

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

IVAN WILLIAM MERVIN HENRY

**Appellant
(Respondent)**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA as represented by THE ATTORNEY GENERAL OF BRITISH COLUMBIA**

**Respondent
(Appellant)**

- and -

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24(1)

PART I - OVERVIEW AND STATEMENT OF FACTS

1. In *Vancouver (City) v. Ward*,¹ this Court laid out a framework for determining when breaches of the *Canadian Charter of Rights and Freedoms*² can result in section 24(1) *Charter* damages awards. *Ward* breathed life into a section which had received scant attention, in the civil context, since the inception of the *Charter*. This Court recognized the novel nature of its decision in *Ward* and of the field of *Charter* damages. Writing for this Court, the Chief Justice found section 24(1) damages to be “a new endeavour” which would “develop incrementally” and “mature[]” as this “important chapter of *Charter* jurisprudence is written by Canada’s courts.”³
2. Unfortunately, this Court’s guidance in *Ward* was not well received by Canadian courts. Far from writing an important chapter of *Charter* jurisprudence, many courts in this country have lowered their pens, closed the chapter and put away the book on section 24(1) damages.
3. The instant appeal provides this Court with an opportunity to provide a much needed reminder to the judiciary that their role as guardians of the constitution requires them to safeguard *Charter* rights and, in appropriate circumstances, grant *Charter* damages.
4. As held in *Ward*, once a court has identified a *Charter* breach for which section 24(1) damages are appropriate, and which is not outweighed by countervailing factors, that court must fashion a remedy which is appropriate and just in the circumstances.⁴ Given the constitutional nature of such damages, it is improper to impose additional requirements on a plaintiff, such as meeting the common law test for malicious prosecution, since this would undermine the purpose of section 24(1). As this Court has recognized, section 24(1) damages are “not private law damages, but the distinct remedy of constitutional damages.”⁵ They must be available whenever the test is met, even if a similar tort may not be available. This is true in other cases where *Charter* rights are implicated, even though their common law or statutory corollaries are not. The constitutional question should be answered in the positive.

¹ *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28 [*Ward*].

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

³ *Ward*, *supra* note 1 at paras. 21, 33 and 51.

⁴ *Ibid.* at para. 4; see also *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 196: “To create a right without a remedy is antithetical to one of the purposes of the *Charter* which surely is to allow courts to fashion remedies when constitutional infringements occur.”

⁵ *Ward*, *supra* note 1 at para. 22.

5. Relatedly, this Court must send a clear signal to the judiciary: claims for *Charter* damages must not be summarily struck or dismissed except in the clearest of cases. Section 24(1) damages are a new and evolving area of constitutional law. Unless it is plain and obvious that a plaintiff cannot prove a *Charter* breach, when applying the usual test for determining a *Charter* breach, novel claims for damages should be allowed to proceed to trial. Consideration of countervailing factors should await a full evidentiary record and proper submissions from both parties.

PART II - POSITION ON THE APPELLANT'S ISSUES

6. The issues in this case are as follows:

- (A) Does section 24(1) of the *Charter* authorize a court of competent jurisdiction to award damages against the Crown for prosecutorial misconduct absent proof of malice? This question can be broken down as follows:
 - (i) Does *Ward* change the test for determining the breach of a given *Charter* right by requiring a plaintiff to prove Crown prosecutors acted maliciously in breaching that *Charter* right? (Step 1 of *Ward*)
 - (ii) Does “prosecutorial discretion” qualify as a countervailing factor in all circumstances involving Crown prosecutors? (Step 3 of *Ward*)
 - (iii) Does Crown motive play a role in determining quantum of *Charter* damages? (Step 4 of *Ward*)
- (B) Should the within appeal be allowed?

7. The intervener Canadian Civil Liberties Association (“CCLA”) submits these questions should be answered as follows:

- (A) Yes, *Charter* damages are available for prosecutorial misconduct absent proof of malice, for the following reasons (framed as answers to the questions posed above):
 - (i) No, *Ward* does not change the test for determining the breach of a given *Charter* right. Courts must apply the same test for a *Charter* breach in the civil context as they do in any other context. If motive is irrelevant in determining a breach of a given *Charter* right in one context, then motive is irrelevant in determining a breach of that right in all contexts.
 - (ii) “Prosecutorial discretion” may qualify as a countervailing factor, but not as a blanket rule. While this discretion may sometimes allow the Crown to discharge its onus at Step 3 of *Ward*, there may well be cases where it does not. This issue should be left for a trial judge to determine on a full evidentiary record at trial, on a case-by-case basis.
 - (iii) Crown motive may play a role in determining quantum, but again not as a blanket rule. Trial judges must be free to craft appropriate and just remedies. Sometimes, the compensation and vindication aspects of a

Charter remedy may lead to a trial judge finding Crown motive to be irrelevant. Other times, perhaps not. Again, this issue should be left for a trial judge to determine on a full evidentiary record at trial, on a case-by-case basis.

(B) The CCLA takes no position on the disposition of the within appeal.

PART III - STATEMENT OF ARGUMENT

A. Where should “Crown motive” fit into a section 24(1) damages analysis?

8. This Court held in *Ward* that section 24(1) damages are available only if a plaintiff proves a breach of one or more *Charter* rights (Step 1), and an award of damages would serve a functional purpose (Step 2), i.e. it would compensate the plaintiff, vindicate *Charter* rights and/or deter future breaches. The burden then shifts to the Crown to establish why, having regard to countervailing factors such as the existence of alternative remedies and concerns for good governance, *Charter* damages would be “inappropriate or unjust” (Step 3).⁶ If the Crown fails to do so, then section 24(1) damages must be awarded and the question shifts to quantum (Step 4).

i. Crown motive should not change the test for proof of a Charter breach from one context to another

9. Step 1 of a *Ward* analysis is not concerned with what process led to a *Charter* breach, but rather only whether the plaintiff has established such a breach.⁷ This is true irrespective of whether an additional burden, such as a burden to demonstrate malice, would exist in a similar tort or other claim. Put simply, if motive is irrelevant for determining a *Charter* breach in one context, it is irrelevant in all contexts, including in claims for section 24(1) damages. For instance, in finding a breach of the *Charter* right to be tried within a reasonable time, this Court has considered the differences between that constitutional right and the common law doctrine of abuse of process:

The Crown’s motives, whatever they may be, do not render a reasonable delay unreasonable nor can they transform an unreasonable delay into a reasonable lapse of time. Thus, whether the delay is the result of malice, negligence or inadvertence is of little import [to the s. 11(b) analysis]. ... With respect, whether governmental delay is deliberate or not is irrelevant to the determination of the

⁶ *Ward*, *supra* note 1 at paras. 23-24, 32-33.

⁷ *Ibid.* at para. 23.

violation. Indeed, the right may be violated, in some circumstances, despite the best intentions and best efforts of the authorities.⁸

Using the example above, it cannot be that a plaintiff's section 11(b) right is different in a civil claim than in a criminal trial – a *Charter* breach is a *Charter* breach.

10. *Charter* damages are constitutional in nature, and importing additional hurdles from common law tests into the already flexible *Charter* remedies analysis is unnecessary and undesirable. There is no room in Step 1 of *Ward* for creating additional requirements to the usual method of establishing a breach of a *Charter* right. Any gatekeeping function performed by the malice requirement in a tort like malicious prosecution is already present in a claim for *Charter* damages, depending on the facts of a given case – it is built into Step 3 (countervailing factors) and Step 4 (quantum of damages) of the *Ward* analysis.

11. In other words, a prosecutor's motive may play a role, but only when the burden has shifted to the *Crown* to prove the existence of alternative remedies and concerns for good governance, or other countervailing factors, that render *Charter* damages inappropriate or unjust.⁹ It is open to the *Crown* to argue that prosecutorial discretion in discharging its quasi-judicial function is sufficient to negate a specific *Charter* damage claim. Adding additional elements to the plaintiff's case – such as requiring proof of prosecutorial malice – shifts the burden from the state to the individual, and is improper and unfair. As a practical matter, particularly if the plaintiff is required to prove malice before discovery and trial (as here), this additional requirement will be insurmountable in most cases. Furthermore, whether at pleadings or trial, importing malice as a requirement for the plaintiff to prove in cases involving prosecution-related section 24(1) damages (as opposed to police-related, government-related, or otherwise) would lead to a splintered and unprincipled approach to section 24(1) jurisprudence.

12. Such a splintered approach to the *Charter* is exactly what has happened at trial and appellate courts in the four years since *Ward*. *Ward* did not say that *Charter* damage claims should be struck or summarily dismissed when they fail to satisfy common law or statutory criteria, and *Ward* certainly did not say that a different, lesser *Charter* applies in respect of

⁸ *Mills v. The Queen*, [1986] 1 S.C.R. 863 at 933-934, Lamer J. (as he then was; dissenting on other grounds) [*Mills*].

⁹ *Ward*, *supra* note 1 at para. 33.

section 24(1) damages claims. Yet, this is what many Canadian courts seem to have concluded by importing a malice requirement into the determination of whether a range of sections of the *Charter* have been breached. A review of the post-*Ward* case law found seven reported cases which demonstrate this imported malice requirement:

- *Dumont c. Québec (Procureur général)*, 2012 QCCA 2039, in which the court held there to be no section 7 *Charter* breach, because the Crown was not motivated by malice. The court went on to find that the “relative immunity that protects exercise of the discretionary power of Crown attorneys is in opposition to [the plaintiff’s] action under both section 24(1) of the *Charter* and general law regarding liability;”¹⁰
- *Canada (Procureur général) c. Hinse*, 2013 QCCA 1513, in which the court held there to be no breach of section 4 of the Quebec *Charter of Human Rights and Freedoms*, because the Minister did not act in bad faith. The court went on to similarly dismiss the claim for exemplary damages under section 24(1) of the *Charter* and the corresponding claim in extra-contractual liability under the Civil Code of Québec;¹¹
- *D.W.H. v. D.J.R.*, 2011 ABQB 608, in which the court held that, while there was a breach of section 15 of the *Charter*, no *Charter* damages could be awarded, because the Legislature was not acting in bad faith or negligently;¹²
- *Forrest v. The Queen*, 2012 ONSC 429 (Div. Ct.), in which the court held there to be no section 7 *Charter* breach, because the Crown was not acting with wilfulness or *mala fides*. The court went on to dismiss a corresponding claim under the tort of negligent police investigation;¹³
- *Payne v. Mak*, 2012 ONSC 6541, in which the court held there to be no section 7, 8, 11(d), or 11(g) *Charter* breaches, because the Crown was not acting with wilfulness or *mala fides*. The court went on to dismiss the corresponding tort claim for negligent investigation and malfeasance in public office for the same reasons;¹⁴
- *Gravelle v. Ontario*, 2012 ONSC 5149, in which the court held there to be no *Charter* breach, because the “tort” of *Charter* breach requires “deliberateness, collusion, and motive to cause harm.” The court went on to similarly dismiss corresponding claims for malicious prosecution, negligent investigation, abuse of process, and intentional infliction of harm for the same reasons;¹⁵ and
- *Hneihen v. Centre for Addiction and Mental Health*, 2014 ONSC 55, in which the court struck a claim for *Charter* damages as there was no violation of the plaintiff’s section 7, 9, or 12 *Charter* rights, because the plaintiff had pleaded neither wilfulness nor *mala*

¹⁰ At paras. 40, 117, leave to appeal to S.C.C. refused, 35168 (May 16, 2013).

¹¹ At paras. 144, 245-247, leave to appeal to S.C.C. granted, 35613 (August 26, 2014).

¹² At paras. 129-130, aff’d 2013 ABCA 240.

¹³ At paras. 61-62, 72-73, leave to appeal to Ont. C.A. refused, [2012] O.J. 6645 [*Forrest*].

¹⁴ At paras. 138, 143.

¹⁵ At paras. 91, 97.

fides. The court also struck a claim for false imprisonment.¹⁶

13. In contrast, a review of the jurisprudence revealed a total of only three reported decisions since *Ward* in which a plaintiff sued for *Charter* damages, and won.¹⁷

14. It is incongruous for courts to interpret *Charter* rights more robustly for some than for others. How can it be that an accused can make out a violation of his section 7 right to full disclosure where a prosecutor “misconceived” the Crown’s disclosure obligations,¹⁸ but an innocent and wrongly convicted plaintiff cannot make out a violation of his section 7 right unless the prosecutor acted maliciously? It cannot be true that:

[T]he liability for breach under s. 7 of the *Charter* requires wilfulness or *mala fides* in the creation of a risk or course of conduct that leads to damages. Proof of simple negligence is not sufficient for an award of damages in an action under the *Charter*. Bad faith is essential to establish the *Charter* breach....¹⁹

A *Charter* breach in one context must be a *Charter* breach in all contexts.

ii. Prosecutorial discretion should not give the Crown a “trump card” to negate Charter damages in every case

15. When it comes to countervailing factors, it is true that *Ward* held that private law thresholds and defences can offer “guidance,” as existing causes of action against state actors “embody a certain amount of ‘practical wisdom’ concerning the type of situation in which it is or is not appropriate to make an award of damages against the state.”²⁰ However, *Ward* also cautioned that “it is improper for courts to reduce this discretion by casting it in a strait-jacket of judicially prescribed conditions.”²¹

16. A case concerning a clear breach of a *Charter* right – such as where the Crown admits to failing to provide full disclosure to an accused – does not engage issues of prosecutorial discretion and should not be subject to the same appeal to countervailing factors. As this Court held as recently as July of this year, “[t]he Crown has a broad duty to disclose relevant evidence

¹⁶ At paras. 120, 125.

¹⁷ The damages awarded per plaintiff in those three cases were \$5,000, \$500 and \$66, respectively: see section iii. of this Factum.

¹⁸ *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 at 346 [*Stinchcombe*].

¹⁹ *Forrest*, *supra* note 13 at para. 62.

²⁰ *Ward*, *supra* note 1 at para. 43. The Chief Justice continued: “Similarly, it may be necessary for the court to consider the procedural requirements of alternative remedies. Procedural requirements associated with existing remedies are crafted to achieve a proper balance between public and private interests, and the underlying policy considerations of these requirements should not be negated by recourse to s. 24(1) of the Charter:” *ibid*.

²¹ *Ward*, *supra* note 1 at para. 18, referring to *Mills*, *supra* note 8 at 965.

and information to persons charged with criminal offences ... the Crown is an officer of the court, with undivided loyalty to the administration of justice[;] the Crown is not in an adversarial role in relation to its disclosure obligations.”²² Where the prosecutor had no discretion to apply, as in the case of disclosure, it would be a non-starter for the Crown to raise prosecutorial discretion as a countervailing factor at Step 3 of *Ward*.

17. Even where the *Charter* breach arises from a prosecutor improperly exercising discretion, it does not follow that prosecutorial discretion – as it has been defined by the body of common law – applies as a full answer to a *Charter* damages claim. While private law defences may assist a court to determine the scope of countervailing factors, they should not dispose of the issue.

18. Claims for tort damages and *Charter* damages co-exist but do not completely overlap, much in the same way as claims under the *Bill of Rights*²³ and the *Charter* co-exist but do not completely overlap. A plaintiff may sue in either, or both, but the two regimes are separate.²⁴ A claim for the breach of a right or freedom under the *Charter* may succeed where such a claim under the *Bill of Rights* would fail²⁵ – or vice versa.²⁶ Similarly, a claim for damages arising under the *Charter* may succeed where such a claim in tort would fail – or vice versa.²⁷ The interplay of tort and *Charter* damages was best demonstrated in *Ward* itself. Though the plaintiff’s claim in tort was defeated, “it did not change the fact that his right under s. 8 of the *Charter* to be secure against unreasonable search and seizure was violated. No tort action was available for that violation and a declaration will not satisfy the need for compensation. Mr. Ward’s only recourse is a claim for damages under s. 24(1) of the *Charter*.”²⁸

19. In any event, even if *Charter* damage claims rely on novel arguments, it is improper for a court to strike such a claim at the pleadings stage, unless it is plain and obvious that the plaintiff

²² *R. v. Quesnelle*, 2014 SCC 46 at paras. 11, 65, citing *Stinchcombe*, *supra* note 18.

²³ *Canadian Bill of Rights*, S.C. 1960, c. 44 [*Bill of Rights*].

²⁴ The doctrine of double recovery prevents a plaintiff from recovering twice based on the same wrong – it does not prevent a plaintiff from suing under two concurrent theories of liability, such as a claim for negligent misrepresentation in tort and contract.

²⁵ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 [*Big M*]; *c.f. Robertson and Rosetanni v. The Queen*, [1963] S.C.R. 651 (regarding freedom of religion).

²⁶ *MacBain v. Lederman*, [1985] 1 F.C. 856 (C.A.) (regarding the right to a fair hearing).

²⁷ One example is the tort of malicious prosecution, which is available against a private or public prosecutor, while the corollary *Charter* damages claim is only available against the state.

²⁸ *Ward*, *supra* note 1 at para. 68.

will not be able to discharge its burden to show a *Charter* breach for which section 24(1) damages are appropriate. The test for striking pleadings in Canada is well-established:

[A]ssuming that the facts as stated in the statement of claim can be proved, is it “plain and obvious” that the plaintiff’s statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be “driven from the judgment seat”. Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect ... should the relevant portions of a plaintiff’s statement of claim be struck out....²⁹

20. Section 24(1) claims should be allowed to proceed to trial, even if a court believes that the Crown may succeed in discharging its burden under Step 3 of *Ward*. Such a determination can be made properly only after weighing the evidence at trial. Plaintiffs should not be “driven from the judgment seat” by having their pleadings struck or cases summarily dismissed, without an opportunity to test and meet Crown arguments about countervailing concerns. That would be antithetical to the nature of the *Charter* as the supreme law of Canada, and prevent a nascent but important area of constitutional law from being allowed to mature.

21. The present case illustrates the misinterpretation by lower courts of this Court’s ruling in *Ward*. Lower courts have not given *Charter* damages a large and purposive interpretation, as they did with other early *Charter* jurisprudence. In the mid-1980s, trial and appellate courts took on the challenge of defining Canada’s new constitutional instrument with zeal and creativity. They followed this Court’s lead in determining that *Charter* rights should not be limited by prior interpretations of rights under common law³⁰ or statute³¹. Not so in the early 2010s. Even though this Court in *Ward* specifically held that a potential claim in tort does not bar a claimant from obtaining section 24(1) damages,³² courts have been conflating the two remedies by adding new hurdles for plaintiffs at Step 1 of the *Ward* test.

²⁹ *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980.

³⁰ See e.g. *Hunter v. Southam*, [1984] 2 S.C.R. 145; *R. v. Collins*, [1987] 1 S.C.R. 265; *Mills*, *supra* note 8.

³¹ See e.g. *Big M*, *supra* note 25; *R. v. Therens*, [1985] 1 S.C.R. 613; *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486; and *R. v. Oakes*, [1986] 1 S.C.R. 103.

³² *Ward*, *supra* note 1 at para. 36.

iii. The motive of state actors who violate Charter rights may have an effect on quantum of section 24(1) damages awards

22. In considering how Crown motive fits into the *Ward* test, it is important to consider Step 4, quantum of damages, since it is Step 4 which gives practical expression to the promise of *Charter* damages. The Court recognized a mandate in section 24(1) that a “just and appropriate” award of damages must represent a meaningful response to the seriousness of the breach and the objectives of compensation, vindication and/or deterrence (Step 2 of *Ward*). *Ward* did not suggest a range of damages to be awarded. Courts were given broad discretion to assess each case individually to determine the appropriate quantum on the basis of all relevant considerations, including the conduct of individual government actors.

23. A review of the post-*Ward* case law has determined that *Charter* damages have very rarely been awarded; in fact, only three reported cases could be found.³³ Even where *Charter* damages have ordered, almost all courts have awarded nominal damages at most, appearing to use the \$5,000 awarded in *Ward* as a *de facto* ceiling for section 24(1) awards. To wit:

- *Lamka v. Waterloo Regional Police Services Board*, 2012 CanLII 98291 (Ont. Sm. Cl. Ct.), in which the court awarded \$5,000 for an infringement of the plaintiff’s sections 7 and 8 *Charter* rights following an unlawful strip search and detention;³⁴
- *British Columbia Teachers’ Federation v. British Columbia*, 2014 BCSC 121, in which the court granted a *Charter* damages award in the context of a class action for a breach of section 2(d), amounting to approximately \$66 per class member;³⁵ and
- *Mason v. Turner*, 2014 BCSC 211, in which the court awarded damages of \$500 for an infringement of the plaintiff’s section 10(b) *Charter* right that arose from an unlawful roadside detention and search.³⁶

24. It would be disappointing and unjust if \$5,000 becomes fixed as the maximum award for

³³ In the criminal law context, the corollary to *Charter* damages is a costs award pursuant to section 24(1). Four reported cases since *Ward* have considered *Charter* costs, and the two which awarded such costs each awarded approximately \$5,000: *R. v. SEL*, 2012 ABQB 377 (\$5,331.21 for making improper disclosure to the accused, thereby violating his s. 7 right to make full answer and defence: at para. 26); *R. v. Wetzel*, 2011 SKPC 9 (\$5,000 for the unlawful detention of the accused, thereby violating his s. 9 right: at paras. 94-95), rev’d 2012 SKQB 24, rev’d 2013 SKCA 143 (on the basis that inferior courts cannot award *Charter* costs); *R. v. A.K.*, 2014 CanLII 30066 (N.L.P.C.) (quantum to be determined for breaching the accused’s ss. 7 and 11(b) rights: at paras. 100-104); and *R. v. Bachelet*, 2013 ABPC 11 (\$0 for breaching the accused’s right to full answer and defence – no costs awarded because the prosecutor’s misconduct was not “to an unacceptable degree” or “flagrant and unjustified”: at para. 121).

³⁴ At para. 89.

³⁵ At paras. 635-636 (given the size of the class, the total amount awarded was \$2m). This decision is currently under appeal to the B.C.C.A.

³⁶ At para. 134. The court did not appear to consider the role of compensation at all, but did hold the amount of \$500 would satisfy the goals of vindication and deterrence.

section 24(1) damages. A low ceiling discourages valid *Charter* claims by making them economically irrational given the costs of litigation and the threat of adverse costs awards. A low ceiling also produces *Charter* damage awards that lag well behind awards imposed under private law and human rights codes. Finally, it is difficult to see how damages awards of \$5,000 or less will serve the purposes of vindication and deterrence established by this Court in *Ward*.

B. Disposition of this appeal

25. The constitutional question should be answered in the positive: if prosecutorial misconduct resulted in a *Charter* breach, then section 24(1) damages are a possible remedy, whether or not the prosecutor acted maliciously.

26. The CCLA takes no position on the disposition of the appeal.

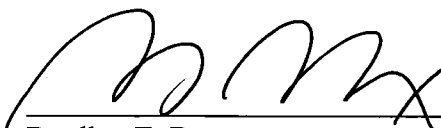
PART IV - SUBMISSIONS CONCERNING COSTS

27. The CCLA does not seek any costs and asks that no costs be awarded against it.

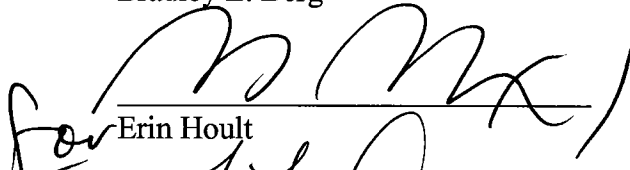
PART V - REQUEST TO MAKE ORAL SUBMISSIONS

28. The CCLA seeks leave to present oral submissions not exceeding fifteen (15) minutes.

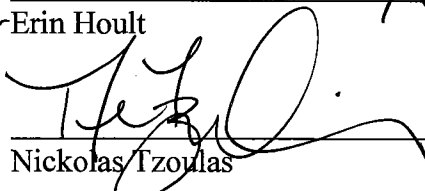
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2014.



Bradley E. Berg



Erin Hoult



Nickolas Tzoulas

Blake, Cassels & Graydon LLP
Counsel for the Interveners,
the Canadian Civil Liberties Association

PART VI - TABLE OF AUTHORITIES

<u>No.</u>	<u>Authority</u>	<u>Paragraph(s)</u>
1.	<i>British Columbia Teachers' Federation v. British Columbia</i> , 2014 BCSC 121	23
2.	<i>Canada (Procureur general) c. Hinse</i> , 2013 QCCA 1513, leave to appeal to S.C.C. granted, 35613 (August 26, 2014)	12
3.	<i>Dumont c. Quebec (Procureur General)</i> , 2012 QCCA 2039, leave to appeal to S.C.C. refused, 35168 (May 16, 2013)	12
4.	<i>D.W.H. v. D.J.R.</i> , 2011 ABQB 608, aff'd 2013 ABCA 240	12
5.	<i>Forrest v. The Queen</i> , 2012 ONSC 429 (Div. Ct.), leave to appeal to Ont. C.A. refused, [2012] O.J. 6645	12, 14
6.	<i>Gravelle v. Ontario</i> , 2012 ONSC 5149	12
7.	<i>Hneihen v. Centre for Addiction and Mental Health</i> , 2014 ONSC 55	12
8.	<i>Hunter v. Southam</i> , [1984] 2 S.C.R. 145	21
9.	<i>Hunt v. Carey Canada Inc.</i> , [1990] 2 S.C.R. 959	19
10.	<i>Lamka v. Waterloo Regional Police Services Board</i> , 2012 CanLII 98291 (Ont. Sm. Cl. Ct.)	23
11.	<i>MacBain v. Lederman</i> , [1985] 1 F.C. 856 (C.A.)	18
12.	<i>Mason v. Turner</i> , 2014 BCSC 211	23
13.	<i>Mills v. The Queen</i> , [1986] 1 S.C.R. 863	9, 15
14.	<i>Nelles v. Ontario</i> , [1989] 2 S.C.R. 170	4
15.	<i>Payne v. Mak</i> , 2012 ONSC 6541	12
16.	<i>R. v. A.K.</i> , 2014 CanLII 30066 (N.L.P.C.)	23
17.	<i>R. v. Bachelet</i> , 2013 ABPC 11	23
18.	<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 S.C.R. 295	18, 21
19.	<i>R. v. Collins</i> , [1987] 1 S.C.R. 265	21

20.	<i>R. v. Oakes</i> , [1986] 1 S.C.R. 103	21
21.	<i>R. v. Quesnelle</i> , 2014 SCC 46	16
22.	<i>R. v. SEL</i> , 2012 ABQB 377	23
23.	<i>R. v. Stinchcombe</i> , [1991] 3 S.C.R. 326	14, 16
24.	<i>R. v. Therens</i> , [1985] 1 S.C.R. 613	21
25.	<i>R. v. Wetzel</i> , 2011 SKPC 9, rev'd 2012 SKQB 24, rev'd 2013 SKCA 143	23
26.	<i>Re B.C. Motor Vehicle Act</i> , [1985] 2 S.C.R. 486	21
27.	<i>Robertson and Rosetanni v. The Queen</i> , [1963] S.C.R. 651	18
28.	<i>Vancouver (City) v. Ward</i> , 2010 SCC 27	1, 4, 8, 9, 11, 15, 18, 21

PART VII - RELEVANT STATUTES

Canadian Bill of Rights, S.C. 1960, c. 44, ss. 1-2, 5

<p>Recognition and declaration of rights and freedoms</p> <p>1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,</p> <p>(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;</p> <p>(b) the right of the individual to equality before the law and the protection of the law;</p> <p>(c) freedom of religion;</p> <p>(d) freedom of speech;</p> <p>(e) freedom of assembly and association; and</p> <p>(f) freedom of the press.</p>	<p>Reconnaissance et déclaration des droits et libertés</p> <p>1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine nationale, sa couleur, sa religion ou son sexe :</p> <p>a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;</p> <p>b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;</p> <p>c) la liberté de religion;</p> <p>d) la liberté de parole;</p> <p>e) la liberté de réunion et d'association;</p> <p>f) la liberté de la presse.</p>
<p>Construction of law</p> <p>2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the <i>Canadian Bill of Rights</i>, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to</p> <p>(a) authorize or effect the arbitrary detention, imprisonment or exile of any</p>	<p>Interprétation de la législation</p> <p>2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la <i>Déclaration canadienne des droits</i>, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme</p> <p>a) autorisant ou prononçant la détention, l'emprisonnement ou l'exil arbitraires de qui que ce soit;</p>

<p>person;</p> <p>(b) impose or authorize the imposition of cruel and unusual treatment or punishment;</p> <p>(c) deprive a person who has been arrested or detained</p> <p>(i) of the right to be informed promptly of the reason for his arrest or detention,</p> <p>(ii) of the right to retain and instruct counsel without delay, or</p> <p>(iii) of the remedy by way of <i>habeas corpus</i> for the determination of the validity of his detention and for his release if the detention is not lawful;</p> <p>(d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;</p> <p>(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;</p> <p>(f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or</p> <p>(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.</p> <p>...</p>	<p>b) infligeant des peines ou traitements cruels et inusités, ou comme en autorisant l'imposition;</p> <p>c) privant une personne arrêtée ou détenue</p> <p>(i) du droit d'être promptement informée des motifs de son arrestation ou de sa détention,</p> <p>(ii) du droit de retenir et constituer un avocat sans délai, ou</p> <p>(iii) du recours par voie d'<i>habeas corpus</i> pour qu'il soit jugé de la validité de sa détention et que sa libération soit ordonnée si la détention n'est pas légale;</p> <p>d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;</p> <p>e) privant une personne du droit à une audition impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;</p> <p>f) privant une personne accusée d'un acte criminel du droit à la présomption d'innocence jusqu'à ce que la preuve de sa culpabilité ait été établie en conformité de la loi, après une audition impartiale et publique de sa cause par un tribunal indépendant et non préjugé, ou la privant sans juste cause du droit à un cautionnement raisonnable; ou</p> <p>g) privant une personne du droit à l'assistance d'un interprète dans des procédures où elle est mise en cause ou est partie ou témoin, devant une cour, une commission, un office, un conseil ou autre tribunal, si elle ne comprend ou ne parle</p>
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<p>Savings</p> <p>5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.</p> <p>“Law of Canada” defined</p> <p>(2) The expression “law of Canada” in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.</p> <p>Jurisdiction of Parliament</p> <p>(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.</p>	<p>pas la langue dans laquelle se déroulent ces procédures.</p> <p>...</p> <p>Clause de sauvegarde</p> <p>5. (1) Aucune disposition de la Partie I ne doit s’interpréter de manière à supprimer ou restreindre l’exercice d’un droit de l’homme ou d’une liberté fondamentale non énumérés dans ladite Partie et qui peuvent avoir existé au Canada lors de la mise en vigueur de la présente loi.</p> <p>Définition : « loi du Canada »</p> <p>(2) L’expression « loi du Canada », à la Partie I, désigne une loi du Parlement du Canada, édictée avant ou après la mise en vigueur de la présente loi, ou toute ordonnance, règle ou règlement établi sous son régime, et toute loi exécutoire au Canada ou dans une partie du Canada lors de l’entrée en application de la présente loi, qui est susceptible d’abrogation, d’abolition ou de modification par le Parlement du Canada.</p> <p>Jurisdiction du Parlement</p> <p>(3) Les dispositions de la Partie I doivent s’interpréter comme ne visant que les matières qui sont de la compétence législative du Parlement du Canada.</p>
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Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, ss. 2, 7, 10-11, 24(1)

<p>Fundamental freedoms</p> <p>2. Everyone has the following fundamental freedoms:</p> <p>(a) freedom of conscience and religion;</p> <p>(b) freedom of thought, belief, opinion and</p>	<p>Libertés fondamentales</p> <p>2. Chacun a les libertés fondamentales suivantes :</p> <p>a) liberté de conscience et de religion;</p> <p>b) liberté de pensée, de croyance, d’opinion</p>
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<p>expression, including freedom of the press and other media of communication;</p> <p>(c) freedom of peaceful assembly; and</p> <p>(d) freedom of association.</p> <p>...</p> <p>Life, liberty and security of person</p> <p>7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p> <p>...</p> <p>Arrest or detention</p> <p>10. Everyone has the right on arrest or detention</p> <p>(a) to be informed promptly of the reasons therefor;</p> <p>(b) to retain and instruct counsel without delay and to be informed of that right; and</p> <p>(c) to have the validity of the detention determined by way of <i>habeas corpus</i> and to be released if the detention is not lawful.</p> <p>Proceedings in criminal and penal matters</p> <p>11. Any person charged with an offence has the right</p> <p>(a) to be informed without unreasonable delay of the specific offence;</p> <p>(b) to be tried within a reasonable time;</p> <p>(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;</p> <p>(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial</p>	<p>et d'expression, y compris la liberté de la presse et des autres moyens de communication;</p> <p>c) liberté de réunion pacifique;</p> <p>d) liberté d'association.</p> <p>...</p> <p>Vie, liberté et sécurité</p> <p>7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p> <p>...</p> <p>Arrestation ou détention</p> <p>10. Chacun a le droit, en cas d'arrestation ou de détention :</p> <p>a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;</p> <p>b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;</p> <p>c) de faire contrôler, par <i>habeas corpus</i>, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.</p> <p>Affaires criminelles et pénales</p> <p>11. Tout inculpé a le droit :</p> <p>a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;</p> <p>b) d'être jugé dans un délai raisonnable;</p> <p>c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;</p> <p>d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la</p>
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<p>tribunal;</p> <p>(e) not to be denied reasonable bail without just cause;</p> <p>(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;</p> <p>(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;</p> <p>(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and</p> <p>(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.</p> <p>...</p> <p>Enforcement of guaranteed rights and freedoms</p> <p>24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.</p>	<p>loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;</p> <p>e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;</p> <p>f) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;</p> <p>g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;</p> <p>h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;</p> <p>i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.</p> <p>...</p> <p>Recours en cas d'atteinte aux droits et libertés</p> <p>24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.</p>
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