

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SANCTUARY MINISTRIES OF TORONTO, ABORIGINAL LEGAL  
SERVICES, ADVOCACY CENTRE FOR TENANTS ONTARIO, BLACK  
LEGAL ACTION CENTRE, CANADIAN CIVIL LIBERTIES ASSOCIATION,  
HIV & AIDS LEGAL CLINIC ONTARIO

Applicants

and

CITY OF TORONTO and  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

~~Respondent~~ Respondents

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

**AFFIDAVIT OF NOA MENDELSON AVIV**

I, Noa Mendelsohn Aviv, of the City of Toronto, AFFIRM:

1. I am Director of the Equality Program at the Canadian Civil Liberties Association (the “CCLA”), and, as such, I have knowledge of the matters to which I hereinafter affirm, except where this knowledge is based on information and belief, in which case I verily believe it to be true.

2. The CCLA is an independent, non-partisan, non-profit organization. Since its creation in 1964, CCLA has been a leading national civil liberties organization, defending and promoting the rights and freedoms of people in Canada. Our organization has thousands of supporters and followers nationwide, and our membership represents a wide variety of persons, occupations and interests.

3. The CCLA continually seeks to defend, foster, and ensure fundamental rights and freedoms through advocacy inside and outside of courts. In its advocacy, the CCLA seeks to reconcile civil liberties and human rights with other public interests. The underlying purpose of our work is the maintenance of a free and democratic society in Canada.

4. Given its history fighting against rights violations in Canada, CCLA has significant experience advocating with respect to deprivations imposed on those who are already marginalized. CCLA has dedicated many of its efforts to promoting the fair and equitable enforcement of laws, and to advocating for the life, security of the person, and equality rights of people who are marginalized on the basis of race, Indigeneity, mental and physical health, age, sexual orientation, gender identity and expression, and other grounds.

#### **Background Information about the CCLA**

5. The CCLA is a national non-profit organization with a nation-wide membership. Since its founding, the CCLA has challenged legislation, intervened in courts across Canada, presented briefs to legislative committees, and delivered programs to promote fundamental rights and freedoms for persons in Canada. The CCLA's early activity spanned such issues as emergency orders, protests, and police accountability.

6. Currently the CCLA continues to be active in work that protects life, security of the person, equality, and other fundamental rights, while reconciling these with other rights and interests. It has addressed issues as diverse as: welfare laws and privacy, a safe injection site, prohibitions in relation to sex work, racial profiling, police accountability, refugee rights, freedom of expression for people who solicit money, mental health, and conditions of confinement.

7. CCLA’s advocacy efforts on behalf of fundamental rights and marginalized individuals and groups across Canada have been effected before public bodies, including in the legislative sphere and before the courts.

8. The CCLA’s Equality Program addresses a broad range of issues and concerns, focusing on systemic discrimination—including in relation to mental and physical health, gender, race, Indigeneity, sexual orientation, and gender identity—and its intersection with other fundamental rights such as the right to be free from arbitrary detention, privacy, life, liberty, and security of the person.

#### **Advocacy before the Courts as Intervener and Party**

9. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), and has acted on multiple occasions as a public interest party or as an intervener in legal proceedings involving fundamental rights and freedoms that affect a diverse range of people in Canada.

10. The CCLA has been granted intervener status and participated in hundreds of cases before the courts (among them dozens before the Supreme Court of Canada). A list and description of many of the cases in which CCLA has been granted public interest party or intervenor status is attached as **Exhibit “A”** to this Affidavit.

11. Central recurring themes in the CCLA’s submissions to the courts and to government bodies include: the need to develop a principled approach that reconciles competing interests; the recognition of the intersection of and interplay between different *Charter* rights, including ss. 7 and 15; and the impact of *Charter* deprivations on marginalized individuals.

12. These themes appear in many of the cases in which CCLA was granted intervenor status, including:

- *R. v. Le*, 2019 SCC 34, concerning whether a detention and search in a private backyard of a racialized individual violated an accused's ss. 8 and 9 rights;
- *Gregory Allen v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services* (Ontario Human Rights Tribunal File No 2016-25116-I) concerning the use of solitary confinement on persons with physical disabilities (this matter settled prior to hearing);
- *R v Boudreault*, 2018 SCC 58, concerning whether a mandatory victim surcharge violates s. 12 of the *Charter*;
- *R. v Tinker*, 2017 ONCA 552, concerning whether a mandatory victim surcharge violates ss. 7 and 12 of the *Charter*;
- *R. v. Appulonappa*, 2015 SCC 59, and *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, concerning the constitutionality of criminal and immigration sanctions imposed on those who provide assistance to refugee claimants as "human smugglers" (CCLA also intervened in *R. v. Appulonappa* before the BC Court of Appeal, 2014 BCCA 163);
- *Carter v. Canada (Attorney General)*, 2015 SCC 5, concerning the constitutionality of the *Criminal Code* prohibition on assisted suicide in light of the rights protected under ss. 7 and 15 of the *Charter*;
- *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;
- *Wood v. Schaeffer*, 2013 SCC 71, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario's Special Investigations Unit (the CCLA also intervened at the Ontario Court of Appeal, 2011 ONCA 716);
- *Canadian Human Rights Commission v. Canada (Attorney General)*, 2013 FCA 75, in which the court considered whether an allegation that the Government of Canada has engaged in prohibited discrimination by under-funding child welfare services for on-reserve First Nations children, in order to succeed, requires a comparison to a similarly situated group;
- *R. v. Manning*, 2013 SCC 1, concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders, their dependents, and affected others (CCLA intervened before the Supreme Court of Canada);

- *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);
- *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);
- *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);
- *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);
- *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under s. 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal); and
- *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate s. 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal).

13. In addition, the CCLA has acted directly as a party in a number of court cases and an inquest, raising civil liberties and Charter issues, including, for example:

- *Corporation of the Canadian Civil Liberties Association v. Attorney General (Canada)*, 2019 ONCA 243; and *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, an application and appeal regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize "administrative segregation" in Canadian correctional institutions (currently on cross-appeal at the Supreme Court of Canada, File No. 38574,);
- *Corporation of the Canadian Civil Liberties Association and Lester Brown v Toronto Waterfront Revitalization Corporation, et. al.*, (Ontario Superior Court of Justice File No. 211/19), concerning whether Sidewalk Labs' smart city project is ultra vires and whether

it violates ss. 2(c), 2(d), 7, and 8 of the Charter of Rights and Freedoms (application ongoing).

- *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario)*, 2019 ONSC 1308, concerning whether the removal of sections of Ontario's health and physical education curriculum violates the equality rights of LGBTQ+ students and parents;
- *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal Personal Information Protection and Electronic Documents Act which have been used to facilitate warrantless access to internet subscriber information
- *National Council of Canadian Muslims et al. v. Attorney General of Québec et al.* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision;
- Inquest into the Death of Ashley Smith (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers; and
- *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the Charter's guarantee of freedom of religion.
- *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145, an application to challenge the validity of provisions banning religious symbols in certain professions in the public sector, and an application for an order staying the operation of these provisions.
- *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19-006266850000), concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines (action ongoing).

14. The CCLA thus has the legal resources and experience necessary to organize and advance *Charter* litigation of the nature raised by the present Application.

### **Advocacy before Parliament and the Provincial Legislatures**

15. The CCLA has extensive experience advising government bodies, both in the legislative and policymaking contexts, on issues relating to equality and the intersection of rights. It has made submissions on these subjects before public bodies and legislatures, and has been a member of several bodies. For example, CCLA:

- (a) Is a past member of the Toronto Police Services Board's former Sub-Committee on Mental Health and Policing;
- (b) Made submissions to Parliamentary committees in the House of Commons and the Senate of Canada on Bill C-279 An Act to amend the *Canadian Human Rights Act* and the *Criminal Code* (gender identity);
- (c) Made submissions to Parliamentary committees in the House of Commons and the Senate of Canada on Bill C-31 An Act to amend the *Immigration and Refugee Protection Act*, the *Balanced Refugee Reform Act*, the *Marine Transportation Security Act* and the *Department of Citizenship and Immigration Act*, concerning the rights of refugees;
- (d) Made submissions to a legislative Committee in Ontario on Bill 13 *An Act to amend the Education Act* with respect to bullying and other matters, concerning bullying and the rights of LGBTQ+ students;
- (e) Made several submissions over many months to the Toronto Police Services Board on carding and racial profiling;

- (f) Made submissions to a legislative committee of the Alberta Legislative Assembly on Bill 31: Mental Health Amendment Act, 2007.

### **The CCLA's Interest in and Ability to Pursue this Litigation**

16. The CCLA has a direct public interest in the validity and constitutionality of the current shelter and respite conditions; the city's conduct during the Covid-19 pandemic towards individuals who are street-involved, hail from among the community's most marginalized groups, and who face chronic health conditions; and services and accommodation provided to this group.

17. CCLA has a direct public interest and a long history of holding governments to account, and advocating for the protection of individual rights and freedoms, in particular for those who are most marginalized and vulnerable.

18. The CCLA's work relating to civil liberties issues throughout Canada will enable it to bring a broader, national perspective to this litigation. The CCLA furthermore has the legal resources to produce a fulsome evidentiary record that will assist this Court in making the findings of fact necessary to resolve the human rights and constitutional questions that lie at the heart of this case.

19. Moreover, the CCLA's past experience making submissions before the courts on questions of human rights, equality, life, liberty, and security of the person gives it the appropriate experience to deal with the issues raised by this litigation.

### **The CCLA's Role in this Litigation**

20. On March 29, 2020, the CCLA wrote an open letter to Mayor John Tory regarding the City of Toronto's actions and omissions with respect to the public health conditions for Toronto's homeless population. The letter called on the City of Toronto to take urgent steps to reduce over-

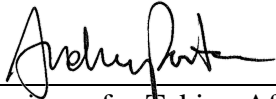


crowding and provide appropriate protections against COVID-19 for those facing homelessness. A copy of the letter is attached hereto as **Exhibit “B”**.

21. On April 20, 2020 counsel for the CCLA, alongside other organizations involved in this litigation wrote a second letter to the City of Toronto demanding that the City immediately create appropriate physical distancing in the City’s shelters and respite centres. A copy of the letter is attached hereto as **Exhibit “C”**.

22. I make this affidavit in support of the within Application, and for no other or improper purpose.

**AFFIRMED BEFORE ME**, via video conference, at the City of Toronto, in the Province of Ontario on May 4, 2020



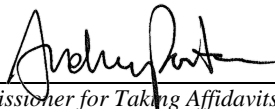
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Commissioner for Taking Affidavits  
*(or as may be)*

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**NOA MENDELSON AVIV**

This is Exhibit "A" referred to in the Affidavit of Noa Mendelsohn  
Aviv affirmed May 4, 2020.



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*Commissioner for Taking Affidavits (or as may be)*

## Exhibit A – CCLA Litigation

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

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);
8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);
9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under s. 508 of the *Criminal Code* after a private information has been received but before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson* before the Ontario Court of Appeal and the Supreme Court of Canada, and in *R. v. Buchbinder* before the Supreme Court of Canada);

10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in s. 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Court of Appeal);
11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter's* guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 O.R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);
15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken by a film censorship board violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated ss. 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);
18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman Catholic separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter's* guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion (the CCLA intervened in the Supreme Court of Canada);

21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by nonmembers pursuant to an agency shop or Rand formula violated the *Charter* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);
24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);
25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in s. 163 of the *Criminal Code* violate the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court – General Division);
27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether s. 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);”fundamen
28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the *Ontario Human Rights Code* and if the Board of Inquiry's dealing with the obscenity issue intruded on the *Charter* guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);
29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);

31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);
32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding of Jewish and certain Christian day schools violated the *Charter's* guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);
33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to s. 7 of the *Charter* or the *Charter* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);
34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether s. 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court – General Division);
35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);
36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of s. 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);
37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);
38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether s. 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether s. 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionally protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);

41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);
42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);
43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-struck workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);
44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in s. 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates s. 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);
47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);
48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under s. 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate s. 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);
50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated s. 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);
52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);
53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);
54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);
55. *Chamberlain v. The Board of Trustees of School District #36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);
56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under s. 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);
57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the extent to which the common law regarding secondary picketing should be modified in light of *Charter* values (the CCLA intervened in the Supreme Court of Canada);
58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);
59. *R. v. Malmo-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates s. 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against



private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);

61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);
62. *R. v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);
63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);
64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);
65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);
66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infrared technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);
68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);
69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);
70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the *Charter's* guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);
71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);

72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);
74. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);
75. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);
76. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);
77. *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);
78. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);
79. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);
81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. A.M.*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);
82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);
83. *Elmasry and Habib v. Roger's Publishing and MacQueen* (No. 4), 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);

84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);
85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);
86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);
87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);
88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);
89. *R. v. Suberu*, 2009 SCC 33, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);
90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);
92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);
93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);
94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);
95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);
96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec

- Labour Code* and the impact of the freedom of association guarantees contained in the *Canadian Charter* and the *Quebec Charter* (the CCLA intervened in the Supreme Court of Canada);
97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which will examine the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen’s Bench of Alberta);
  98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);
  99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61 concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);
  100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);
  101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);
  102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
  103. *R. v. Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);
  104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);
  105. *Leblanc et al. c. Rawdon (Municipalite de)* (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of “anti-SLAPP” legislation (the CCLA intervened at the Quebec Court of Appeal);
  106. *Warman v. Fournier et al.*, 2010 ONSC 2126, concerning the appropriate legal test when a litigant in a defamation action is attempting to identify previously-anonymous internet commentators (the CCLA intervened at the Ontario Superior Court of Justice);
  107. *R. v. National Post*, 2010 SCC 16, concerning the relationship between journalist-source privilege, freedom of the press under s. 2b, and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada);

108. *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada);
109. *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);
110. *R. v. Cornell*, 2010 SCC 31, concerning whether the manner in which police conduct a search, in particular an unannounced ‘hard entry’, constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada);
111. *City of Vancouver, et al v. Alan Cameron Ward, et al.*, 2010 SCC 27, concerning whether an award of damages for the breach of a *Charter* right can be made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada);
112. *R. v. Sinclair*, 2010 SCC 35, *R. v. McCrimmon*, 2010 SCC 36, and *R. v. Willier*, 2010 SCC 37, concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada);
113. *R. v. N.S. et al.*, 2010 ONCA 670, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened at the Ontario Court of Appeal);
114. *The Toronto Coalition to Stop the War et al. v. The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration Canada*, 2010 FC 957, concerning the freedom of association and freedom of expression implications of a preliminary assessment by the government that a British Member of Parliament who was invited to speak in Canada was inadmissible because the government claimed he had engaged in terrorism and was a member of a terrorist organization (the CCLA intervened in the Federal Court);
115. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al.*, 2010 SCC 41, concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada);
116. *R. v. Gomboc*, 2010 SCC 55, concerning the constitutionality of police conducting warrantless searches of private dwelling houses using real-time electricity meters (the CCLA intervened in the Supreme Court of Canada);
117. *Tiberiu Gavrilă v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the Immigration and Refugee Protection Act and the Extradition Act and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada);
118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M-4.1*, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so

- would conflict with commissioners' religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan);
119. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.*, 2011 SCC 2, and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour*, 2011 SCC 3 concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of the press and the broadcasting of court proceedings (the CCLA intervened in the Supreme Court of Canada);
  120. *R. v. Caron*, 2011 SCC 5, concerning the availability of advance cost orders in criminal and quasi-criminal litigation that raises broad reaching public interest issues (the CCLA intervened in the Supreme Court of Canada);
  121. *R. v. Ahmad*, 2011 SCC 6, concerning the constitutionality of ss. 38 to 38.16 of the Canada Evidence Act, R.S.C. 1985 (the CCLA intervened in the Supreme Court of Canada);
  122. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, 2011 SCC 9, concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada);
  123. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, concerning the exclusion of agricultural workers from Ontario's *Labour Relations Act* and whether the labour scheme put in place for these workers violated freedom of association under the *Canadian Charter* (the CCLA intervened in the Supreme Court of Canada);
  124. *R. v. K.M.* 2011 ONCA 252, concerning the constitutionality of taking DNA samples from young offenders on a mandatory or reverse onus basis (the CCLA intervened in the Ontario Court of Appeal);
  125. *Issassi v. Rosenzweig*, 2011 ONCA 302, concerning a 13 year old girl from Mexico who had been granted refugee status in Canada because of allegations that her mother had sexually abused her, and the subsequent return of that youth to her mother in Mexico, by a judge who did not conduct a risk assessment (the CCLA intervened at the Ontario Court of Appeal);
  126. *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, considering whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada);
  127. *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, cases concerning whether Minister's offices, including the Prime Minister's Office, are considered "government institutions" for the purposes of the federal *Access to Information Act* (the CCLA intervened in the Supreme Court of Canada);
  128. *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);
  129. *Phyllis Morris v. Richard Johnson, et al.*, 2011 ONSC 3996, concerning a motion for production and disclosure brought by a public official and plaintiff in a defamation action in order to get

- identifying information about anonymous bloggers (the CCLA intervened on the motion at the Ontario Superior Court of Justice);
130. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);
  131. *Crookes v. Newton*, 2011 SCC 47, concerning whether a hyperlink constitutes “publication” for the purposes of the law of defamation (the CCLA intervened in the Supreme Court of Canada);
  132. *R. v. Katigbak*, 2011 SCC 48, considering the scope of the statutory defences to possession of child pornography (the CCLA intervened in the Supreme Court of Canada);
  133. *R. v. Barros*, 2011 SCC 51, considering the scope of the informer privilege and whether it extends to prohibit independent investigation by the defence which may unearth the identity of a police informer (the CCLA intervened in the Supreme Court of Canada);
  134. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning the constitutionality of municipal bylaws prohibiting the erection of structures and overnight presence in public parks as applied to a protest (the CCLA intervened at the Ontario Superior Court of Justice);
  135. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, concerning parents seeking to have their children exempt from participating in Quebec’s Ethics and Religious Culture curriculum on the basis of their freedom of religion concerns (the CCLA intervened before the Supreme Court of Canada);
  136. *Doré v. Barreau du Québec*, 2012 SCC 12, concerning the jurisdiction of a provincial law society to discipline members for comments critical of the judiciary (the CCLA intervened before the Supreme Court of Canada);
  137. *R. v. Ipeelee*, 2012 SCC 13, concerning the application of s. 718.2(e) of the *Criminal Code* and *Gladue* principles when sentencing an Aboriginal offender of a breach of long-term supervision orders (the CCLA intervened before the Supreme Court of Canada);
  138. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);
  139. *R. v. Tse*, 2012 SCC 16, concerning the constitutionality of the Criminal Code’s “warrantless wiretap” provisions (the CCLA intervened before the Supreme Court of Canada);
  140. *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, concerning the appropriate test for jurisdiction and *forum non conveniens* in a multi-jurisdictional defamation lawsuit and the implications of these jurisdictional issues on freedom of expression (the CCLA intervened before the Supreme Court of Canada);
  141. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, concerning the jurisdiction of Ontario’s Special Investigations Unit to investigate potentially criminal conduct committed by a police officer who has retired since the time of the incident (the CCLA intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal);

142. *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);
143. *J.N. v. Durham Regional Police Service*, 2012 ONCA 428, concerning the retention of non-conviction disposition records by police services (the CCLA intervened in the Ontario Court of Appeal; CCLA also intervened before the Ontario Superior Court of Justice, *J.N. v. Durham Regional Police Service*, 2011 ONSC 2892);
144. *Opitz v. Wrzesnewskyj*, 2012 SCC 55, concerning the proper interpretation of the *Canada Elections Act* in the context of elections contested based on “irregularities,” and in light of s. 3 of the Charter (CCLA intervened before the Supreme Court of Canada);
145. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162, concerning the constitutionality of the hate speech prohibitions in the *Canadian Human Rights Act* (the CCLA intervened in the Federal Court of Canada);
146. *R. v. Cuttell*, 2012 ONCA 661 and *R. v. Ward*, 2012 ONCA 660, concerning the permissibility of warrantless searches of internet users’ identifying customer information (the CCLA intervened at the Ontario Court of Appeal);
147. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);
148. *R. v. Cole*, 2012 SCC 53, examining an employee’s reasonable expectation of privacy in employer-issued computers and the application of s. 8 to police investigations at an individual’s workplace (CCLA intervened before the Supreme Court of Canada);
149. *R. v. Prokofiew*, 2012 SCC 49, concerning the inferences that could be made from accused person’s decision not to testify (CCLA intervened before the Supreme Court of Canada);
150. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the proper balance between the transparency of court proceedings and the privacy of complainants (CCLA intervened before the Supreme Court of Canada);
151. *Lund v. Boisson*, 2012 ABCA 300, which considers the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Court of Appeal);
152. *R. v. Khawaja*, 2012 SCC 69 and *Sriskandarajah v. United States of America*, 2012 SCC 70 which together considered whether the definition of “terrorist activity” introduced by the Anti-Terrorism Act 2001, amending the Criminal Code, infringe the Charter (CCLA intervened before the Supreme Court of Canada);
153. *R. v. NS*, 2012 SCC 72, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened before the Supreme Court of Canada);



154. *R. v. Davey*, 2012 SCC 75, *R. v. Emms*, 2012 SCC 74 and *R. v. Yumnu*, 2012 SCC 73, concerning the Crown's vetting of prospective jurors prior to jury selection and the failure to disclose information to defence counsel (CCLA intervened before the Supreme Court of Canada);
155. *R. v. Manning*, 2013 SCC 1, concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders, their dependents, and affected others (CCLA intervened before the Supreme Court of Canada);
156. *Saskatchewan Human Rights Commission v. William Whatcott*, 2013 SCC 11, concerning the constitutionality and interpretation of the hate speech provisions of the Saskatchewan Human Rights Code and the extent to which that law can limit the expression of a man distributing anti-homosexual flyers (CCLA intervened before the Supreme Court of Canada);
157. *R. v. Mernagh*, 2013 ONCA 67, concerning the constitutionality of medical marijuana regulations (CCLA intervened before the Ontario Court of Appeal);
158. *Tigchelaar Berry Farms v. Espinoza*, 2013 ONSC 1506, concerning temporary migrant workers who, following their termination, were immediately removed from Canada by their employers pursuant to a government-mandated employment contract (CCLA intervened before the Ontario Superior Court);
159. *R. v. TELUS Communications Co.*, 2013 SCC 16, concerning the interpretation of the interception provisions of the *Criminal Code* and whether the authorizations in a General Warrant and Assistance Order are sufficient to require a cell phone company to forward copies of all incoming and outgoing text messages to the police;
160. *R. v. Pham*, 2013 SCC 15, concerning whether the demands of proportionality in sentencing require that the individual accused's circumstances be taken into account to include a collateral consequence, such as deportation;
161. *Canadian Human Rights Commission v. Canada (Attorney General)*, 2013 FCA 75, in which the court considered whether an allegation that the Government of Canada has engaged in prohibited discrimination by under-funding child welfare services for on-reserve First Nations children, in order to succeed, requires a comparison to a similarly situated group;
162. *Penner v. Niagara (Regional Police Service Board)*, 2013 SCC 19, concerning the use of issue estoppel in the context of civil claims against the police;
163. *R. v. Saskatchewan Federation of Labour*, 2013 SKCA 43, concerning essential services legislation and the freedom to strike;
164. *R. v. Welsh*, 2013 ONCA 190, concerning the constitutionality of an undercover police officer posing as a religious or spiritual figure in order to elicit information from a suspect;
165. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, concerning employee privacy and the reasonableness of randomized alcohol testing in the workplace;
166. *RC v. District School Board of Niagara*, 2013 HRTO 1382, concerning the policy and practice of distribution of non-instructional religious material within the school board system and whether it is discriminatory on the basis of creed;

167. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their sentence in Canada and the application of s. 6 of the Charter (the CCLA also intervened at the Federal Court of Appeal, 2011 FCA 39);
168. *R. v. Chehil*, 2013 SCC 49, and *R. v. Mackenzie*, 2013 SCC 50, concerning the "reasonable suspicion" standard and the right to be free from unreasonable search and seizure;
169. *Ezokola v. Minister of Immigration and Citizenship*, 2013 SCC 40, concerning application of the exclusion clause 1(F)(a) of the 1951 UN Refugee Convention, as incorporated in the IRPA, and the proper test for complicity in war crimes and crimes against humanity. The case considers an individual who has been denied refugee status because he was employed by the government of the Democratic Republic of Congo at a time that international crimes were committed by the State;
170. *Reva Landau v. Ontario (Attorney General)*, 2013 ONSC 6152, concerning the constitutionality of the current funding of Ontario's Catholic schools;
171. *R. v. Vu*, 2013 SCC 60, concerning the scope of police authority to search computers and other personal electronic devices found within a place for which a warrant to search has been issued;
172. *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, concerning the constitutionality of Alberta's *Personal Information Protection Act* in light of its impact on a union's freedom of expression in respect of activities on a picket line;
173. *Faysal v. General Dynamics Land Systems Canada* (Ontario Human Rights Tribunal File No. 2009-03006-I), concerning the application by a Canadian employer of the US *International Traffic in Arms Regulations*, and whether such application constitutes discrimination, contrary to the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and Canadian legal obligations pursuant to international human rights law (matter settled before a hearing);
174. *Wood v. Schaeffer*, 2013 SCC 71, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario's Special Investigations Unit (the CCLA also intervened at the Ontario Court of Appeal, 2011 ONCA 716);
175. *Bernard v. Canada (Attorney General)*, 2014 SCC 13, concerning an employer sharing the contact information of a Rand employee with a union and whether this violates rights to privacy and the freedom not to associate;
176. *John Doe v. Ontario (Finance)*, 2014 SCC 36, concerning an exception in Ontario's *Freedom of Information and Protection of Privacy Act* for advice and recommendations to a Minister;
177. *Mission Institution v. Khela*, 2014 SCC 24, concerning the scope of habeas corpus, the disclosure obligations on a correctional institution when they conduct an involuntary transfer, and the remedies that are available pursuant to a habeas application;
178. *R. v. Summers*, 2014 SCC 26, concerning the presumption of innocence and the interpretation of "circumstance[s]" that may justify granting enhanced credit for pre-trial custody under s. 719(3.1) of the *Criminal Code*;

179. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, concerning the constitutionality of Canada’s “security certificate” regime, particularly the restrictions on communications between a Named Person and the Special Advocate;
180. *France v. Diab*, 2014 ONCA 374, regarding whether an extradition judge must engage in a limited weighing of evidence to assess the sufficiency of evidence for committal to extradition and whether a failure to do so would violate s. 7 of the *Charter*;
181. *R. v. Spencer*, 2014 SCC 43, concerning the permissibility of warrantless searches of internet users’ identifying customer information;
182. *R. v. Taylor*, 2014 SCC 50, concerning the right to counsel and whether intentional police reliance on medical procedures to gather evidence without implementing the right to counsel violates s. 8 of the *Charter*;
183. *R. v. Hart*, 2014 SCC 52, concerning the constitutionality and admissibility of a confession obtained through a “Mr. Big” police operation;
184. *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, concerning whether a court must consider an individual’s rehabilitation when seeking to exclude a refugee from Canada for “serious prior criminality”;
185. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, concerning the application of the *Charter* to the *State Immunity Act* and whether it denies state immunity for acts committed by foreign governments when such acts result in violations of international law prohibitions against torture (the CCLA also intervened at the Quebec Court of Appeal, 2012 QCCA 1449);
186. *Wakeling v. United States of America*, 2014 SCC 72, regarding the constitutionality of sections of the *Criminal Code* and the *Privacy Act* that allow for the substance of wiretaps to be disclosed to foreign law enforcement actors;
187. *R. v. Fearon*, 2014 SCC 77, concerning the scope of the police power to search incident to arrest and whether it extends to a warrantless search of personal electronic devices (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 106);
188. *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;
189. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, concerning the constitutionality of the labour relations regime for members of the Royal Canadian Mounted Police;
190. *Carter v. Canada (Attorney General)*, 2015 SCC 5, concerning the constitutionality of the *Criminal Code* prohibition on assisted suicide in light of the rights protected under ss. 7 and 15 of the *Charter*;
191. *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, concerning the impact of provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and associated regulations, on solicitor-client privilege and whether these provisions unjustifiably violate s. 7 of the *Charter*;

192. *Baglow v. Smith*, 2015 ONSC 1175, concerning the fair comment defence and the approach to defamation cases where the allegedly defamatory publication takes place within the “blogosphere”;
193. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, concerning whether a private religious high school should be exempted from the requirement to teach Quebec’s Ethics and Religious Culture curriculum and whether the failure to grant an exemption violates the institution’s freedom of religion;
194. *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, regarding whether a roving police “stop and search” checkpoint targeting apparent protesters during the G20 Summit violated ss. 2 and 7 of the *Charter*;
195. *R. v. Nur*, 2015 SCC 15, concerning the constitutionality of various provisions of the *Criminal Code* which impose mandatory minimum sentences for the possession of a prohibited firearm (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 677, and at the Ontario Superior Court of Justice, 2011 ONSC 4874);
196. *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, concerning whether the rights to equality or to freedom of religion as protected under the Quebec *Charter of human rights and freedoms* are violated when a prayer is recited at the outset of a municipal council meeting;
197. *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, regarding the availability of *Charter* remedies for non-disclosure of evidence at trial and whether claimants should be required to prove prosecutorial malice in the *Charter* claim;
198. *Bowden Institution v. Khadr*, 2015 SCC 26, regarding the proper interpretation of the *International Transfer of Offenders Act* as applied to the sentence received by a Canadian citizen sentenced in the United States and whether the sentence should be served in a provincial correctional facility;
199. *R. v. St-Cloud*, 2015 SCC 27, regarding the interpretation of the power to deny bail because detention is necessary to maintain confidence in the administration of justice;
200. *R. v. Barabash*, 2015 SCC 29, considering the scope of the private use exception to making and possessing child pornography;
201. *R. v. Smith*, 2015 SCC 34, concerning the constitutionality of the *Marijuana Medical Access Regulations* and whether the limitation in the *Regulations* restricting legal possession to only dried marijuana unreasonably infringes s. 7 *Charter* rights;
202. *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide;
203. *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495, concerning the role of the *Charter of Rights and Freedoms* in the interpretation of the Ontario *Human Rights Code* by the Human Rights Tribunal of Ontario, and in particular how the *Charter* protection of freedom of expression impacts on the Code’s protections (the CCLA also intervened before the Ontario Superior Court of Justice, 2014 ONSC 2169);

204. *Frank v. Canada (Attorney General)*, 2015 ONCA 536, concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;
205. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, concerning the application of the *Quebec Charter* to a Canadian company's refusal to train a Pakistan-born Canadian pilot because he was refused clearance under a US program requiring security checks for foreigners;
206. *Disciplinary Hearings of Superintendent David Mark Fenton*, Toronto Police Service Disciplinary Tribunal decision dated 25 August 2015, regarding whether the mass arrest of hundreds of individuals at two locations during the G20 Summit constituted a violation of ss. 2 and 9 of the *Charter* and whether the officer's conduct amounted to misconduct under the *Police Services Act*;
207. *R. v. Appulonappa*, 2015 SCC 59, and *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, concerning the constitutionality of criminal and immigration sanctions imposed on those who provide assistance to refugee claimants as "human smugglers" (CCLA also intervened in *R. v. Appulonappa* before the BC Court of Appeal, 2014 BCCA 163);
208. *Schmidt v. Attorney General of Canada*, 2016 FC 269, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation;
209. *Good v. Toronto (Police Services Board)*, 2016 ONCA 250, regarding the certification of a class action arising from alleged police misconduct during the 2010 G20 Summit;
210. *Villeneuve c. Montréal (Ville de)*, 2016 QCCS 2888, concerning the constitutionality of a City of Montreal by-law that prohibits the holding of gatherings and marches without informing the police of the itinerary and location and prohibiting individuals participating in such gatherings from covering their faces without valid justification;
211. *Trinity Western University v. Law Society of Upper Canada*, 2016 ONCA 518, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality;
212. *Thompson v. Ontario (AG)*, 2016 ONCA 676, concerning a constitutional challenge to schemes in Ontario's *Mental Health Act* that permit involuntary detention and coerced medical treatment for individuals who are not a danger to themselves or others;
213. *R. v. Donnelly* and *R. v. Gowdy*, 2016 ONCA 988 and 2016 ONCA 989, concerning the availability of a sentence reduction remedy under s. 24(1) of the *Charter* and whether such a remedy allows courts to reduce an offender's sentence below the statutory mandatory minimum;
214. *Jean-François Morasse v. Gabriel Nadeau-Dubois*, 2016 SCC 44, concerning an appeal of a contempt conviction in respect of an individual who made public statements about the legitimacy of certain protest activities (CCLA also intervened before the Quebec Court of Appeal, 2015 QCCA 78);

215. *Ernst v. Energy Resources Conservation Board*, 2017 SCC 1, concerning the availability of a Charter remedy where a statute has a general immunity clause;
216. *BC Freedom of Information and Privacy Association v. Attorney General of British Columbia*, 2017 SCC 6, concerning the constitutionality of provisions of the British Columbia *Election Act* requiring registration of third party advertisers without a threshold spending limit;
217. *R. v. Saikaley*, 2017 ONCA 374, concerning the proper interpretation of the *Customs Act* in relation to the warrantless search of cell phones (or other electronic devices) of anyone entering Canada;
218. *Bingley v. Her Majesty the Queen*, 2017 SCC 12, regarding whether a *Mohan voir dire* is required to determine the admissibility of testimony from a Drug Recognition Expert;
219. *R. v. Peers*, 2017 SCC 13, concerning whether the word punishment in s. 11(f) of the *Charter* is restricted to imprisonment or other punishments that engaged the accused's liberty interests;
220. *R. v. Tinker*, 2017 ONCA 552, concerning whether a mandatory victim surcharge violates ss. 7 and 12 of the Charter;
221. *Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin*, 2017 SCC 26, concerning the imposition of personal costs against a criminal lawyer on the basis of his conduct in the representation of his clients;
222. *R. v. Antic*, 2017 SCC 27, concerning the *Criminal Code* restriction on cash bails and the right of an accused to the least restrictive form of bail;
223. *Deborah Louise Douez v. Facebook, Inc.*, 2017 SCC 33, regarding the need to modify the "strong cause" test in forum selection cases where constitutional or *quasi*-constitutional rights are engaged in contracts of adhesion;
224. *Google Inc. v. Equustek Solutions Inc., et al.*, 2017 SCC 33, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide (the CCLA also intervened before the British Columbia Court of Appeal, 2015 BCCA 265);
225. *Nour Marakah v. Her Majesty the Queen*, 2017 SCC 59, regarding whether the sender of a text message has a reasonable expectation of privacy in the message once it is accessible on a recipient's cell phone;
226. *Tristin Jones v. Her Majesty*, 2017 SCC 60, companion case to Marakah, regarding whether the standing test in an informational privacy case should be clarified in the context of evolving technologies;
227. *Schmidt v. Attorney General of Canada*, 2018 FCA 55, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation (the CCLA also intervened before the Federal Court, 2016 FC 269);
228. *R. v. Wong*, 2018 SCC 25, concerning an accused's request to withdraw a guilty plea after finding the applicant was uninformed of significant collateral consequences of the plea;

229. *Groia v. Law Society of Upper Canada*, 2018 SCC 27, concerning a finding of professional misconduct made against a lawyer on the basis of incivility and the question of when such a finding impacts freedom of expression (the CCLA also intervened before the Law Society Appeal Panel, 2013 ONLSAP 41, the Divisional Court, 2015 ONSC 686, and the Court of Appeal, 2016 ONCA 471);
230. *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality (the CCLA also intervened before the Ontario Court of Appeal, 2016 ONCA 518);
231. *Stewart v. Toronto Police Services Board*, 2018 ONSC 2785, concerning the constitutionality of establishing a police perimeter around a public park and requiring a search of bags and belongings as a condition of entry.
232. *Re: Interim Prohibitory Orders issued against Leroy St. Germaine, Lawrence Victor St. Germaine and James Sears dated May 26, 2016*, Board of Review proceedings under the *Canada Post Corporation Act*, considering the constitutionality of a Ministerial decision to prohibit access to Canada Post for individuals alleged to be committing an offence;
233. *Abdi v Canada*, 2018 FC 733 concerning whether *Charter* rights and values may be considered in admissibility proceedings against a non-citizen who had been a Crown ward;
234. *R v Boudreault*, 2018 SCC 58, concerning whether a mandatory victim surcharge violates s. 12 of the *Charter*;
235. *R v Vice Media Canada Inc.*, 2018 SCC 53, considering when a journalist can be compelled to reveal communications with a source for the purpose of assisting a police investigation and whether the police record underlying the production order should be subject to a sealing order or a publication ban (The CCLA also intervened before the Ontario Court of Appeal, 2017 ONCA 231);
236. *Frank v. Canada (Attorney General)*, 2019 SCC 1 concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;
237. *Spencer Dean Bird v. Her Majesty the Queen*, 2019 SCC 7, concerning the role of *Charter* considerations when applying the doctrine of collateral attack;
238. *R v. Jarvis*, 2019 SCC 10, concerning whether surreptitious visual recordings of students were made in circumstances that give rise to a reasonable expectation of privacy;
239. *R v. Corey Lee James Myers*, 2019 SCC 18, concerning the proper approach to be taken in respect of a 90 day bail review;
240. *G v. Attorney General for Ontario et al.*, 2019 ONCA 264, concerning whether inclusion on sex offender registries is contrary to ss. 7 and 15 of the *Charter* for persons found not criminally responsible by reason of mental disorder and absolutely discharged by a Review Board

241. *Mills v. Her Majesty the Queen*, 2019 SCC 22, concerning whether an accused had a reasonable expectation of privacy in electronic communications to an undercover police officer;
242. *Minister of Public Safety and Emergency Preparedness, et al. v. Tusif Ur Rehman Chhina*, 2019 SCC 29, concerning whether a *habeas corpus* proceeding should be available to individuals held in immigration detention;
243. *Gregory Allen v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services* (Ontario Human Rights Tribunal File No 2016-25116-I) concerning the use of solitary confinement on persons with physical disabilities (this matter settled prior to hearing);
244. *Mitchell v. Jackman* (Supreme Court of Newfoundland and Labrador, Court of Appeal File No. 2017 01H 0089), concerning the constitutionality of provisions of the Newfoundland *Elections Act* which allow for special ballot voting prior to an election writ being dropped (CCLA also intervened in the Newfoundland and Labrador Trial Division (General) 2017 NLTD(G) 150; the Court of Appeal dismissed the appeal as moot);
245. *R. v. Culotta*, 2018 SCC 57, concerning whether the right to counsel requires immediate access to a phone and the internet, and whether blood samples should be excluded under s. 24(2) of the *Charter* when the samples are taken for strictly medical purposes rather than police purposes;
246. *R. v. Le*, 2019 SCC 34, concerning whether a detention and search in a private backyard of a racialized individual violated an accused's ss. 8 and 9 rights;
247. *R. v. Penunsi*, 2019 SCC 39, concerning whether the judicial interim release provisions contained in s. 515 of the *Criminal Code* apply to s. 810 peace bond proceedings, and whether s. 810.2(2) of the *Criminal Code* empowers a judge to issue an arrest warrant in order to cause a defendant to a s. 810.2 information to appear.
248. *Christian Medical and Dental Society et al. v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, concerning the constitutionality of policies requiring physicians who conscientiously object to a medical practice to nevertheless provide an effective referral and urgent care to patients seeking care (CCLA also intervened in the Superior Court, 2018 ONSC 579);
249. *R v. Passera*, 2019 ONCA 527, considering whether it is cruel and unusual punishment to compel an offender who is detained prior to trial to spend more time in custody than other similarly situated offenders prior to becoming eligible for parole or early release;
250. *Marie-Maude Denis v. Marc-Yvan Coté*, 2019 SCC 44, concerning the interpretation and application of the *Journalistic Sources Protection Act* and the changes it made to the *Canada Evidence Act* concerning the treatment of journalistic sources in court proceedings;
251. *Fleming v. Ontario*, 2019 SCC 45, concerning the ancillary common law powers of police officers in the context of an arrest for an apprehended breach of the peace, and the impact of the exercise of that power on the right to peaceful protest;
252. *Kosoian v. Société de transport de Montréal, et al.*, 2019 SCC 59, concerning whether a pictogram can create an infraction and the circumstances in which an individual must identify themselves to police;



253. *Ontario (Attorney General) v. Bogaerts*, 2019 ONCA 876, concerning private organizations with delegated law enforcement powers that engage s. 8 of the *Charter*, and the importance of transparency and accountability as fundamental legal principles under s. 7; and
254. *C.M. v York Regional Police*, 2019 ONSC 7220, concerning the procedural fairness of the police vulnerable sector check process.

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

255. *Cooperstock v. United Airlines* (Federal Court of Appeal File No. A-262-17), concerning whether an attempted parody website critical of a corporation constitutes a copyright or trademark violation;
256. *Yulik Rafilovich v. Her Majesty the Queen* (Supreme Court of Canada File No. 37791), concerning whether a fine in lieu of forfeiture should be imposed in respect of proceeds of crime seized by the police but returned by order of the court to the accused to pay for defence counsel;
257. *British Columbia v. Provincial Court Judges' Association of B.C.* (Supreme Court of Canada File No. 38381), and *Nova Scotia v. Nova Scotia Provincial Court Judges' Association* (Supreme Court of Canada File No. 38459), considering whether Cabinet documents should be protected from disclosure in the judicial review of judicial compensation or whether they should be exempted on the basis of public interest immunity ; and
258. *Attorney General of Quebec, et al. v. 9147-0732 Québec inc.* (Supreme Court of Canada File No. 38613), considering whether corporations should (or should not) have a right to be free from cruel and unusual treatment under s. 12 of the Charter.

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

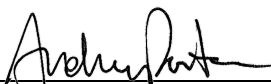
259. *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the *Charter's* guarantee of freedom of religion;
260. *Canada (Canadian Human Rights Commission) v. Toronto-Dominion Bank (re Canadian Civil Liberties Association)*, [1996] 112 FTR 127, affirmed [1998] 4 FC 205 (CA), concerning whether an employer's policy requiring employees to submit to a urine drug test was discriminatory under the *Canadian Human Rights Act*;
261. *Corporation of the Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)* (2002), 61 OR (3d) 649 (CA), concerning the proper evidentiary standard to be applied under the *Ontario Police Services Act* when the Civilian Commission on Police Services considers the issue of hearings into civilian complaints of police misconduct;
262. *Canadian Civil Liberties Association v. Toronto Police Service*, 2010 ONSC 3525 and 2010 ONSC 3698, concerning whether the use of Long Range Acoustic Devices (LRADs) by the

Toronto Police Service and the Ontario Provincial Police during the G20 Summit in June 2010 violated Regulation 926 of the *Police Services Act* and ss. 2 and 7 of the *Charter*;

263. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers;
264. *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal *Personal Information Protection and Electronic Documents Act* which have been used to facilitate warrantless access to internet subscriber information (application ongoing);
265. *Corporation of the Canadian Civil Liberties Association v. Attorney General (Canada)*, 2019 ONCA 243; and *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, an application and appeal regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize “administrative segregation” in Canadian correctional institutions (currently on cross-appeal at the Supreme Court of Canada, File No. 38574,);
266. *Corporation of the Canadian Civil Liberties Association, et al. v. Attorney General (Canada)* (Ontario Superior Court File No. CV-15-532810), an application concerning the constitutionality of provisions of various pieces of legislation as a result of the *Anti-Terrorism Act, 2015* (application ongoing);
267. *National Council of Canadian Muslims (NCCM), Marie-Michelle Lacoste and Corporation of the Canadian Civil Liberties Association c Attorney General of Quebec* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision;
268. *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario)*, 2019 ONSC 1308, concerning whether the removal of sections of Ontario’s health and physical education curriculum violates the equality rights of LGBTQ+ students and parents;
269. *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145, an application to challenge the validity of provisions banning religious symbols in certain professions in the public sector, and an application for an order staying the operation of these provisions.
270. *Corporation of the Canadian Civil Liberties Association and Lester Brown v Toronto Waterfront Revitalization Corporation, et. al.* (Ontario Superior Court of Justice File No. 211/19), concerning whether Sidewalk Labs’ smart city project is *ultra vires* and whether it violates ss. 2(c), 2(d), 7, and 8 of the *Charter of Rights and Freedoms* (application ongoing); and

271. *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19-006266850000), concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines (action ongoing).

This is Exhibit "B" referred to in the Affidavit of Noa Mendelsohn  
Aviv affirmed May 4, 2020.



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*Commissioner for Taking Affidavits (or as may be)*



March 29, 2020

Mayor John Tory  
City of Toronto  
100 Queen St W, Toronto, ON M5H 2N2  
**By Email:** mayor\_tory@toronto.ca

Dear Mayor and Council,

We are writing you about actions and omissions by the City of Toronto with respect to the public health conditions for Toronto's homeless population. The crisis of homelessness in Toronto is decades old – and recent actions taken by the Province of Ontario and City of Toronto to address the novel corona virus have unfortunately made matters worse. The closure of many businesses, public works and facilities, combined with restrictions on outdoor activities and gatherings, have disproportionately affected the homeless population, limiting such relief as was formerly provided by private, charitable, and public sectors. Sheltered space consistent with public health standards, adequate sanitation, food security, public health screening and other health care services are necessities of life that are even more critical during this pandemic.

The overcrowded conditions in Toronto's homeless facilities threaten not only the many vulnerable people who use these spaces, but also the shelters' staff and volunteers, and the city's broader neighbourhoods and communities. In addition, considering the vulnerable health status of the homeless population, with many elderly and immune-compromised individuals, a covid-19 outbreak in a city homeless facility (including shelters, respite sites, and day drop-ins) could lead to numerous acute cases, which could place extreme strain on city hospitals and the healthcare system.

And yet solutions are possible and indeed being implemented in many other locations in Canada and around the world. Cities large and small across Canada including Calgary, Fredericton, Barrie and Cobourg, as well as those in the UK, New Zealand, and France are finding creative solutions to the covid-19 and homelessness crisis. Authorities are making space available for homeless individuals in hotels, motels, office spaces, schools, and even the festival hall in Cannes. In San Francisco, 31 hotels are offering 8,500 vacant rooms to be leased by the city. Indeed California is considering not only leases but also the purchase of hotels as a potential permanent solution to homelessness. Closer to home, Peterborough Mayor Diane Therrien has named homelessness during the pandemic as a "serious issue" and a "top priority," explaining that "It's impossible to self-isolate when you don't have your own space" or create social distancing "when you have 40 people in a room."

We acknowledge the difficult tasks faced by city leadership and staff, and your immense hard work during this challenging time. And we recognize that the city of Toronto has reportedly taken several measures already to alleviate the homeless crisis during this pandemic, including efforts to prevent evictions, booking of hotel rooms for specific shelter users such as those who need to self-isolate, and opening of 8-10 new facilities with space for 350 more people. Sadly, this is insufficient at a time when everyone is being asked to stay indoors. Further, according to firsthand accounts, overcrowding in existing and new facilities persists - these too are overcrowded, and distancing in them is impossible. At

this time, more immediate action is necessary, and we are calling on the City of Toronto to take the following steps with all possible urgency:

1. To keep individuals and communities safe by making it possible for every person without a home to remain in appropriate 24/7 indoor space;
2. To create and enforce directives to reduce overcrowding in homeless facilities, including limits to the number of people in each facility, and requiring a minimum 2 metres between and surrounding beds;
3. To procure facilities that allow for real physical distancing - with one person or family in each unit - such as hotels, motels, and student residences.
4. To proactively disclose to the public these directives, the city's plan, and related statistics;
5. To provide adequate personal protective equipment to homeless facility staff.

The extraordinary times we are in demand extraordinary measures. Prisons are finding discretionary means to alleviate their own over-crowding by releasing certain inmates who do not pose a risk to the public. The province recently announced that it was granted an order from Chief Justice Morawetz suspending the enforcement of orders evicting tenants from their homes (barring a court order), and that Tribunals Ontario will not be issuing new eviction orders at this time. In a March 26<sup>th</sup> decision from the Ontario Superior Court, Justice Favreau, considering the circumstances of an individual who had recently been evicted and was living in homeless shelters, stated:

It is important to emphasize that this motion was brought in the context of the COVID-19 pandemic... **these are not ordinary times... everyone has an interest in having a home that allows them to stay healthy and assist in preventing the spread of the virus.** (emphasis added)

Despite the challenges, a failure to reduce over-crowding or provide appropriate protections against covid-19 violates the city's own standards, and deprives individuals of their fundamental rights to life and security of the person. Given the gravity of the situation, we urge you to take immediate steps as listed above, and look forward to your reply. We cannot afford more time, and will not hesitate to take legal action if necessary.

That said, Mayor Tory and Councillors, we sincerely wish you and your loved ones good health. This is a time to come together for the protection of the most vulnerable among our community, and of our community at large.

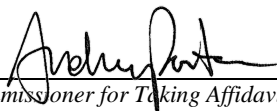
Sincerely,



Noa Mendelsohn Aviv  
Director, Equality Program -- Canadian Civil Liberties Association

Cc: Councillor Joe Cressy, Board of Health Chair, Chief Matthew Pegg, Fire Chief & General Manager of Emergency Management, Dr. Eileen de Villa, Medical Officer of Health, Mary-Anne Bedard, General Manager of Shelter of Support & Housing Administration

This is Exhibit "C" referred to in the Affidavit of Noa Mendelsohn  
Aviv affirmed May 4, 2020.

A handwritten signature in black ink, appearing to read "Andrew Port", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*



Jessica R. Orkin  
Direct Line: 416.979.4381  
Fax: 416.591.7333  
jorkin@goldblattpartners.com  
Our File No. 20-632

April 20, 2020

**Via E-mail**

*Via E-mail (mayor\_tory@toronto.ca)*  
Mayor John Tory  
Office of the Mayor  
City Hall, 2nd Floor  
100 Queen St. W.  
Toronto ON M5H 2N2

*Via E-mail (Mary-Anne.Bedard@toronto.ca)*  
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Dear Sir/Madam:

**Re: COVID -19 and Outbreaks in Toronto's Shelter System**

Yesterday, the City of Toronto confirmed COVID-19 cases in 11 of the City's shelters and respites with 83 confirmed cases, including a devastating outbreak at Willowdale Welcome Centre with 44 confirmed cases. Later that day, the public number of confirmed cases at Willowdale increased to 74, for a total of 113 across the shelter system. We fear that this number will only continue to rise in coming days.



We write on behalf of a coalition of public interest organizations that have been spurred to action by the deplorable conditions in the City's shelters and respite centres, which represent an urgent threat to the life and safety of Toronto's homeless population. We represent the Advocacy Centre for Tenants Ontario, the Black Legal Action Centre, and the HIV & AIDS Legal Clinic Ontario. The Canadian Civil Liberties Association, represented by Andrew Porter of Lenczner Slaght LLP, and Aboriginal Legal Services, are also part of this coalition.

We have made the difficult decision to initiate legal proceedings against the City as early as **April 23, 2020**, if the City does not take more urgent action to address this deepening crisis. If we are forced to litigate this issue, we will argue that the City is operating its shelter system and maintaining Standards that are discriminatory and violate the right to life and security of the person of shelter residents under sections 7 and 15 of the *Charter of Rights and Freedoms*, and also breach the Ontario *Human Rights Code*.

It is no surprise that the consequences of the pandemic have been harshest in congregate living facilities. The City's shelter system is no exception. The numbers of outbreaks and cases are rising at an alarming rate among our City's most vulnerable. COVID-19 represents an urgent public health crisis in the City's shelter system.

Calls from public health and elected officials to 'stay home' and self-isolate have demonstrated the importance of safe shelter as a matter of public health. Self-isolating is impossible without adequate shelter.

Physical distancing is known to be the central health strategy for managing the health impact of COVID-19, at both population and individual levels. Despite the increased risks of transmission in congregate shelters, the City is not operating its shelter system in accordance with federal and provincial public health guidance requiring a minimum of 2 metres of separation between beds. Instead of abiding by this guidance, the City continues to permit the operation of shelters and respites in accordance with the Toronto Shelter Standards and 24-Hour Respite Standards. Importantly, the City continues to implement these hazardous spacing practices at the shelters it directly operates.

The Shelter Standards permit inadequate physical distancing of 2.5 feet between beds, and the use of bunk beds. The Respite Standards do not require any minimum spacing. Unlike the federal and provincial public health guidance, these Standards were not designed in response to COVID-19. The Shelter Standards and Respite Standards are grossly inadequate in light of what is known about the virus, and the risks and manner of transmission.

Our clients' concern about conditions in the City's shelter system is shared by hundreds of front-line health providers who recently sounded the alarm over inadequate physical distancing in a

public letter. They have warned of preventable deaths and further outbreaks.<sup>1</sup> We echo their call to action. We add that the slow pace of action by the City to address these conditions in the shelter system is also unconstitutional.

The City's continued implementation of the Shelter and Respite Standards in the face of the present reality discriminates against Black and Indigenous people, as well as against people living with disabilities, all of whom are overrepresented in the shelter system. It also threatens the life, health, and safety of everyone experiencing homelessness in the City.

We acknowledge that the City has taken steps to procure additional safe shelter to facilitate physical distancing in existing shelters, and has plans for additional relocations in the coming weeks. Nevertheless, while the City has taken steps to offer an alternative to congregate shelter by leasing 1,200 hotel rooms, as we enter the sixth week of the provincial state of emergency, the majority of these hotel rooms remain empty. Thousands of additional alternative spaces will need to be procured to effectively depopulate the shelters and properly reduce the risk of COVID transmission in these settings.

The slow pace at which the City is acting leaves people experiencing homelessness at an immediate risk for contracting COVID-19, while thousands of hotel rooms in the City lie vacant. The heightened risk of transmission within the shelter system is also hazardous for shelter staff, their families, and the broader community.

The City must act immediately and urgently to meet its constitutional obligations.

### **The City's Shelter and Respite Standards**

The Toronto Shelter Standards were adopted by City Council in 2015.<sup>2</sup> They establish binding minimum requirements for the provision of City-operated and funded shelter services.<sup>3</sup> All emergency and transitional shelters directly operated or funded by the City must to adhere to the Shelter Standards.<sup>4</sup>

Section 9.3.1(e) of the Shelter Standards imposes binding requirements with respect to spacing:

*“Shelter providers will maintain a lateral separation of at least **0.75 m. (2.5 ft.)** between **beds** (or alternative sleeping arrangements) and a vertical separation of at least 1.1 m.*

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<sup>1</sup> Over 300 health-care workers sign open letter demanding more shelter for Toronto's homeless, April 13, 2020, online: <https://nowtoronto.com/news/health-care-workers-open-letter-homeless-coronavirus/>.

<sup>2</sup> Toronto Shelter Standards approved by Toronto City Council in 2015, online: <https://www.toronto.ca/community-people/community-partners/emergency-shelter-operators/toronto-shelter-standards/> (the “Shelter Standards”).

<sup>3</sup> Shelter Standards, *supra* at Preamble, i and 23.

<sup>4</sup> Shelter Standards, *supra* at Preamble, i.

*(3.5 ft.) between the top of a bed frame to the lowest hanging section of an overhead object (e.g., upper bunk frame, light fixture, bulkhead, air duct, plumbing, etc.)”<sup>5</sup>*

The Respite Standards were approved by the General Manager of Shelter, Support and Housing Administration in 2018 and are even more permissive, and deficient, than the Shelter Standards. The Respite Standards do not even require spacing of 2.5 feet / 0.75 metres between beds on a mandatory basis:

7.3.1(i) When required by [Shelter, Support & Housing Administration], Providers will maintain a lateral separation of at least 0.75 m. (2.5 ft.) between resting spaces.<sup>6</sup>

The City has the power to issue binding directives to amend or override the Shelter Standards and Respite Standards, or issue a binding interim standard.<sup>7</sup> The City has declined to exercise these powers, instead favouring “voluntary” approaches while continuing to authorize the minimum standards in the Shelter Standards and the lack of standards in the Respite Standards.<sup>8</sup> In the context of the COVID-19 pandemic, the City’s decision to continue to implement these Standards endangers the life and safety of shelter residents, and infringes sections 7 and 15 of the *Charter* as well as the Ontario *Human Rights Code*.

### **Shelter and Respite Standards are Inconsistent with Federal and Provincial Public Health Guidance in the Context of the COVID-19 Pandemic**

The Public Health Agency of Canada (“PHAC”) has issued the *Guidance for providers of services for people experiencing homelessness (in the context of COVID-19)* which sets the following minimum standard for spacing of beds in shelter settings:

*“In general, sleeping areas (for those who are not experiencing respiratory symptoms) should have beds/mats placed at least 2 metres apart, and request that all clients sleep head-to-toe.”<sup>9</sup>*

The Ministry of Health for the Province of Ontario has issued *COVID-19 Guidance: Homeless Shelters* which sets the following minimum standard for spacing of beds in shelter settings:

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<sup>5</sup> Shelter Standards, *supra*, at 59.

<sup>6</sup> 24-Hour Respite Site Standards, online: <https://www.toronto.ca/community-people/community-partners/24-hour-respite-site-operators/24-hour-respite-site-standards/> (the “Respite Standards”).

<sup>7</sup> See online: <https://www.toronto.ca/community-people/community-partners/emergency-shelter-operators/bulletins-directives-funding-submissions-and-shelter-standards/>.

<sup>8</sup> Toronto Public Health, COVID-19 Interim Guidance for Homelessness Service Settings, April 8, 2020, online: <https://www.toronto.ca/wp-content/uploads/2020/03/8ee3-Interim-Guidance-for-Homelessness-Service-Settings-Providers.pdf>.

<sup>9</sup> Public Health Agency of Canada, *Guidance for providers of services for people experiencing homelessness (in the context of COVID-19)*, April 13, 2020, online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/guidance-documents/homelessness.html>.

*“When clients are sleeping, beds/cots/mattresses should be at least 2 metres (6 feet) apart. Bunk beds should not be used.”<sup>10</sup>*

The City’s continued implementation of the deficient Shelter Standards defies these minimum standards and is putting lives at risk. Federal and provincial guidance makes clear that spacing of 2 metres is not only necessary in the case of symptomatic residents, but also in respect of residents who are not experiencing symptoms. The City is also defying categorical direction from the Province that “[b]unk beds should not be used.”<sup>11</sup> These directions are not limited to symptomatic residents but apply to all shelter residents in the Province.

More generally, public health guidance for all Torontonians and all Ontarians consistently emphasizes the critical importance of adequate physical distancing, in order to manage and minimize the health impacts of COVID-19 at both individual and population levels. The City’s response to COVID-19 has included a series of physical distancing and “stay at home” measures, including By-Law 322, which mandates physical distancing (2 metres) in select City property, namely public parks and squares.<sup>12</sup> By-Law 322 was “based on the advice of the Medical Officer of Health, who has recommended physical distancing measures to prevent the spread of COVID-19, including maintaining a distance of at least two metres from other individuals who are not members of the same household.”<sup>13</sup> Two metres of spacing as the minimum physical distancing precaution for any interaction outside one’s immediate household is the consensus public health recommendation in the present context.

### **Violation of the s. 7 Charter Right to Life and Security of the Person**

In the context of the COVID-19 pandemic, the current cramped conditions in the City’s shelter system constitute an infringement of the rights to life and security of shelter residents. The predictable increased risk of COVID transmission resulting from inadequate spacing in a congregate living setting represents a constitutionally-cognizable threat to the life and security of the person interests of all shelter residents. Indeed, there is “virtual certainty”<sup>14</sup> that the continued spacing of beds 2.5 feet apart and the continued use of bunk beds will result in more frequent and more severe outbreaks and, ultimately, an increase in preventable deaths.

The population health status of people experiencing homelessness is substantially worse than the rest of the public. This means that people experiencing homelessness have higher rates of chronic health conditions including cardiorespiratory disease, mental health challenges, substance

<sup>10</sup> Ministry of Health, COVID-19 Guidance: Homeless Shelters, April 1, 2020, online: [http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019\\_homeless\\_shelters\\_guidance.pdf](http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_homeless_shelters_guidance.pdf).

<sup>11</sup> *Ibid.*

<sup>12</sup> City of Toronto By-Law 322-2020, made under Mayor’s delegated authority under Section 59-6.1 of Chapter 59, Emergency Management of The City of Toronto Municipal Code and Emergency Order No. 1 issued by Mayor John Tory on April 2, 2020.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at para 111.

dependence, and HIV. People experiencing homelessness have a higher chance of intensive-care admission or death if they get COVID-19 in comparison with Toronto's housed general public.

The City's imposition of conditions of danger to life and safety on all shelter residents is *not* in accordance with the principles of fundamental justice, including the principles of arbitrariness, gross disproportionality, and equality.

The City's decision to continue to impose deficient spacing standards in Toronto shelters is arbitrary. The decision to continue to use bunk beds, despite known risks of transmission from droplets showering down on the person occupying the lower bunk, is similarly arbitrary. In the context of the COVID-19 pandemic, these standards bear no connection to any plausible public health purpose.<sup>15</sup> They are in direct contradiction with the advice of public health authorities.

Prior to the COVID-19 pandemic, the City's stated objective in promulgating the 2.5 feet spacing standard (and the 3.5 feet vertical spacing standard for bunk beds) was to "minimize the spread of communicable disease." In the context of COVID-19, continued implementation of the Shelter and Respite Standards "is arbitrary, undermining the very purposes" that the standards serve.<sup>16</sup>

The harms caused by the City's implementation of 2.5 feet spacing and bunk beds are also grossly disproportionate to any legitimate objective the Shelter and Respite Standards may serve. Gross disproportionality targets state action that may be rationally connected to the objective but whose effects are so disproportionate that they cannot be supported.<sup>17</sup> In the context of COVID-19, the spacing requirements set out in the Shelter and Respite Standards cannot satisfy this proportionality standard. The City has the power to implement physical distancing within the shelters, by moving more rapidly to open additional spaces in order to reduce the population within the existing shelters.

In understanding the gravity of the harms caused by the City's conduct, it is important to note that the City's conduct does not *only* risk the life and safety of shelter residents. Inadequate spacing in shelters also imperils shelter staff who will be exposed if an outbreak occurs, as well as their families and the broader community. Shelter residents who contract COVID-19 are more likely to require hospitalization, thereby contributing to the overcrowding of Intensive Care Units and undermining the City's public health efforts to "flatten the curve."

In short, the City's failure to implement physical distancing in shelters jeopardizes the life and health of all Toronto residents and risks undermining the effectiveness of other public health interventions. These harms are grossly disproportionate to any purpose the City might invoke in deciding to continue to space beds 2.5 feet apart and in deciding to continue to use bunk beds.

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<sup>15</sup> *Bedford v. Canada (A.G.)*, [2013] 3 S.C.R. 1101 at para 111.

<sup>16</sup> *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para 136.

<sup>17</sup> *Bedford v. Canada (A.G.)*, [2013] 3 S.C.R. 1101 at para 120.

## **Discriminatory Impact on Black and Indigenous Shelter Residents and People living with Disabilities**

The City's decision to continue to implement the Shelter and Respite Standards, in defiance of consensus public health guidance, disproportionately impacts Black and Indigenous residents, as well as people living with disabilities, in the City of Toronto. Racialized, Black and Indigenous people continue to be overrepresented in the Toronto homeless population, with Indigenous people making up 16% of the homeless population despite representing less than 2.5% of the general population, and racialized people making up two thirds of the homeless population, with the largest percentage identifying as Black.<sup>18</sup> Disabilities are also disproportionately prevalent among people experiencing homelessness.

Given the unequal and disproportionate impact of the City's Shelter and Respite Standards on the life and safety of historically marginalized groups including racialized, Black and Indigenous people and people living with disabilities, the City's continued application of those standards also breaches the guarantee of equality in s. 15 of the *Charter*.

In the context of the COVID-19 pandemic, the Shelter and Respite Standards have the effect of requiring or authorizing discrimination in services in breach of sections 1 and 47(2) of the *Human Rights Code*. As a result of the deficient Shelter and Respite Standards, people who experience homelessness – disproportionately racialized, Black, Indigenous and/or living with disabilities – are denied the equal benefit of the City's public health protections. They cannot heed the City's guidance of: "Everyone should stay home, as much as possible. Avoid close contact and keep a distance of 6 feet (2 metres) from others."<sup>19</sup> The Shelter and Respite Standards also deny them the ability to heed Ontario or Canada's public health guidelines to sleep a minimum of 6 feet (2 metres) apart. The continued authorization, by City By-Law, of 2.5 feet bed spacing and bunk beds is discriminatory in breach of the *Human Rights Code*. This triggers a duty to accommodate up to the point of undue hardship. In this context, the City has a duty under the *Human Rights Code* to implement physical distancing in shelters. It has failed to comply with that duty.

### **Urgent Action is Required**

Having undertaken to provide shelter to Toronto residents experiencing homelessness, the City cannot do so in a manner which is discriminatory, or that endangers the life and safety of those who are intended to benefit and be protected by this service.

We demand urgent action by the City to impose and implement mandatory standards in shelters and respites requiring 2 metres of physical distancing between beds and ending the use of bunk beds, so long as there remains substantial risk of COVID-19 transmission. The City must hasten

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<sup>18</sup> City of Toronto, Street Needs Assessment 2018 Results Report, online: <https://www.toronto.ca/wp-content/uploads/2018/11/99be-2018-SNA-Results-Report.pdf>.

<sup>19</sup> City of Toronto, "COVID-19: Stay Home & Reduce Virus Spread," online: <https://www.toronto.ca/home/covid-19/covid-19-protect-yourself-others/covid-19-stay-reduce-virus-spread/>.

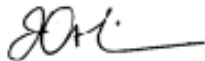
its provision of alternative safe shelter, in order to enable physical distancing within existing shelters, without any further delay. These actions by the City will serve to reduce the dangerous overcrowding in the shelter system, prevent further outbreaks of COVID-19, and ultimately, save the lives of vulnerable Toronto residents. If urgent action is not taken to ensure adequate physical distancing in shelters and respites, including by providing alternatives to congregate shelter, people experiencing homelessness will continue to suffer irreparable harm to their health and safety.

We are prepared to commence litigation and seek injunctive relief if this proves necessary. However, our clients and their frontline partners firmly believe that the deepening of this crisis can be averted. Our clients and their partners are eager to engage in discussions about steps that can be taken by the City to avoid litigation during this crisis.

Nevertheless, if the City fails to move rapidly in opening up adequate new spaces for safe shelter to permit proper physical distancing for people experiencing homelessness, and instead continues to allow spacing of 2.5 feet and the use of bunk beds within the existing shelter system, thereby endangering the life and safety of the City's most vulnerable residents, we will have no choice but to seek the urgent intervention of the Courts.

The cost of inaction is not only unconstitutional, it is incalculable. Continuing to endanger people experiencing homelessness will hurt all of us.

We look forward to your rapid response.



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SANCTUAREY MINISTRIES et al.  
Applicants

-and- CITY OF TORONTO et al.  
Respondents

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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