at p. 10. 30 Having decided that municipal inspectors owe a duty of care to owner-builders, La Forest J. proceeded to discuss the implications of the owner-builder's negligence. He considered the dictum of Lord Wilberforce in Anns v. Merton London Borough Council, supra, that no duty is owed "to a negligent building owner, the source of his own loss"; see Rothfield v. Manolakos, supra, at p. 1271. La Forest J. found that this principle was applicable only in the narrowest of circumstances. At p. 1271, he states: It is to be expected that contractors, in the normal course of events, will fail to observe certain aspects of the building by-laws. That is why municipalities employ building inspectors. Their role is to detect such negligent omissions before they translate into dangers to health and safety. If, as I believe, owner builders are within the ambit of the duty of care owed by the building inspector, it would simply make no sense to proceed on the assumption that every negligent act of an owner builder relieved the municipality of its duty to show reasonable care in approving building plans and inspecting construction. Negligent owners would be viewed as the sole source of their own loss where they, for example, knowingly flouted the applicable building regulations or
2000	Ingles v. Tutkaluk Construction Ltd.	3/2/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1773/index.do	Ingles v. Tutkaluk Construction Ltd., [2000] 1 S.C.R. 298	BASTARACHE J.	unanimous	Ontario	Municipal law Torts	C	referred to	Acrecrest Ltd. v. Hattrell & Partners, [1983] 1 All E.R. 17	lower-level court	UK	34 La Forest J.'s interpretation of Lord Wilberforce's dictum in Anns v. Merton London Borough Council, supra, is consistent with the interpretation provided by the English Court of Appeal. In Acrecrest Ltd. v. Hattrell & Partners, [1983] 1 All E.R. 17, Donaldson L.J. found that the principle does not exclude negligent builder-owners from the ambit of a municipality's duty of care, but rather that it serves as a defence. He interprets the Lord Wilberforce's dictum as follows, at p. 31: . . . the local authority's duty of care extends to the building owner and the builder-owner to the same extent as to future owners and present and future occupiers. The difference in the position of the building owner or builder-owner is not in the ambit of the duty, but in the fact that they may have more difficulty in proving a causal connection between the damage and the building inspector's negligence and may also be faced with allegations of contributory negligence which may partially or even wholly defeat their claim. This, I think, is what Lord Wilberforce meant when in the Anns case . . . he said: "The duty is owed to them [the owners or occupiers of the house], not of course to the negligent building owner, the source of his own loss." If the building owner's negligence was the effective source of his loss, he would fail on the ground that there was a break in the chain of causation or on the ground that it was just and equitable that the damages recoverable should be reduced to nothing, having regard to the building owner's share in the responsibility for the damage. . . . Clearly, the English Court of Appeal interpreted Lord Wilberforce's dictum as a defence to a claim of negligence on the part of an owner-builder who was the sole source of his or her own loss. Such a defence could be invoked, either to show that the negligence of an inspector could not in any way be the
2000	Ingles v. Tutkaluk Construction Ltd.	3/2/2000	https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1773/index.do	Ingles v. Tutkaluk Construction Ltd., [2000] 1 S.C.R. 298	BASTARACHE J.	unanimous	Ontario	Municipal law Torts	C	referred to	Fitzgerald v. Lane, [1988] 2 All E.R. 961	SC	UK (HL)	55 The trial judge found that Tutkaluk was 80 percent liable for the damage suffered by the appellant. The city was 20 percent liable for its negligent inspection. He then turned to the appellant's negligence. Having found that the appellant should bear some of the responsibility for his loss, the trial judge reduced the city's liability by 30 percent to account for the appellant's negligence. It appears that the trial judge took this approach to ensure that Tutkaluk would not benefit from the finding of negligence against the appellant, by having his damages reduced in proportion to the appellant's fault. With respect, this initial apportionment is not consistent with the Negligence Act, R.S.O. 1990, c. N.1. Sections 1 and 3 of that Act read as follows: 1. Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent. 3. In any action for damages that is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff that contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively. When there are two or more tortfeasors, and a plaintiff has also been found negligent, the proper approach to apportionment is to first reduce the extent of the recoverable damages in proportion with the plaintiff's negligence, and then to apportion the remaining damages between the defendants, in accordance with their fault; see, for example, Fitzgerald v. Lane, [1988] 2 All E.R. 961 (H.L.); Bow Valley v. Saint John Shipbuilding, supra; Colonial Coach