Form 104B (Rule 48(10))

SC No. 20-A0113

SUPREME COURT OF YUKON

Between:

CELIA ERIN BUNBURY BAINBRIDGE WRIGHT

Petitioner

And:

GOVERNMENT OF YUKON
(DIRECTOR OF PUBLIC SAFETY AND INVESTIGATIONS)

Respondent

CANADIAN CIVIL LIBERTIES ASSOCIATION

Intervener

OUTLINE OF ARGUMENT OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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I. Overview

1. The statute at issue in this litigation is the *Safer Communities and Neighbourhoods Act* (the "SCAN Act").[1] The law's title is innocuous. But that title is at odds with the unconstitutional means through which it pursues its objective.

2. Under the SCAN Act, the respondent can receive anonymous complains from individuals who believe that their neighbourhood is being "adversely affected" by activities connected to a "specified use."[2] On receipt of a complaint, the respondent may investigate the complaint, send a warning letter to the owner or resident of the property, apply for a community safety order, or take any other action that it considers appropriate.[3]

3. The respondent may also seek to "resolve the complaint" by "informal action".[4] Subsection 3(2) of the SCAN Act sanctions a particular form of informal action—with the consent of a landlord, the respondent may serve Yukon residents with a notice of eviction on five days' notice.[5] Such a notice allows the landlord and respondent to circumvent the procedural and substantive protections required to obtain community safety orders or emergency closures under the SCAN Act[6] or those provided for in the *Residential Landlord and Tenant Act*.[7] The respondent can serve an eviction notice under subsection 3(2) without: meeting any burden of proof; providing any evidence of the case to meet; providing the evicted person

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[1] *Safer Communities and Neighbourhoods Act*, SY 2006, c 7.
[2] SCAN Act, s. 2.
[3] SCAN Act, s. 3(1).
[4] SCAN Act, s. 3(1)(d).
[5] SCAN Act, s. 3(2). See also Affidavit #1 of Kurt Bringsli at paras. 24-26.
[6] SCAN Act, ss. 6, 7.
[7] *Residential Landlord and Tenant Act*, SY 2012, c 20.

an opportunity to respond; or making any efforts to secure alternative housing for the evicted person.

4. When the state enables evictions in this way, it deprives Yukoners' liberty interests by intruding into the fundamental choice of where and how they establish their homes. This deprivation of liberty can have a profound negative impact on individuals—including children or other vulnerable members of the family unit residing at the residence—who have nothing to do with the adverse effects or specified uses complained of under the SCAN Act. The state action also has a disproportionate impact on already vulnerable and marginalized groups, particularly Indigenous peoples.

5. Without duplicating the petitioner's arguments, the Canadian Civil Liberties Association (the "CCLA") intervenes to offer arguments on the proper interpretation of section 7 of the *Charter*, as it applies to evictions under the SCAN Act.

II. Facts

6. The CCLA takes no position on the facts or the evidence.

III. Argument

7. The CCLA makes five related arguments.

8. First, international law, including the right to housing, is relevant for the interpretation of section 7 of the *Charter*.

9. Second, subsection 3(2) evictions under the SCAN Act constitute a deprivation of liberty under section 7 of the *Charter*.

10. Third, this deprivation is not in accordance with the principles of fundamental justice because it is overbroad and grossly disproportionate.

11. Fourth, regardless of its findings on the admissibility or weight of evidence, this Court can take judicial notice of the disproportionate impact SCAN Act evictions have on already vulnerable and marginalized groups, including Indigenous peoples and racialized and low-income communities.

12. Finally, section 7 infringements are not easily justified under section 1 of the *Charter* and this case is no exception.

III.A. International instruments are relevant and persuasive interpretive aids

13. International instruments are relevant and persuasive interpretive tools when interpreting the *Charter*'s protections.[8] This is particularly true for instruments that pre-date the *Charter* and illuminate the way it was framed.[9]

14. Two such instruments are particularly relevant in this matter. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights recognize that everyone has the right to a standard of living adequate for the health and well-being of his or her family, which includes food, clothing, and housing.[10]

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[8] *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 at para. 35.
[9] *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 at para. 41.
[10] *Universal Declaration of Human Rights*, UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217 (III), art. 25(1); *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 999 UNTS 3, Can TS, 1976 No. 46, art. 11.1. See also *Victoria (City) v. Adams*, 2008 BCSC 1363 at paras. 86-87.

15. Notably, in a General Comment on article 11.1 of the Covenant, the Committee on Economic, Social, and Cultural rights recognized that "instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."[11]

16. In recent legislation, Canada has also affirmed that "the right to adequate housing is a fundamental human right affirmed in international law."[12]

17. In *Victoria (City) v. Adams*, Justice Ross conducted a detailed analysis of the relevant international instruments and concluded that they "inform the interpretation of the *Charter* and in this case, the scope and content of s. 7."[13] The British Columbia Court of Appeal affirmed this analysis. [14] Accordingly, this Court's analysis of section 7 in this case must be informed by relevant legal principles derived from international law.

III.B. Subsection 3(2) evictions are a deprivation of liberty

18. The CCLA submits that the SCAN Act gives rise to a deprivation of liberty engaging section 7 of the *Charter* because the law intrudes into the fundamental personal choice of how and where Yukoners establish their homes.

19. To find an infringement of section 7, the Court must undertake a two-stage analysis:

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[11] General Comment No. 4 on Article 11.1 of the Covenant, the Committee on Economic, Social and Cultural Rights 6th session, U.N. Doc. E/1992/23, annex III (1991) at para. 18. See also *Victoria (City) v. Adams*, 2008 BCSC 1363 at para. 89.
[12] *National Housing Strategy Act*, SC 2019, c 29, s 313, s. 4(a).
[13] *Victoria (City) v. Adams*, 2008 BCSC 1363 at para. 100.
[14] *Victoria (City) v. Adams*, 2009 BCCA 563 at paras. 32-35.

a. Is there a deprivation of life, liberty, or security of the person?

b. Is the deprivation in accordance with the principles of fundamental justice?[15]

20. At the first stage, the CCLA limits its submissions to the liberty interest. A review of the Supreme Court of Canada's section 7 jurisprudence shows that the right to liberty includes the choice of where to establish one's home. A forced eviction is, therefore, a clear deprivation of the liberty interest that engages section 7 of the *Charter*.

21. A key starting point in jurisprudence on the relationship between liberty and personal autonomy is Justice La Forest's concurring judgment in *Godbout*. In that case, Justice La Forest wrote in his concurring reasons that the right to liberty:

> encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. … In my view, **choosing where to establish one's home is, likewise, a quintessentially private decision going to the very heart of personal or individual autonomy.**[16]

22. Since *Godbout* was released, the Supreme Court of Canada and other appellate courts have consistently taken up La Forest J.'s view that the liberty interest must protect basic choices that go to the core of an individual's dignity and independence.

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[15] See e.g. *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 55; *R. v. JJ*, 2022 SCC 28 at para. 116.

[16] *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para. 66 per La Forest J [emphasis added].

23. For example, the liberty interest includes the ability to make choices about medical treatment,[17] the ability to make fundamental decisions about raising children,[18] and the ability to frequent public spaces including playgrounds, parks, and bathing areas.[19]

24. The choice to create rudimentary shelter in a public space where there are no shelter alternatives also engages the liberty interest, and interfering with it is a significant interference with the dignity and independence of those individuals.[20] In recent housing encampment cases, courts have recognized that the specific needs of individuals must be considered in assessing whether alternative housing is truly accessible.[21] This includes whether the alternative shelter is available to families with children.[22]

25. On the other hand, although the CCLA does not necessarily endorse all of the following decisions, it notes that courts have found that the liberty interest does not include numerous activities and lifestyle choices, including: the choice to drink unpasteurized milk;[23] recreational marihuana use;[24] the ability to attend music lessons, train for a triathlon, or be less available to family for two weeks a year as a condition of employment;[25] and the taste for fatty foods or an obsessive interest in golf.[26]

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[17] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at paras. 64-69; *R. v. Smith*, 2015 SCC 34 at paras. 18-20.
[18] *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC).
[19] *R. v. Heywood*, 1994 CanLII 34 (SCC).
[20] *Victoria (City) v. Adams*, 2009 BCCA 563 at paras. 102-110.
[21] *Prince George (City) v. Stewart*, 2021 BCSC 2089 at paras. 73-74, 96.
[22] *Victoria (City) v. Adams*, 2008 BCSC 1363 at para. 56.
[23] *R. v. Schmidt*, 2014 ONCA 188 at paras. 37-40.
[24] *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74 at paras. 84-87; *R. v. Clay*, 2003 SCC 75 at paras. 30-33.
[25] *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55 at paras. 48-52.
[26] *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74 at para. 86.

26. As the question has not been definitively settled by the Supreme Court of Canada, this Court must determine whether choosing how and where to shelter one's family is more analogous to cases where a liberty interest has been found or to those where it has been rejected. The CCLA submits that the choice of where and how individuals shelter themselves and their families belongs at the core of one's dignity and independence. If being prohibited from visiting parks and playgrounds infringes liberty, then surely so too does being forcibly removed from one's home. Forced eviction goes to the core of an individual's dignity and independence in ways that mere "lifestyle choices" such as food preferences or sports interests do not.

27. If there is any uncertainty or ambiguity on this point, international law tips the balance towards finding that the liberty interest is engaged in this case. Notably, the international legal instruments cited above make clear that: (a) forced eviction is incompatible with basic rights and (b) it can only be justified in exceptional circumstances. Translated to the section 7 context, this means that (a) subsection 3(2) clearly engages the liberty interest and (b) if the provision is to be justified, it must be in accordance with the principles of fundamental justice.

28. Ultimately, tracing the line from *Godbout* to the present, the section 7 jurisprudence supports a determination that evictions under subsection 3(2) of the SCAN Act are a deprivation of liberty.

III.C. Subsection 3(2) evictions are not in accordance with the principles of fundamental justice

29. As noted above, the second stage of the section 7 analysis is to determine whether the deprivation is in accordance with the principles of fundamental justice. The three central

substantive principles of fundamental justice are that a law that deprives an individual of life, liberty, or security of the person cannot be (1) arbitrary, (2) overbroad, or (3) grossly disproportionate.[27]

30. The CCLA submits that subsection 3(2) of the SCAN Act is both overbroad and grossly disproportionate.

III.C.1. Subsection 3(2) evictions are overbroad

31. Overbreadth deals with laws that may be rational *in part*, but that nonetheless overreach and capture *some* conduct that bears no relation to the legislative objective.[28] The analysis at this stage is qualitative, not quantitative—a law that is overbroad or grossly disproportionate with respect to one person is sufficient at this stage of the analysis.[29] Further, the focus is on the individuals who have suffered rights infringements and not on any competing social interests or public benefits.[30]

32. The question here is whether the means chosen are necessary to achieve the state objective. If the state uses means that are broader than necessary to accomplish the objective, the principles of fundamental justice are violated because an individual's rights will have been limited for no reason.[31]

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[27] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 72; *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 97.
[28] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 112-113.
[29] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 123.
[30] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para 79.
[31] *R. v. Heywood*, 1994 CanLII 34. See also *R. v. JJ*, 2022 SCC 28 at para. 139.

33. Accordingly, in order to undertake an overbreadth analysis, the Court must first determine the objective of subsection 3(2). It must then ask whether the means adopted by the law to achieve that objective are overbroad.[32]

34. In assessing the objective, the court must articulate the objective at an appropriate level of generality. If the purpose is stated in too general terms, it can provide no meaningful check on the means employed to achieve it.[33] This Court should therefore resist arguments that seek the characterize the objective of subsection 3(2) as simply "making communities in the Yukon safer" or "enhancing the public safety of communities".

35. Rather, the objective would appear to be to remove tenants from property where their illegal conduct on that property harms the public safety of the community.

36. Working from this objective, the effects of SCAN Act evictions are overbroad for three reasons.

37. First, subsection 3(2) could easily capture some *conduct* not intended by the legislative objective. For example, as suggested by the petitioner, an individual who likes to play loud music while using drugs recreationally would be captured by the SCAN Act's broad definitions of "specified use" and "adverse effects". However, while this kind of conduct may be annoying, it does not engage public safety concerns. If evicting people responsible for such conduct does not enhance public safety, it does not serve the objective of subsection 3(2) of the SCAN Act.

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[32] *R. v. Moriarity*, 2015 SCC 55 at paras. 25-27.
[33] *R. v. Moriarity*, 2015 SCC 55 at para. 28.

38. Second, evictions under subsection 3(2) of the SCAN Act have an impact on *individuals* who have done nothing wrong. Most notably, vulnerable family members who live in homes that are subject to a subsection 3(2) eviction notice will be forced to leave their homes. This case provides a clear example of family members facing eviction with no evidence of them contributing anything to the adverse effects or specified uses that the SCAN Act seeks to prevent.

39. In *Bedford*, Chief Justice McLachlin determined that the avails of prostitution provisions were overbroad. These unconstitutional provisions punished *everyone* who lives off the avails of prostitution without distinguishing between those who exploit sex workers and those who could actually increase the safety and security of sex workers, such as drivers, managers, bodyguards, accountants, or receptionists.[34] In the same way, when a tenancy agreement or lease is terminated under subsection 3(2), it punishes everyone who lives at that property and not just those who are contributing to the adverse effects or specified uses. Punishing children and other residents in this way cannot be said to advance the objectives of the SCAN Act—it is consequently overbroad.

40. The fact that other family members are captured by the law in this way is made all the more striking by looking at who is *excluded* from subsection 3(2). By definition, subsection 3(2) can only apply to tenants or lessees—people who are renting property. Individuals who own their property cannot be subject to an eviction notice under subsection 3(2). Accordingly, children or other family members who have no connection to the adverse effects or specified use can be evicted from their homes. Yet, owners of

[34] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 142-143.

property who are plainly engaging in a specified use that adversely affects the community are not subject this form of sanction.

41. Third, subsection 3(2) of the SCAN Act deprives the liberty interest in an extreme way, when more tailored approaches are possible. Strikingly, more tailored approaches do not need to be invented in this case—rather, they are already part of the SCAN Act and other legislation concerning landlords and tenants such as the *Residential Landlord and Tenant Act*.[35]

42. For example, and in contrast to subsection 3(2) evictions, in order to obtain a community safety order, the respondent has to prove to a court that activities give rise to a "reasonable inference" that the property is being used for a specified use and that the neighbourhood is being adversely affected.[36] No such threshold has to be met in order to issue a notice under subsection 3(2).

43. The SCAN Act also provides the respondent with an ability to obtain an emergency closure of a property if it can prove that activities are a "serious and immediate threat to the safety and security of one or more occupants of the property or persons in the community or neighbourhood."[37] Accordingly, there can be no suggestion that subsection 3(2) evictions are necessary to handle imminent danger. Again, however, to obtain such an order the respondent must meet a high threshold that is not necessary to pursue an eviction under subsection 3(2).

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[35] *Residential Landlord and Tenant Act*, SY 2012, c 20.
[36] SCAN Act, s. 6(1).
[37] SCAN Act, s. 7(1).

44. Further, in the case of an emergency closure, the respondent is required to help the residents of the property find alternative accommodations, which can include arranging short-term accommodations.[38] However, this obligation does not seem to attach to evictions under subsection 3(2).

45. The *Residential Landlord and Tenant Act* also provides a mechanism for landlords to end tenancy agreements for cause on the grounds of "seriously jeopardizing the health and safety" of others on or adjacent to the property and for "engaging in offensive or illegal activity."[39] Notably, however, under this scheme tenants are provided with a longer notice period, an opportunity to correct the situation, and the opportunity to dispute the notice.[40]

46. All of the above measures could be employed while still achieving the objectives of the SCAN Act. As these measures are contained within the SCAN Act and other legislation, the legislature was clearly aware of less broad measures that could still meet the statutory objective. It follows, therefore, that evictions pursuant to subsection 3(2), which do not employ such measures, are overbroad.

47. Finally, the CCLA stresses that it is no answer that the SCAN Unit could exercise discretion and act more leniently when issuing a subsection 3(2) eviction notice. The respondent's affidavit makes reference to the fact that it does not always enforce a five-day notice period under subsection 3(2) and will provide an extension where requested.[41] However, the challenge before the court is not a judicial review of any discretionary

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[38] SCAN Act, s. 25.
[39] *Residential Landlord and Tenant Act*, SY 2012, c 20, s. 52(1)(d)–(e).
[40] *Residential Landlord and Tenant Act*, SY 2012, c 20, s. 52(1), 52(2)–(3).
[41] Affidavit #1 of Kurt Bringsli at paras. 27, 33.

decision, but a direct challenge of the subsection 3(2) itself. This provision provides for a five-day notice period. It is not made constitutional by the fact that state actors *might* act more leniently in any given case.[42] In any event, the constitutional frailties of subsection 3(2) evictions pertain not merely to the provision's notice period, but to how it is overbroad in its scope and grossly disproportionate in its impact.

III.C.2. Subsection 3(2) evictions are grossly disproportionate

48. Even if some rational connection between evictions under subsection 3(2) and the provision's objective can be established, the provision's effects are still grossly disproportionate.

49. A law will be grossly disproportionate if its effects on life, liberty, and security of the person are so disproportionate to its purposes that it cannot be supported. The rule applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure.[43]

50. As with overbreadth, at this stage the focus is on the individuals whose rights have been infringed and not on any broader public interest concerns.[44]

51. In multiple housing encampment cases, courts have found that preventing individuals from obtaining adequate shelter in order to protect public spaces and public property is grossly disproportionate.[45] It was entirely out of sync with the objectives of the bylaws in those

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[42] See e.g. *R. v. Nur*, 2015 SCC 15 at paras. 85-86; *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 at para. 80.
[43] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 120.
[44] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 121.
[45] See e.g. *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 at paras. 204-224; *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670 at para. 119.

cases to impose severe and negative consequences, including the risk of death, on the unhoused. The same principles apply by analogy in this case. Particularly where the respondent takes no steps to find alternative housing and where the SCAN Act allows a previous landlord to refuse to rent to those evicted,[46] there is a real risk that evicted individuals will find themselves unhoused for an extended period of time.

52. An analogy to *Bedford* proves helpful here again. In that case, Chief Justice McLachlin determined that the purpose of the bawdy house provisions was to "combat neighbourhood disruption or disorder and to safeguard public health and safety"—in other words, to combat community harms in the nature of nuisance.[47] The Chief Justice determined that although Parliament has the power to regulate against nuisances, doing so at the cost of the health, safety, and lives of sex workers was grossly disproportionate.[48]

53. The same analysis holds true in this case. The effect of the broad definitions of "adverse effects" and "specified use" is that they capture a wide array of conduct. This means that, in many cases, what is being targeted is community harm in the nature of nuisance. Indeed, one of the specified uses in the SCAN Act is "prostitution and activities related to prostitution."[49] The SCAN's Act attempt to sanction this conduct because it interferes with the peaceful enjoyment of the neighbourhood bears striking resemblance to the bawdy house provisions in *Bedford* that the Supreme Court of Canada determined were unconstitutional.

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[46] SCAN Act, s. 42
[47] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 131-132.
[48] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 136.
[49] SCAN Act, s. 1.

54. Further, the negative effects of forced eviction greatly outweigh any benefit in regulating nuisance. The benefit here is to restore peaceful enjoyment to people who own neighbouring properties. However, this benefit is obtained by evicting people from their homes, potentially in the middle of a Yukon winter, without taking any steps to verify if they have either the means or connections to secure another place to live. The drastic effects experienced by those evicted is grossly disproportionate to the minor benefit of restoring peaceful enjoyment of property.

55. Indeed, in the absence of the SCAN Act, the typical way to address a neighbour disturbing an owner's peaceful enjoyment is an action in nuisance. In such an action, however, a remedy evicting the neighbour from their home is unavailable. The effect of the SCAN Act is to arm residents and landlords with the disproportionate remedy of having their neighbours or tenants evicted to address nuisance.

56. As in *Bedford*, while the legislature has the power to regulate against nuisance, it cannot do so at the cost of the health, safety, and even lives of evicted residents which include vulnerable family members. A law that does so has lost sight of its purpose and is grossly disproportionate.[50]

III.D. Judicial notice of the impact on vulnerable and marginalized groups

57. The CCLA submits that the effects of the SCAN Act will be disproportionate to already vulnerable and marginalized groups, in particular Indigenous peoples. Subsection 3(2) must, therefore, be examined on the basis that it exacerbates pre-existing disadvantage.

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[50] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 136.

58. Regardless of whether the Court finds the petitioner's evidence admissible, it can take judicial notice of the impact that evictions under subsection 3(2) will have on these vulnerable and marginalized groups.

59. In *Ipeelee*, the Supreme Court of Canada held that courts *must* take judicial notice of "the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples."[51] These factors form part of the necessary context that sentencing judges must consider.

60. Contributing to the overrepresentation of racialized and low-income communities, including Indigenous peoples, in the justice system, the Supreme Court has also recognized that "we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities."[52]

61. While these cases come from the sentencing and policing contexts, overrepresentation of Indigenous peoples in the criminal justice system and over-policing of Indigenous peoples and racialized and low-income communities should inform this Court's assessment of the impact of the SCAN Act on these groups.

62. Indeed, the SCAN Act makes the Director and anyone acting under the act "peace officers" as defined in the *Criminal Code*,[53] and assigns them broad law enforcement powers. The

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[51] *R. v. Ipeelee*, 2012 SCC 13 at para. 60.
[52] *R. v. Le*, 2019 SCC 34 at para. 97.
[53] SCAN Act, s. 1.

SCAN Act is designed to reduce the occurrence of certain specified uses, including drug use, prostitution, and other *Criminal Code* offences. Further, as noted above, subsection 3(2) of the SCAN Act specifically targets tenants and lessees and cannot be used against owners of property.

63. It is imperative to acknowledge that if Indigenous, racialized, and low-income communities are overrepresented in the justice system and disproportionately policed, they are also likely to be disproportionately targeted under the SCAN Act. If anything, expanding the pool of individuals with law enforcement powers to people who may not have received sufficient training and may not be subject to serious accountability mechanisms can only make things worse.

64. The section 7 analysis in this case must be attentive to the particular context in which it arises.[54] In this case, part of this context is the fact that those individuals whose dignity and independence are already compromised or in jeopardy lose the right to choose where to live through SCAN Act evictions.

65. Accordingly, a SCAN Act eviction for marginalized and vulnerable individuals creates a more profound deprivation of liberty by exacerbating pre-existing disadvantage. It also makes that deprivation even more grossly disproportionate to any legitimate objective under the SCAN Act.

III.E. Section 7 violations are not easily justified under section 1

66. Early section 7 jurisprudence suggests that section 1 justifications for section 7 violations are exceedingly difficult to make out. The Supreme Court of Canada has held that section 1

[54] *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para. 78.

justification may only be possible "in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like."[55] Clearly, such exceptional conditions do not exist in this case.

67. Later jurisprudence suggests there may still be a place for a section 1 analysis.[56] However, the section 1 justification usually requires social science or expert evidence that would justify the law's impact in terms of society as a whole.[57] The respondent has not produced any such evidence.

68. In any event, for many of the same reasons that subsection 3(2) is overbroad, it is also not minimally impairing as required by section 1. The legislature had numerous other measures available to it that would have been less impairing of section 7 rights, and it chose not to employ them.

IV. Order sought

69. The CCLA takes no position on the outcome of this petition.

70. The CCLA seeks no order for costs and asks that no order for costs be made against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of October, 2023.

Brent Olthuis, K.C.
Lawyer for the Canadian Civil Liberties Association

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[55] See e.g. *Reference Re section 94(2) of the Motor Vehicle Act (B.C.)*, 1985 CanLII 81 (SCC) at para. 85; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para. 66.
[56] See e.g. *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 124-129.
[57] *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 126-127.

LIST OF AUTHORITIES

A. Jurisprudence

1. *Abbotsford (City) v. Shantz*, 2015 BCSC 1909
2. *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC 55
3. *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC)
4. *Canada (Attorney General) v. Bedford*, 2013 SCC 72
5. *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17
6. *Carter v. Canada (Attorney General)*, 2015 SCC 5
7. *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9
8. *Godbout v. Longueuil (City)*, [1997] 3 SCR 844
9. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32
10. *Prince George (City) v. Stewart*, 2021 BCSC 2089
11. *R. v. Clay*, 2003 SCC 75
12. *R. v. Heywood*, 1994 CanLII 34 (SCC)
13. *R. v. Ipeelee*, 2012 SCC 13
14. *R. v. JJ*, 2022 SCC 28
15. *R. v. Le*, 2019 SCC 34
16. *R. v. Nur*, 2015 SCC 15
17. *R. v. Malmo-Levine*; *R. v. Caine*, 2003 SCC 74
18. *R. v. Moriarity*, 2015 SCC 55
19. *R. v. Schmidt*, 2014 ONCA 188
20. *R. v. Smith*, 2015 SCC 34
21. *Reference Re section 94(2) of the Motor Vehicle Act (B.C.)*, 1985 CanLII 81 (SCC)
22. *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, 2023 ONSC 670
23. *Victoria (City) v. Adams*, 2008 BCSC 1363
24. *Victoria (City) v. Adams*, 2009 BCCA 563

B. Legislation

25. *National Housing Strategy Act*, SC 2019, c 29, s 313
26. *Residential Landlord and Tenant Act*, SY 2012, c 20
27. *Safer Communities and Neighbourhoods Act*, SY 2006, c 7

C. International law sources

28. General Comment No. 4 on Article 11.1 of the Covenant, the Committee on Economic, Social and Cultural Rights 6th session, U.N. Doc. E/1992/23, annex III (1991) at 114
29. *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 999 UNTS 3, Can TS, 1976 No. 46
30. *Universal Declaration of Human Rights*, UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217 (III)

SC No. 20-A0113

SUPREME COURT OF YUKON

Between:

CELIA ERIN BUNBURY BAINBRIDGE WRIGHT

Petitioner

And:

GOVERNMENT OF YUKON
(DIRECTOR OF PUBLIC SAFETY AND INVESTIGATIONS)

Respondent

CANADIAN CIVIL LIBERTIES ASSOCIATION

Intervener

OUTLINE OF ARGUMENT (INTERVENER)

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