

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

**B E T W E E N:**

**THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE  
CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION GUARDIAN  
ABC], AND FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD MAJD  
MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI AND REDA  
YASSIN AL NAHASS and NEDIRA JEMAL MUSTEFA**

**APPELLANTS**  
*(Respondents)*

**-AND -**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENTS**  
*(Appellants)*

---

**MOTION RECORD OF THE PROPOSED INTERVENER -  
THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

*Pursuant to Rule 55 of the Rules of the Supreme Court of Canada, SOR/2002-156*

---

**LANDINGS LLP**  
1414-25 Adelaide St E  
Toronto, Ontario, M5C 3A1

**Jacqueline Swaisland, Efrat Arbel,  
Jonathan Porter**

T: (416) 363-1696  
F: (416) 352-5295  
[jswaisland@landingslaw.com](mailto:jswaisland@landingslaw.com)

**SOLICITORS FOR  
PROPOSED INTERVENER**

**LEGAL AID ONTARIO  
REFUGEE LAW OFFICE**  
20 Dundas Street West  
Toronto, Ontario M5G 2H1

**Benjamin Liston**

T: (416) 977-8111  
F: (416) 977-5567  
[listonb@lao.on.ca](mailto:listonb@lao.on.ca)

ORIGINAL TO:

**REGISTRAR OF THIS COURT**

COPIES TO:

**Andrew Brouwer, Michael Bossin  
Heather Neufeld, Leigh Salsberg,  
Erin Simpson, Kate Webster**  
c/o Refugee Law Office  
201-20 Dundas Street West  
Toronto, ON M5G 2H1  
Tel (A. Brouwer): 416-435-3269  
Fax: 416-977-5567  
Email: [Andrew.Brouwer@lao.on.ca](mailto:Andrew.Brouwer@lao.on.ca)

**Counsel for the Appellants,  
Canadian Council for Refugees, Amnesty  
International and the Canadian Council  
of Churches**

**Prasanna Balasundaram**  
Downtown Legal Services  
655 Spadina Avenue  
Toronto, ON M5S 2H9  
Tel: 416-9345-4535  
Fax: 416-934-4536  
Email: [law.dls@utoronto.ca](mailto:law.dls@utoronto.ca)

**Counsel for the Appellants,  
ABC, DE, FG and Nedira Jemal Mustefa**

**Jared Will and Joshua Blum**  
Jared Will & Associates  
226 Bathurst Street, Suite 200  
Toronto, ON M5T 2R9  
Tel: 416-657-1472  
Fax: 416-657-1511  
Email: [jared@jwlaw.ca](mailto:jared@jwlaw.ca); [joshua@jwlaw.ca](mailto:joshua@jwlaw.ca)

**Counsel for the Appellants,  
Mohammad Majd Maher Homsy,  
Hala Maher Homsy, Karam Maher Homsy  
and Reda Yassin Al Nahass**

**Goldblatt Partners LLP**  
500-30 Metcalfe Street  
Ottawa, ON K1P 5L4

**Colleen Bauman**  
Tel: 613-482-2463  
Fax: 613-235-3041  
Email: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

**Ottawa Agent for the Appellants**

**Attorney General of Canada**  
Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

Per: **Martin Anderson, David Knapp,**  
**Charles Julian Jubenville, Lucan Gregory**  
Tel: 647-256-0748  
Fax: 416-954-8982

**Counsel for the Respondents**

**Deputy Attorney General of Canada**  
National Litigation Sector  
Suite 500, Room 557  
50 O'Connor Street  
Ottawa, ON K1A 0H8

**Christopher M. Rupar**  
Tel: 613-670-6290  
Fax: 613-954-1920  
Email: [christopher.rupar@justice.gc.ca](mailto:christopher.rupar@justice.gc.ca)

**Ottawa Agent for the Respondents**

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

B E T W E E N:

**THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE  
CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION GUARDIAN  
ABC], AND FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD MAJD  
MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI AND REDA  
YASSIN AL NAHASS and NEDIRA JEMAL MUSTEFA**

**APPELLANTS**  
*(Respondents)*

-AND -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENTS**  
*(Appellants)*

---

**INDEX OF DOCUMENTS**

---

<b>TAB</b>		<b>PAGE</b>
1.	Notice of Motion	1
2.	Affidavit of Abby Deshman	5
3.	Memorandum of Argument	43

S.C.C. File No. 39749

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

B E T W E E N:

**THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE  
CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION  
GUARDIAN ABC], AND FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD  
MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI AND  
REDA YASSIN AL NAHASS and NEDIRA JEMAL MUSTEFA**

**APPELLANTS**  
(*Respondents*)

-AND -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENTS**  
(*Appellants*)

---

**NOTICE OF MOTION**

*Pursuant to Rule 47(1)(a) of the Rules of the Supreme Court of Canada, SOR/2002-156*

---

**TAKE NOTICE** that the Canadian Civil Liberties Association/*Association canadienne des libertés civiles* (“the CCLA”) hereby applies to a Judge of this Honourable Court, pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 for an order granting:

- (a) leave to intervene in the above-listed appeal;
- (b) leave to file a factum in accordance with Rules 37 and 42 of the *Rules of the Supreme Court of Canada*;
- (c) leave to make brief oral argument at the hearing of the above-listed appeal;
- (d) no order as to costs; and
- (e) such further and other order as the said Judge may deem appropriate.

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

1. This appeal concerns the circumstances under which Canada can sustain a refugee transfer agreement with another state in accordance with the international legal prohibition on indirect *refoulement*. As part of this appeal, the Appellants have raised issues regarding the evidentiary burden on applicants in *Charter* litigation as well as the procedural requirements on litigants when faced with assertions of privilege and non-disclosure by the government party.
2. The CCLA is a national organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand supporters from all parts of the country, representing a wide variety of persons, occupations, and interests. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. In every issue on which the CCLA intervenes, its attention is directed to the critical balance between civil liberties and the competing public interests that are involved. The purpose of the CCLA's work is the maintenance of a free and democratic society in Canada, which requires, among other things, the promotion and protection of the *Charter* rights of all citizens, and the rigorous observance and discharge by the Canadian government of its *Charter* obligations.
3. To advance its purpose, the CCLA often intervenes in legal proceedings at all levels of court across the country. The CCLA has been granted public interest standing in over 260 cases over its more than 50 years of existence.
4. Any expansion of the evidentiary burden on *Charter* litigants or addition of procedural requirements in the face of government assertions of privilege and non-disclosure would have a direct impact on the groups represented by the CCLA. More broadly, any change in these thresholds would have a significant impact on the principle of access to justice and litigants' capacity to successfully assert their *Charter* rights.
5. Accordingly, the CCLA has a genuine interest in this appeal.

6. If granted leave to intervene the CCLA intends to address the two novel requirements adopted by the Court of Appeal which threaten to unduly impede *Charter* litigation. Specifically, the CCLA proposes to argue that: (i) the Court of Appeal imposed a heightened evidentiary standard for *Charter* litigation; and (ii) the precondition articulated by the Court of Appeal that applicants make “constant and firm objection” to government assertions of privilege prior to relying on an adverse inference deviates from the caselaw of this Court. The CCLA will provide submissions that demonstrate that these novel and unnecessary procedural requirements and elevated evidentiary standards create significant access to justice concerns and will likely have an adverse impact on the ability of litigants to contest the legality of executive action and enforce their *Charter* rights.
7. The submissions that the CCLA proposes to make are explained further in outline form under the heading “The CCLA will make unique and useful submissions” in the Memorandum of Argument filed in the within motion to intervene.
8. The CCLA will abide by any schedule set by this Honourable Court.
9. The CCLA will not seek leave to submit any evidence.
10. The CCLA will not seek costs in the proposed intervention and respectfully requests that none be awarded against it.
11. Consistent with the proper role of interveners before this Honourable Court, the CCLA will take no position on the disposition of the appeal.
12. Rules 47 and 55 of the *Rules of the Supreme Court of Canada*.
13. Such further or other grounds as counsel may see fit to raise and may be permitted by this Honourable Court.

**AND FURTHER TAKE NOTICE** that the following documents are referred to in support of the motion:

- (a) The within Notice of Motion;
- (b) The Affidavit of Abby Deshman;
- (c) The Memorandum of Argument in support of the motion; and
- (d) Such further or other material as counsel may advise and may be permitted.

**DATED** at Toronto, Ontario, this 11<sup>th</sup> day of April, 2022.

---

**Jacqueline Swaisland**

Barrister and Solicitor

**Landings LLP**

1414-25 Adelaide St E  
 Toronto, Ontario, M5C 3A1  
 T: (416) 363-1696  
 F: (416) 352-5295  
[jswaisland@landingslaw.com](mailto:jswaisland@landingslaw.com)

---

**Efrat Arbel**

Barrister and Solicitor

**C/O Landings LLP**

1414-25 Adelaide St E  
 Toronto, Ontario, M5C 3A1  
 T: (416) 363-1696  
 F: (416) 352-5295  
[arbel@allard.ubc.ca](mailto:arbel@allard.ubc.ca)

---

**Benjamin Liston**

Barrister and Solicitor

**Legal Aid Ontario's Refugee Law Office**

20 Dundas Street West  
 Toronto, Ontario M5G 2H1  
 T: (416) 977-8111 x 7176 / F: (416) 977-5567  
 Email: [listonb@lao.on.ca](mailto:listonb@lao.on.ca)

---

**Jonathan Porter**

Barrister and Solicitor

**Landings LLP**

1414-25 Adelaide St E  
 Toronto, Ontario, M5C 3A1  
 T: (416) 363-1696  
 F: (416) 352-5295  
[jporter@landingslaw.com](mailto:jporter@landingslaw.com)

**SOLICITORS FOR PROPOSED INTERVENER**



S.C.C. File No. 39749

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

B E T W E E N:

**THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE  
CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION  
GUARDIAN ABC], AND FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD  
MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI AND  
REDA YASSIN AL NAHASS and NEDIRA JEMAL MUSTEFA**

**APPELLANTS**  
(Respondents)

-AND -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENTS**  
(Appellants)

---

**AFFIDAVIT OF ABBY DESHMAN**

*Pursuant to Rules 47(1)(b) and 57(1) of the  
Rules of the Supreme Court of Canada, SOR/2002-156*

---

I, **ABBY DESHMAN**, of the City of Toronto, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am a lawyer and program director with the moving party Canadian Civil Liberties Association (the **CCLA**). Thus, I have knowledge of the facts to which I depose below. If I do

not have personal knowledge, I have stated the source of my information and believe it to be true.

2. The CCLA seeks leave to intervene in this application. As a result of its expertise, special knowledge, and perspective on civil liberties as they relate to this application, the CCLA can assist the court.

**A. The Canadian Civil Liberties Association**

3. Founded in 1964, the CCLA is a national organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand supporters from all parts of the country, representing a wide variety of persons, occupations, and interests.

4. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. In every issue on which the CCLA intervenes, we direct our attention to the critical balance between civil liberties and the competing public interests that are involved. The purpose of our work is the maintenance of a free and democratic society in Canada, which requires, among other things, the promotion and protection of the *Charter* rights of all citizens, and the rigorous observance and discharge by the Canadian government of its *Charter* obligations. To advance our purpose, the CCLA often intervenes in legal proceedings at all levels of court across the country.

**B. The CCLA's Knowledge and Experience Intervening in Cases**

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

been involved in the litigation of many important civil liberties issues arising both before and under the *Charter*. It has often been granted intervener status before courts and tribunals across Canada to present oral and written argument on civil liberties issues. On several other occasions, the CCLA has also been granted party status to litigate significant civil liberties issues. A list of the many cases in which the CCLA has been granted intervener or party status is attached as **Exhibit A** to this affidavit.

6. A recurring theme in the CCLA's submissions to courts and government bodies is the need to develop principled approaches to the balancing of interests that almost inevitably occurs in cases involving civil liberties. In all of its work, the CCLA seeks to propose an appropriate balance on a principled basis.

**C. The CCLA's interest and expertise regarding this appeal**

7. As set out in the Appellants' application for leave, this case raises significant issues around what is required for a sufficient record to adjudicate *Charter* claims and when it is appropriate to draw a negative inference against parties asserting privilege and consequently not disclosing relevant documents. These issues include in particular: (i) the creation by the Federal Court of Appeal of a heightened evidentiary threshold for *Charter* litigants, and (ii) a new procedural burden imposed on claimants to make "constant and firm objection" to assertions of privilege in order for a negative inference to be drawn against the government party refusing disclosure.

8. This Court's resolution of these issues will impact access to justice in Canada, the manner in which *Charter* rights are litigated, and the practical ability of individual and public interest applicants to challenge government decision making. As such, the CCLA has a strong

interest in the outcome of this appeal given our public interest litigation efforts – litigation that has been critical to ensuring access to justice across Canada.

9. The CCLA has particular experience intervening in cases related to access to justice and to the scope of Cabinet confidence and other privileges and their relationship to the *Charter*. For example:

- (a) *Leroux v. Ontario*, 2021 ONSC 2269, in which a key issue was the impact of the *Crown Liability and Proceedings Act* on the principle of access to justice. In that case, the CCLA's intervention focused on the relationship between access to justice and government accountability, and argued that legislation that restricts access to the courts creates undue hardship;
- (b) *British Columbia (Attorney General) v Provincial Court Judges' Association of British Columbia*, 2020 SCC 20; *Nova Scotia (Attorney General) v Judges of the Provincial Court and Family Court of Nova Scotia*, 2020 SCC 21, in which the issues were whether Cabinet documents should be protected from disclosure in the judicial review of judicial compensation or whether they should be exempted based on public interest immunity.
- (c) *R v National Post*, 2010 SCC 16, which concerned the relationship between journalist-source privilege, freedom of the press under section 2(b) of the *Charter*, and search warrant and assistance orders targeting the media;
- (d) *O'Neill v Attorney General of Canada* (2006), 82 OR (3d) 241 (Sup Ct J), which concerned the interaction of national security and *Charter* rights; and

- (e) *Reference re Legislative Privilege* (1978), 18 OR (2d) 529 (CA), in which the issue was whether a member of the legislature has a privilege allowing them to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial.

10. Based on its record, the CCLA has the expertise to provide the Court with submissions to assist in the disposition of this appeal. In particular, our proposed submissions leverage CCLA's unique expertise advocating for access to justice and in assisting the courts to balance civil liberties with competing interests.

11. The CCLA believes that in resolving the questions raised by this appeal, the Court should consider how the principles it articulates will impact access to justice with respect to the unique nature of *Charter* litigation and judicial review, in which one of the parties is frequently a government agency with greater access to relevant information as well as the authority to assert privilege or confidence, while the other party often has limited resources to engage in lengthy litigation. Given the CCLA's proven record as a public interest litigant that seeks standing on issues affecting civil liberties and access to justice in Canada, any judgment of this Court affecting the evidentiary burden on litigants to establish a *Charter* breach and to challenge government assertions of confidence or privilege will have a direct impact on the CCLA and the groups that it represents. As the CCLA has intervened on several occasions in public interest litigation regarding access to justice and government accountability, we have developed the necessary expertise to provide the Court with useful submissions on this issue.

12. As such, the CCLA has a genuine interest in this appeal. Based on its mandate, its membership, and its history of interventions and public interest litigation at all levels of the

judiciary, the CCLA also has necessary knowledge, skills, and resources to provide useful submissions

**D. The CCLA will advance different and valuable insights that will further the Court's determination of this appeal**

13. The CCLA has reviewed the Appellant's Factum; the parties' Memoranda of Argument on application for leave to appeal; and the parties' Memoranda of Argument in the court below. I have reviewed the arguments in this Motion to Intervene and I can confirm they properly reflect the CCLA's proposed position as intervenor in this appeal. Based on this review, I believe the CCLA will advance arguments that are distinct from the parties' submissions and will further the Court's determination of this appeal.

14. As mentioned above, the Appellants raise questions regarding the evidentiary sufficiency findings made by the Court of Appeal as well as the requirement articulated by the Court of Appeal that applicants make "constant and firm objection" to assertions of privilege and confidence. The CCLA provides a different and valuable perspective by ensuring the principles articulated by this Court in resolving those questions account for the unique context of *Charter* litigation and the fundamental notion of access to justice.

15. If granted leave to intervene, the CCLA intends to address the two novel requirements adopted by the Court of Appeal which threaten to unduly impede *Charter* litigation. Specifically, the CCLA proposes to argue that: (i) the Court of Appeal imposed a heightened evidentiary standard for Charter litigation; and (ii) the precondition articulated by the Court of Appeal that applicants make "constant and firm objection" to government assertions of privilege prior to relying on an adverse inference deviates from the caselaw of this Court. The CCLA will provide

submissions that demonstrate that the novel and unnecessary procedural requirements and elevated evidentiary standard create significant access to justice concerns and will likely have an adverse impact on the ability of litigants to contest the legality of executive action and enforce their *Charter* rights.

16. The CCLA agrees that while unique on its facts, this case raises fundamental issues about the principle of access to justice and the ability of the government to immunize its decisions from judicial review. A determination in this case is likely to have far-reaching consequences.

17. The CCLA's submissions will be especially useful to the Court because they will provide a different perspective from that of the parties and advance the potentially affected interests of Canadian citizens and Canadian residents more broadly. If granted leave, the CCLA's submissions will be distinctively grounded in its national mandate to promote and protect fundamental rights and liberties. In particular, the CCLA has proven expertise in addressing the role of the courts in defining and vindicating individual rights and government obligations.

18. Based on this, I believe that granting the CCLA leave to intervene would be valuable to the Court's declarations.

**E. It is in the interests of justice that the CCLA be granted leave to intervene and the CCLA's participation will not unduly delay the proceedings:**

19. I believe that the interests of justice favour the CCLA's participation in this appeal. As stated above, the Court's judgment in this appeal will impact the evidentiary and procedural burdens on future *Charter* litigants as well as clarify the availability of negative inferences in the face of assertions of privilege by a government party. More broadly, the resolution of these

issues will have a significant impact on the principle of access to justice in Canada, particularly as it regards the litigation of *Charter* rights. Considering the broad potential impact of the Court's judgement, the CCLA believes it is appropriate for the Court to hear perspectives beyond those offered by the parties in the appeal. In particular, the interests of justice favour the Court looking to hear the viewpoints of interveners that represent and assist vulnerable groups, which often have limited resources to challenge government action and litigate their *Charter* rights.

20. I also believe that granting the CCLA leave in this matter would not unduly delay the proceedings or add expense to the parties. The CCLA will abide by the schedule set by this Court and will not seek to admit new evidence.

21. The CCLA has also communicated with counsel for other potential intervenors in this appeal, attended meetings of potential intervenors, and shared an outline of potential arguments, in order to avoid duplication.

22. The CCLA therefore requests that it be granted leave to intervene in the application, with leave to file a factum of no more than 10 pages and to present oral argument not exceeding 10 minutes. The CCLA will limit its argument solely to these submissions, which should avoid unnecessary duplication of argument before this court.

23. The CCLA seeks no costs in the proposed intervention and asks that no costs be awarded against it.

24. I make this affidavit in support of the within application for leave to intervene and for no other or improper purpose.

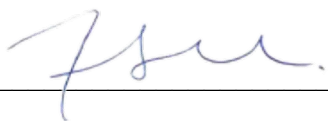


**SWORN BEFORE ME REMOTELY**

in accordance with O. Reg. 431/20:

*Administering Oath or Declaration Remotely*under the *Commissioners for Taking Affidavits**Act*, R.S.O. 1990, c. C.17 in the City of Torontoin the Province of Ontario on this 8<sup>th</sup> day of

April, 2022

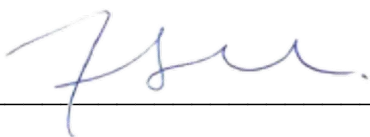

**A COMMISSIONER, ETC.**

**ABBY DESHMAN**

This is **Exhibit “A”** referred to in the

Affidavit of Abby Deshman

Sworn before me, this 8th day of April, 2022

A handwritten signature in blue ink, appearing to read 'Jsu', is written above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

## Exhibit A – CCLA Litigation

### CCLA Interventions

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

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);
8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);
9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under 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);
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. *Odyssey 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. Boissin 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. *Whitcott 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. Boissin*, 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. *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 (CCLA was granted leave to intervene but the matter settled prior to a hearing);
228. *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);
229. *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;
230. *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**);
231. *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);
232. *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.
233. *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;
234. *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;
235. *R v Boudreault*, 2018 SCC 58, concerning whether a mandatory victim surcharge violates s. 12 of the *Charter*;
236. *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);

237. *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;
238. *Spencer Dean Bird v. Her Majesty the Queen*, 2019 SCC 7, concerning the role of *Charter* considerations when applying the doctrine of collateral attack;
239. *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;
240. *R v. Corey Lee James Myers*, 2019 SCC 18, concerning the proper approach to be taken in respect of a 90 day bail review;
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 freedom of expression and peaceful protest;
252. *R. v. Rafilovich*, 2019 SCC 51, 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;
253. *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;
254. *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;
255. *C.M. v York Regional Police*, 2019 ONSC 7220, concerning the procedural fairness of the police vulnerable sector check process;
256. *Stewart v. Toronto Police Services Board*, 2020 ONCA 255, 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;
257. *R. v. Sullivan*, 2020 ONCA 333, concerning the constitutionality of s. 33.1 of the Criminal Code which ousts the common law defence of automatism for certain offences when induced by voluntary intoxication;
258. *Leroux v. Ontario*, 2020 ONSC 1994, concerning the impact of the *Crown Liability and Proceedings Act* on a certification motion previously granted by the Court;
259. *R. v. Zora*, 2020 SCC 14, concerning the mens rea for the offence of failing to comply with a condition of undertaking or recognizance;
260. *British Columbia v. Provincial Court Judges' Association of B.C.*, 2020 SCC 20 and *Nova Scotia v. Nova Scotia Provincial Court Judges' Association*, 2020 SCC 21, 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;
261. *1704604 Ontario Limited v. Pointes Protection Association, et al.*, 2020 SCC 22 and *Maia Bent, et al. v. Howard Platnick, et al.*, 2020 SCC 23, concerning the appropriate approach to applying the criteria for dismissal set out in ss. 137.1 to 137.5 in Ontario's Courts of Justice Act (i.e. the proper interpretation of Ontario's anti-SLAPP provisions);

262. *Attorney General of Quebec, et al. v. 9147-0732 Québec inc.*, 2020 SCC 32, considering whether corporations should (or should not) have a right to be free from cruel and unusual treatment under s. 12 of the Charter;
263. *Ontario (Attorney General) v. G*, 2020 SCC 38, concerning whether inclusion on a sex offender registry 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 (CCLA also intervened before the Ontario Court of Appeal);
264. *Children's Aid Society of Toronto v. O.O & J.A.G.-L.* (Ontario SCJ File No. FS-20-16365), concerning the suspension of parental access to a child in care as a result of the COVID-19 pandemic and the proper evidentiary threshold that must be met before eliminating parental access;
265. *AC and JF v Alberta*, 2021 ABCA 24, concerning the test for an injunction against government action or legislation, in the context of a constitutional challenge against the government's retroactive change to Alberta's Support Financial Assistance Program for young people who had been raised in government care. The change lowered the age eligibility for this program;
266. *Leroux v. Ontario*, 2021 ONSC 2269, considering whether the *Crown Liability and Proceedings Act* alters the common law of Crown immunity, whether the legislation improperly usurps the core jurisdiction of the superior courts, and the impact of the legislation on a previously certified class proceeding;
267. *Francis v. Ontario*, 2021 ONCA 197, concerning a class action regarding the placement of inmates with serious mental illness in solitary confinement, and the scope of the Crown's liability in tort under the *Crown Liability and Proceedings Act*;
268. *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22, concerning when a civil court can intervene in a dispute about membership within a voluntary religious association;
269. *Sherman Estate v. Donovan*, 2021 SCC 25, considering the relationship between privacy interests in an estate administration matter and the open courts principle;
270. *Grabher v. Nova Scotia (Registrar of Motor Vehicles)*, 2021 NSCA 63, concerning the discretion granted to the Registrar of Motor Vehicles to refuse and rescind certain personalized license plates and whether the statutory grant of that discretion is consistent with freedom of expression;
271. *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, considering whether changes to electoral boundaries and the number of wards in a municipality once the election campaign was already underway violated freedom of expression under the *Charter*;
272. *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, addressing a claim of discrimination brought against a comedian for statements made and disseminated during a comedy routine, and the impact of the protection of freedom of expression on that claim;
273. *R. v. Morris*, 2021 ONCA 680, concerning how systemic discrimination and background factors ought to inform the sentencing of Black offenders;

- 274. *R. v. Parranto*, 2021 SCC 46 regarding the use of starting points in the criminal sentencing process;
- 275. *Working Families Ontario v. Ontario*, 2021 ONSC 4076, considering the constitutionality of third-party spending restrictions in a pre-writ period in Ontario's *Election Finances Act*; and *Working Families Coalition (Canada) Inc. v. Ontario*, 2021 ONSC 7697, considering the same provisions after the invocation of the notwithstanding clause (CCLA is also intervening at the Ontario Court of Appeal); and
- 276. *Turner v. Death Investigation Council et al.*, 2021 ONSC 6625, a motion to seal parts of the record of proceedings in a judicial review of a matter determined by the Death Investigation Oversight Council; and
- 277. *R. v. Stairs*, 2022 SCC 11, addressing the constitutionality of warrantless searches of individuals' homes incident to arrest.

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

- 278. *Her Majesty the Queen v. Lafrance* (Supreme Court of Canada File No. 39570) regarding the constitutionality of warrantless searches of dwellings incident to arrest;
- 279. *Luamba c. Procureur général du Canada et Procureur général du Québec* (Quebec Superior Court File Number: 500-17-114387-205) concerning the power of the police to carry out roadside checks without suspicion (CCLA has conservatory intervenor status);
- 280. *Attorney General of British Columbia v. Council of Canadians with Disabilities* (SCC File No. 39430) concerning the test for public interest standing;
- 281. *Her Majesty the Queen v. Hilbach, et al.* (SCC File No. 39438) and *Hills v. Her Majesty the Queen* (SCC File No. 39338) regarding the appropriate approach to examining the constitutionality of mandatory minimum sentences under s. 12 of the *Charter*;
- 282. *Ndhlovu v. Her Majesty the Queen* (SCC File No. 39360) regarding the constitutionality of mandatory lifetime registration pursuant to the *Sex Offender Information Registration Act* for individuals convicted of more than one designated offence;
- 283. *Attorney General of Quebec, et al., v. Alexandre Bissonnette* (SCC File No. 39544) regarding the constitutionality of the *Criminal Code* provision allowing a judge to add one 25-year period before eligibility for parole for each first degree murder conviction;
- 284. *Her Majesty the Queen v. Tessier* (SCC File No. 39350) regarding the interaction between the common law confessions rule and the lack of a police caution prior to questioning;
- 285. *James Andrew Beaver v. Her Majesty the Queen* (SCC File No. 39480) regarding whether police attempts at a “fresh start” can insulate evidence from admissibility consideration pursuant to s. 24(2) of the *Charter*;
- 286. *Matthew Winston Brown v. Her Majesty the Queen* (SCC File No. 39781) regarding the constitutionality of s. 33.1 of the *Criminal Code*;

287. *Bowman v. Ontario* (ONCA File C68939), an appeal of a decision not to certify a class action related to Ontario's cancellation of its basic income pilot project;
288. *Toussaint v. Canada* (Ontario SCJ File CV-20-00649404-0000), in which the government of Canada has brought a motion to strike a claim brought by a woman seeking compensation for the failure to provide her with coverage for health care treatment under the Interim Federal Health Program;
289. *Fair Change Community Legal Clinic v Ontario* (Ontario SCJ File CV-17-577519), challenging the constitutionality of certain provisions of Ontario's *Safe Streets Act*;
290. *Alford v Canada* (Ontario SCJ File CV-17-0504-00), regarding the constitutionality of section 12 of the *Act to establish the National Security and Intelligence Committee of Parliamentarians and to make consequential amendments to certain Acts* on the basis that the *Act* impliedly amends the *Constitution* by attempting to create an exception to the principle of parliamentary privilege;
291. *Canadian Alliance for Sex Work Law Reform et al. v. Attorney General of Canada* (Ontario SCJ File: CV-21-00659594-0000), concerning the constitutionality of *Criminal Code* provisions related to sex work; and
292. *Wright v Yukon (Director of Public Safety and Investigations)* (S.C. No. 20-A0113), regarding the constitutionality of s. 3 of the *Safer Communities and Neighbourhood Act*.

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

293. *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;
294. *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*;
295. *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;
296. *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*;
297. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario) 2013, 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;
298. *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);
299. *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;
  300. *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);
  301. *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, an application by the National Council of Canadian Muslims, Marie-Michelle Lacoste and Corporation of the Canadian Civil Liberties Association challenging the validity of a provision banning face coverings in giving or receiving public services and an application for an order staying the operation of this provision (the application on the merits did not proceed);
  302. *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;
  303. *Hak v. Attorney General of Quebec*, 2021 QCCS 1466; *Hak c. Procureure générale du Québec*, 2019 QCCA 2145; and *Hak v. Attorney General of Quebec*, 2019 QCCS 2989, an application by Ichrak Nourel Hak, the National Council of Canadian Muslims (NCCM) and the Corporation of the Canadian Civil Liberties Association 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 (appeal pending);
  304. *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* (without costs abandonment filed when Sidewalk Labs ended the project);
  305. *CCLA v. Attorney General of Ontario*, 2020 ONSC 4838, 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;
  306. *Sanctuary et al v. Toronto (City) et al.*, 2020 ONSC 6207 a challenge by Sanctuary Ministries of Toronto, Aboriginal Legal Services, Advocacy Centre for Tenants Ontario, Black Legal Action Centre, Canadian Civil Liberties Association and HIV & AIDS Legal Clinic Ontario concerning the constitutionality of the Toronto Shelter Standards and 24-Hour Respite Site Standards, and of the conduct of the City in the operation of its shelters and failure to develop and implement a COVID-19 mitigation plan, on the basis that these do not comply with public health dictates regarding physical distancing during the COVID-19 pandemic (ongoing);

307. *Taylor v. Newfoundland and Labrador*, 2020 NLSC 125, claiming that the Special Measures Order put in place by the province's Chief Medical Officer of Health that prohibits some Canadian citizens and permanent residents to visit the province is *ultra vires* provincial jurisdiction and that it violates ss. 6 and 7 of the *Charter* and cannot be saved by s. 1, and arguing that new enforcement provisions under the *Public Health Protection and Promotion Act* unjustifiably infringe ss. 7 8 and 9 of the *Charter* (decision is being appealed);
308. *Attorney General of Nova Scotia v. Freedom Nova Scotia et al.*, (SCNS – Hfx No.: 506040), in which CCLA was granted public interest standing to seek a rehearing of an *ex parte quia timet* injunction obtained by the government of Nova Scotia that prohibited protests and the promotion of “illegal public gatherings” during the COVID-19 pandemic; after the application for a rehearing was dismissed on the grounds of mootness, CCLA appealed the initial decision granting the injunction;
309. *Canadian Civil Liberties Association v. The Province of New Brunswick* (Court File No. FC-9-21), challenging the constitutionality of a provincial regulation that excludes abortions (except in approved hospitals) from provincial healthcare coverage; and
310. *Canadian Civil Liberties Association v. Attorney General of Canada* (Court File No. T-316-22), challenging the legality of the government's use of the federal *Emergencies Act* and the constitutionality of some of the orders passed pursuant to the *Act*.

S.C.C. File No. 39749

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

B E T W E E N:

**THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE  
CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION  
GUARDIAN ABC], AND FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD  
MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI AND  
REDA YASSIN AL NAHASS and NEDIRA JEMAL MUSTEFA**

**APPELLANTS**  
(*Respondents*)

-AND -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**RESPONDENTS**  
(*Appellants*)

---

**MEMORANDUM OF ARGUMENT  
IN SUPPORT OF THE MOTION**

*Pursuant to Rules 47 and 55 of the Rules of the Supreme Court of Canada, SOR/2002-156*

---

**LANDINGS LLP**  
1414-25 Adelaide St E  
Toronto, Ontario, M5C 3A1

**Jacqueline Swaisland, Efrat Arbel,  
Jonathan Porter**

T: (416) 363-1696  
F: (416) 352-5295  
[jswaisland@landingslaw.com](mailto:jswaisland@landingslaw.com)

**SOLICITORS FOR  
PROPOSED INTERVENER**

**LEGAL AID ONTARIO  
REFUGEE LAW OFFICE**  
20 Dundas Street West  
Toronto, Ontario M5G 2H1

**Benjamin Liston**

T: (416) 977-8111  
F: (416) 977-5567  
[listonb@lao.on.ca](mailto:listonb@lao.on.ca)

## PART I – OVERVIEW AND FACTS

1. This appeal raises questions that strike at the heart of this Court’s commitment to access to justice and the rule of law. The Canadian Civil Liberties Association/*Association canadienne des libertés civiles* (“the CCLA”) consequently has a significant interest in the outcome of this appeal and is seeking leave to intervene.

2. The CCLA intends to address two novel requirements adopted by the Court of Appeal which threaten to unduly impede *Charter* litigation. The first requirement is an increased evidentiary threshold for *Charter* litigants. The second is a new procedural burden imposed on litigants faced with government assertions of privilege over relevant information. If granted leave to appeal, the CCLA will use its expertise to provide unique submissions that will assist the Court. Specifically, the CCLA will demonstrate that these unnecessary requirements create substantial access to justice concerns and will likely have an adverse impact on the ability of litigants to contest the legality of executive action and enforce their *Charter* rights.

## PART II – QUESTION IN ISSUE

3. Should the CCLA be granted leave to intervene in this appeal?

## PART III – ARGUMENT

4. Leave to intervene may be granted where a party has an interest in the subject matter before the Court and will be able to make unique submissions that are useful to the Court.<sup>1</sup> In this case, the CCLA has a direct interest and brings forward considerable expertise with respect to the issues raised by this appeal. It will also make unique and useful submissions respecting the negative impact of the Court of Appeal’s decision on the ability of *Charter* litigants to challenge government laws and action. As such, it is requested that leave to intervene be granted.

### **A. The CCLA has a legitimate interest and expertise in the subject matter of this appeal**

5. Founded in 1964, the CCLA is a national organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand supporters from all parts of the country,

<sup>1</sup> *Rules of the Supreme Court of Canada*, [SOR/2002-156](#), s 55; *Reference re Worker’s Compensation Act*, [\[1989\] 2 SCR 335](#) at 339-40, 1989 CarswellNat 740.



representing a wide variety of persons, occupations, and interests.<sup>2</sup>

6. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster the recognition of those rights and liberties. In every issue on which the CCLA intervenes, it directs its attention to the critical balance between civil liberties and the competing public interests that are involved. The purpose of the CCLA's work is the maintenance of a free and democratic society in Canada, which requires, among other things, the promotion and protection of the *Charter* rights of all citizens and residents, and the observance and discharge by the government of its *Charter* obligations. To advance its purpose, the CCLA often intervenes in legal proceedings at all levels of court across the country. The CCLA has been granted leave to intervene in over 260 cases in its more than 50 years of existence.<sup>3</sup>

7. The CCLA has particular experience intervening in cases related to the principle of access to justice. For example, the CCLA was recently granted leave to intervene in *Leroux v Ontario*, in which a key issue was the impact of the *Crown Liability and Proceedings Act* on the principle of access to justice. In that case, the CCLA's intervention focused on the relationship between access to justice and government accountability.<sup>4</sup>

8. Previous CCLA interventions have also specifically addressed how assertions of privilege interact with the principle of access to justice and how they ought to be treated by the courts. For example, the CCLA was granted leave to intervene in *British Columbia (AG) v Provincial Court Judges' Association of British Columbia*, 2020 SCC 20 and *Nova Scotia (AG) v Judges of the Provincial Court and Family Court of Nova Scotia*, 2020 SCC 21, concerning whether Cabinet documents should be protected from disclosure in a judicial review. The CCLA was also granted leave in *Reference re Legislative Privilege*, 83 DLR (3d) 161 (CA), in which the issue was whether a member of the legislature has a privilege allowing them to refuse to disclose the source or content of confidential communications by informants.

9. Given the CCLA's proven record as a public interest litigant that seeks standing on issues affecting civil liberties and access to justice in Canada, any judgment of this Court affecting the evidentiary burden on litigants to establish a *Charter* breach, or the ability of litigants to proceed

<sup>2</sup> *Affidavit of Abby Deshman* at para 3

<sup>3</sup> *Affidavit of Abby Deshman* at para 5.

<sup>4</sup> *Leroux v Ontario*, [2021 ONSC 2269](#). *Affidavit of Abby Deshman* at para 9.

when confronted with government assertions of confidence or privilege, will have a direct impact on the CCLA and the groups that it represents. As such, the CCLA has a genuine interest in this appeal. Moreover, this track record – combined with its mandate and extensive history of interventions – demonstrates that the CCLA has the necessary knowledge, skills and resources to provide useful submissions to this Honourable Court.<sup>5</sup>

## **B. The CCLA will make unique and useful submissions**

10. The CCLA will advance arguments that are distinct from those of the parties and will assist this Court in its determination of the appeal. If granted leave to intervene, the CCLA will argue as follows:

### **B.1.a. Court of Appeal imposed heightened evidentiary standard for *Charter* litigation**

11. Despite the comprehensive nature of the record in this case, the Court of Appeal held that the evidentiary record was “insufficient” to adjudicate the *Charter* challenge, and found the Appellants’ “somewhat piecemeal and individualized” evidence insufficient to draw “system-wide inferences”.<sup>6</sup> In doing so, the Court devised a new evidentiary sufficiency requirement for the adjudication of *Charter* claims. If granted leave to intervene, the CCLA will demonstrate that this new standard creates a vague, unhelpful, and heightened evidentiary requirement for *Charter* litigants that will diminish their ability to access the courts.

12. This is not a case without a full evidentiary record. While the Court of Appeal relies on this Court’s guidance in cases like *Mackay*<sup>7</sup> and *Danson*<sup>8</sup> to ground its findings of insufficiency, those cases simply stand for the broad proposition that a full evidentiary record is required before deciding *Charter* cases.<sup>9</sup> In this case, following the direction of the Federal Court of Appeal in 2008,<sup>10</sup> the Appellants advanced individualized evidence from refugees directly impacted by the Safe Third Country Agreement and provided a comprehensive factual record upon which to assess

<sup>5</sup> *Affidavit of Abby Deshman* at paras 5, 9-10.

<sup>6</sup> *Canada (Minister of Citizenship and Immigration) v Canadian Council for Refugees*, [2021 FCA 72](#) at para 78 [*Canadian Council for Refugees FCA*].

<sup>7</sup> *Mackay v Manitoba*, [\[1989\] 2 SCR 357](#), 61 DLR (4th) 385 [*Mackay*] (cited to SCR).

<sup>8</sup> *Danson v Ontario (AG)*, [\[1990\] 2 SCR 1086](#), 73 DLR (4th) 686 [*Danson*] (cited to SCR).

<sup>9</sup> See *Mackay*, *supra* 7 at 363 (“In this case there has been not one particle of evidence put before the Court”); *Danson*, *supra* note 8 at 1100.

<sup>10</sup> *Canadian Council for Refugees v. Canada*, [2008 FCA 229](#) at paras 102-103, 109 [*CCR 2008*].

the alleged *Charter* breaches. The Appellants filed 26 individual affidavits and nine expert affidavits.<sup>11</sup> The Respondents cross-examined most of the Appellants' experts and the Appellants cross-examined almost all of the Respondents' affiants to establish the relevant adjudicative and legislative facts. In the end, the record was over 21,500 pages in length.<sup>12</sup> As the trier of fact, the Federal Court noted the "extensive evidentiary record" filed by both parties,<sup>13</sup> and cited many of the affiants and cross-examinations in its *Charter* analysis.

13. In finding that the record was "insufficient", it appears that the Court of Appeal objected to the fact that some of the Appellants' evidence arises from individual cases, and that the Appellants have used this evidence, along with expert evidence, to ground the claim of systemic violations of *Charter* rights. Yet this is a common, and sometimes necessary, approach in *Charter* litigation.<sup>14</sup> Indeed, the individualized evidence was specifically requested by the Federal Court of Appeal in its 2008 decision.<sup>15</sup> By finding the record deficient and discounting individualized evidence on the basis that it was piecemeal and insufficient to make system-wide inferences, the Court has interjected new evidentiary requirements that are exceedingly onerous, restrictive, and vaguely defined.

**B.1.b. Court of Appeal requires that Appellants' make 'constant and firm objection' to government assertions of privilege prior to adverse inference being drawn**

14. The Court of Appeal also creates new procedural hurdles that litigants must overcome when faced with government non-disclosure of relevant documents. Specifically, the Court finds that adverse inferences will be drawn only when there is 'constant and firm objection' made by the challenging party to the government's assertions of privilege.<sup>16</sup> This new 'constant and firm objection' standard requires litigants to not only request all relevant evidence, but additionally, to raise and maintain objections to all assertions of privilege *and* exhaust litigation of those objections

<sup>11</sup> *Canadian Council for Refugees v Canada (Minister of Citizenship and Immigration)*, [2020 FC 770](#) at paras 31-32 [*Canadian Council for Refugees FC*].

<sup>12</sup> Appeal Book, Index ["AB"]

<sup>13</sup> *Canadian Council for Refugees v Canada FC*, *supra* note 11 at para 30.

<sup>14</sup> See e.g. *Bedford v Canada*, [2010 ONSC 4264](#) at para 84, *aff'd* [2013 SCC 72](#); *PHS Community Services Society v Attorney General of Canada*, [2008 BCSC 661](#), *aff'd* [2011 SCC 44](#); *Canadian Doctors for Refugee Care v Canada (AG)*, [2014 FC 651](#) at paras 165-72.

<sup>15</sup> *CCR 2008*, *supra* note 10.

<sup>16</sup> *Canadian Council for Refugees FCA*, *supra* note 6 at para 111 (emphasis added).

before a court will draw an adverse inference based on non-disclosure.<sup>17</sup> Problematically, the Federal Court of Appeal has subsequently endorsed this novel approach in *Portnov*, finding that full objections must be raised and maintained even where an objection will likely be unsuccessful because the government's assertion of privilege is valid.<sup>18</sup>

15. The Court of Appeal's imposition of a 'constant and firm objection' standard deviates from the caselaw of this Court. This Court does not require a litigant to take steps to challenge asserted privilege in order for a negative inference to be drawn when the government claims privilege over relevant documents. For example, in *RJR-MacDonald*,<sup>19</sup> the majority rejected arguments under section 1 in large part based on the Attorney General's assertion of privilege under s. 39 of the *Canada Evidence Act*.<sup>20</sup> This Court found that since it "lack[ed] authority to review the documents for which privilege is claimed under s. 39", the non-disclosed information undercut the government's minimal impairment claim.<sup>21</sup>

16. Notably in *RJR*, the applicant tobacco companies "studiously refrained" from taking any steps to obtain the information over which privilege was asserted, yet this did not prevent the majority from drawing an adverse inference against the government.<sup>22</sup> In concurring reasons, Iacobucci J. cautioned against placing "part of the responsibility" for an incomplete factual record with the appellant on the basis that "their counsel did not pursue every conceivable legal avenue in order to attempt to secure the publication of the undisclosed documents".<sup>23</sup> Highlighting concerns about access to justice and the principle of legality, Iacobucci J. was "reluctant to permit the justification of a conceded constitutional violation because of the inability of a party to the litigation to have pursued all possible avenues to obtain the non-disclosed information".<sup>24</sup>

17. This Court later affirmed in *Babcock* the importance of a court's ability to draw an adverse inference in the face of non-disclosure as a safeguard against the government abusing its broad

<sup>17</sup> *Ibid* at para 78.

<sup>18</sup> *Portnov v Canada (AG)*, [2021 FCA 171](#) at para 51. In finding the applicant did not meet the burden of proving his case, the Court of Appeal faulted him for failing to challenge the government's objection to disclosing information the applicant had requested.

<sup>19</sup> *RJR-MacDonald Inc. v Canada (AG)*, [\[1995\] 3 SCR 199](#), 127 DLR (4th) 1 [*RJR*].

<sup>20</sup> [RSC 1985, c C-5](#) [CEA].

<sup>21</sup> *RJR*, *supra* note 19 at paras [165-66](#), McLachlin J.

<sup>22</sup> *Ibid* at para 101, per LaForest J, dissenting on the section 1 analysis.

<sup>23</sup> *Ibid* at para 186, per Iacobucci J, concurring on the section 1 analysis.

<sup>24</sup> *Ibid*.

authority to certify documents under s. 39(1) of the *CEA* in order to gain a tactical litigation advantage.<sup>25</sup> Nothing in *Babcock* supports the findings by the Court of Appeal that a party must challenge or object to government non-disclosure prior to a court drawing an adverse inference.

## **B.2 Court of Appeal’s requirements impede access to justice and erode existing safeguards against immunization of government decision-making**

18. If granted leave to intervene, the CCLA will outline how the Court of Appeal’s heightened evidentiary requirement and procedural hurdles impede access to justice by creating significant technical barriers for *Charter* litigants and by increasing litigation costs and delays. The CCLA will also demonstrate that these new requirements erode the safeguards put in place by this Court and are likely to result in the immunization of government actions from review.

### **B.2.a. Imposition of technical barriers impede access to justice**

19. This Court has made it clear that undue technical barriers can impede access to justice. For example, in *TeleZone*, this Court noted that “[a]ccess to justice requires that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours.”<sup>26</sup> Similarly, in *Downtown Eastside*, this Court identified “practical and effective ways to challenge the legality of state action” as a core element of the principle of legality.<sup>27</sup> The Court of Appeal’s decision runs afoul of these principles.

20. The Court of Appeal’s novel evidentiary and procedural standards are onerous and compel litigants to expend additional resources in order to compile an all-encompassing evidentiary record and to undertake increased litigation when challenging government decisions. For example, the Court of Appeal noted that litigants should resort to “tools” to address the non-disclosure of evidence, but these tools generally require costly and prolonged litigation.<sup>28</sup> Indeed, the ‘constant and firm objection’ standard even requires that Appellants formally object to *and* litigate any non-

<sup>25</sup> *Babcock v Canada (AG)*, [2002 SCC 57](#) at para 36 [*Babcock*].

<sup>26</sup> *Canada (AG) v TeleZone Inc*, [2010 SCC 62](#) at paras 18-19. See also *Nevsun Resources Ltd v Araya*, [2020 SCC 5](#) at para 145 (“Judges can and should resolve legal disputes promptly to facilitate rather than frustrate access to justice”), citing *Hryniak v Mauldin*, [2014 SCC 7](#) at paras 24-25, 32 [*Hryniak*].

<sup>27</sup> *Canada (AG) v Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#) at para 31 [*Downtown Eastside*].

<sup>28</sup> *Canadian Council for Refugees FCA*, *supra* note 6 at paras 107-22.

disclosed information certified by the government under s. 39(1) of the *CEA*, despite those challenges often being doomed to fail because there are no indications that the certifications were improper or otherwise objectionable.<sup>29</sup> Similar concerns arise with respect to the Court's evidentiary expectations which appear to increase the amount of evidence required to ground a *Charter* claim. In both instances, the Court has erected significant and unnecessary technical barriers that will hinder the ability of litigants to access the courts.

### **B.2.b. Increased costs and delays associated with litigation impede access to justice**

21. In *Hryniak*, this Court made clear that a just adjudication of disputes must be affordable.<sup>30</sup> Yet, the evidentiary and procedural hurdles outlined by the Court of Appeal are so practically onerous as to require the expenditure of considerable costs by justice-seeking groups, likely putting the very prospect of advancing *Charter* litigation outside the reach of many.

22. Increased litigation also comes with increased time, the potential for undue delay, and the expenditure of scarce judicial resources. In the case at bar, motions regarding contested disclosure had already delayed the proceedings for eight months and yet were still found wanting. This Court has repeatedly found that the right to access a court of law in a timely manner is “one of the foundational pillars protecting the rights and freedoms of our citizens.”<sup>31</sup> If upheld, the Court of Appeal's ‘constant and firm objection’ standard and increased evidentiary requirements have the potential to overwhelm court time in the assessment of contested protracted disclosure claims, and in so doing, to delay the adjudication of rights claims and impede access to justice.

23. When court costs and delays become too onerous, this Court has cautioned that, “people look for alternatives or simply give up on justice”.<sup>32</sup> For marginalized litigants whose rights and freedoms are on the line, there are often no alternatives to engaging in *Charter* litigation.

<sup>29</sup> See e.g. *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#) at paras 605-06 [“*Greenhouse Gas*”] (noting that Cabinet deliberations where the Governor in Council is empowered to make regulations are “very nearly a total black box”).

<sup>30</sup> *Hryniak*, *supra* note 26 at para 28.

<sup>31</sup> *B.C.G.E.U v British Columbia (AG)*, 1998 CanLII 3 (SCC) [\[1988\] 2 SCR 214](#) at para 26. In *Hryniak*, this Court held that a fair process must not only be proportionate and affordable, it must also be timely. This Court emphasized “undue process and protracted trials, with unnecessary expense and delay, can prevent the fair and just resolution of disputes”. See *ibid* at para 24.

<sup>32</sup> *Hryniak*, *supra* note 26 at para 25.

Therefore, upholding the Court of Appeal's disclosure and evidentiary standards will likely force some litigants to give up on justice. Such a result would be antithetical to the access to justice commitments outlined by this Court.

### **B.2.c. New requirements immunize laws and government action from review**

24. In *Trial Lawyers Association of British Columbia v British Columbia (AG)*,<sup>33</sup> this Court emphasized the fundamental importance of allowing litigants to challenge government action in court as a basic cornerstone of the rule of law.<sup>34</sup> If granted leave to intervene, the CCLA will detail how the Court of Appeal's imposition of a heightened evidentiary standard and procedural hurdles risks immunizing government decisions from judicial scrutiny by making it very difficult for litigants to access the necessary information and adduce a sufficient evidentiary record in order to advance their case. This contravenes the Court's longstanding commitment to ensuring the pragmatic feasibility of rights-seeking litigation.<sup>35</sup>

25. Practically, the Court of Appeal's evidentiary requirements are so onerous as to make government action unchallengeable in certain situations. The Appellants adduced a comprehensive evidentiary record, the contents of which are outlined above. It is difficult to contemplate how under-resourced, rights-seeking litigants would be able to adduce a more detailed and rigorous record. To dismiss the justiciability of this claim, and others like it, on the basis of the insufficiency of the evidentiary record creates a real risk that government actions will be immunized from judicial scrutiny and that, as a result, fundamental rights will be neglected.

26. The Court of Appeal's 'constant and firm objection' standard is similarly onerous. Using this approach, government parties are effectively immunized from the need to limit their own non-disclosure. Without the requirement of accountability, there is little to prevent government parties from acting in self-interested, self-serving ways.

27. This approach erodes important safeguards established by this Court in *RJR* and *Babcock*. Those decisions disincentivize selective disclosure and tactical non-disclosure, making clear that

<sup>33</sup> [2014 SCC 59](#).

<sup>34</sup> *Ibid* at para 40.

<sup>35</sup> See e.g. *R v Kokopenace*, [2015 SCC 28](#); *Trial Lawyers Association of British Columbia v British Columbia (AG)*, [2014 SCC 59](#).



the laws of privilege must be paired with safeguards promoting the responsible exercise of the claimed privilege to ensure that the Crown does not unfairly disclose only material favourable to its position, while claiming privilege over material that is damaging.<sup>36</sup> These safeguards align with the guidance in *Vavilov* concerning justified and transparent decision-making.<sup>37</sup> In *Vavilov*, this Court made clear that an administrative decision maker cannot “expect that its decision would be upheld on the basis of internal records that were not available to” the affected parties.<sup>38</sup>

28. The ‘constant and firm objection’ standard flies in the face of this approach by requiring litigants to sustain an exhaustive – and potentially futile<sup>39</sup> – level of objection to the government’s claims of privilege before courts will recognize such gaps as failures of the government to justify its decision. Particularly when combined with the increased evidentiary burden required by the Court of Appeal, the impact of the decision may effectively immunize government action from review.

29. Indeed, that is what happened in this case. As noted, the record was comprehensive. Yet, it was still found to be insufficient for the adjudication of the claim. With respect to the reasonableness of the ongoing designation under s. 159.3 of the Regulations and the sufficiency of the reviews that were conducted under s. 102(3) of the IRPA in particular,<sup>40</sup> the Court faulted the Appellants for not providing sufficient evidence even though the *only* evidence not provided was what the government had redacted or refused to disclose.

30. The Court of Appeal declined to draw adverse inferences from the government’s non-disclosure because the Appellants had not made ‘constant and firm objection’ to the privileges raised.<sup>41</sup> This was even though the Appellants had specifically sought all of relevant government records, conducted a three-day cross-examination of the public servant in charge of the reviews,

<sup>36</sup> *Babcock*, *supra* note 25 at paras 35-36.

<sup>37</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para 95.

<sup>38</sup> *Ibid* at para 95. See also *Gitxaala Nation v Canada*, [2016 FCA 187](#) at paras 320-24 (finding “a troubling and unacceptable gap”, such that the reasons lacked justification).

<sup>39</sup> This Court has found that many of the privileges claimed by the government are difficult, if not impossible, to challenge. *Greenhouse Gas*, *supra* 29; Rowe J, dissenting but not on this point; *Babcock*, *supra* note 25 paras 38-40.

<sup>40</sup> *Canadian Council for Refugees v Canada (Minister of Citizenship and Immigration)*, [SCC File No 39749](#) (Factum of the Appellant at para 43). The Governor in Council’s periodic subsection 102(3) reviews examine the continued designation of the United States under the STCA.

<sup>41</sup> *Canadian Council for Refugees FCA*, *supra* note 6 at paras 74, 83, 106-20.



and successfully litigated the Respondent's claim that the evidence was not relevant to the Court's adjudication.<sup>42</sup> The only thing that the Appellants did not do was challenge the non-disclosure made by the Respondents on the basis of valid privileges. The Appellants had assumed the government's claims of privilege were made in good faith and, given the nature of the privileges claimed, concluded they would have been near impossible to challenge.<sup>43</sup>

31. As a result, this case demonstrates how the Court of Appeal's new evidentiary requirements and procedural hurdles can allow the government to use the law of privilege to evade judicial scrutiny of its actions, thereby effectively immunizing government action from judicial review.

### **C. The Role of the Proposed Intervener**

32. The CCLA will take no position on the disposition of the appeal, will accept the record as it is, will seek to avoid unnecessarily duplicating submissions of other parties and interveners, and will abide by any schedule set by the Court. Moreover, granting leave to intervene will cause no prejudice to the parties.

33. Based on the above, it is respectfully submitted that the CCLA has established that the organization has a genuine interest in this appeal; has the necessary experience and expertise to make useful submissions; will make arguments that are distinct from the parties; and, will further the Court's determination of this appeal.

### **PART IV and V – SUBMISSION ON COSTS AND ORDER SOUGHT**

34. The CCLA does not seek costs and requests that no costs be ordered against it. The CCLA respectfully requests the Court issue an Order granting:

- (a) leave to intervene in the above-listed appeal;
- (b) leave to file a 10-page factum in accordance with Rules 37 and 42 of the *Rules of the Supreme Court of Canada* and to make 10 minutes of oral argument;
- (c) no order as to costs; and
- (d) such further and other order as the said Judge may deem appropriate.

<sup>42</sup> *Canadian Council for Refugees v Canada*, Motion for Directions, [2019 FC 285](#).

<sup>43</sup> *Greenhouse*, supra 29; *Babcock*, supra note 25 paras 38-40.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11<sup>th</sup> DAY OF APRIL, 2022

---

**Jacqueline Swaisland**  
Barrister and Solicitor

**Landings LLP**  
1414-25 Adelaide St E  
Toronto, Ontario, M5C 3A1  
T: (416) 363-1696  
F: (416) 352-5295  
[jswaisland@landingslaw.com](mailto:jswaisland@landingslaw.com)

---

**Benjamin Liston**  
Barrister and Solicitor

**Legal Aid Ontario's Refugee Law Office**  
20 Dundas Street West  
Toronto, Ontario M5G 2H1  
T: (416) 977-8111 x 7176 / F: (416) 977-5567  
Email: [listonb@lao.on.ca](mailto:listonb@lao.on.ca)

---

**Efrat Arbel**  
Barrister and Solicitor

**C/O Landings LLP**  
1414-25 Adelaide St E  
Toronto, Ontario, M5C 3A1  
T: (416) 363-1696  
F: (416) 352-5295  
[arbel@allard.ubc.ca](mailto:arbel@allard.ubc.ca)

---

**Jonathan Porter**  
Barrister and Solicitor

**Landings LLP**  
1414-25 Adelaide St E  
Toronto, Ontario, M5C 3A1  
T: (416) 363-1696  
F: (416) 352-5295  
[jporter@landingslaw.com](mailto:jporter@landingslaw.com)

**SOLICITORS FOR PROPOSED INTERVENER**