COA-25-CV-1047

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO and MINISTER OF TRANSPORTATION

Appellants

- and -

CYCLE TORONTO, EVA STANGER-ROSS, and NARADA KIONDO

Respondents

- and -

DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN PUBLIC HEALTH ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, FOR OUR KIDS TORONTO, and GREENPEACE CANADA

Interveners

FACTUM OF THE INTERVENER
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

SAVARDS LLP
400-26 Soho St.
Toronto, ON M5T 1Z7

Megan Savard (LSO#58785I)
Tel: 416-849-9205
Email: megan@savards.ca

UNIVERSITY OF TORONTO
39 Queen's Park Cres E
Toronto, ON M5S 2C3

Cheryl Milne (LSO#27022C)
Tel: (416) 978-0092
Email: cheryl.milne@utoronto.ca

Counsel for the David Asper Centre for Constitutional Rights

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO and MINISTER OF TRANSPORTATION

Appellants

- and -

CYCLE TORONTO, EVA STANGER-ROSS, and NARADA KIONDO

Respondents

- and -

DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN PUBLIC HEALTH ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, FOR OUR KIDS TORONTO, and GREENPEACE CANADA

Interveners

FACTUM OF THE INTERVENER
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

TABLE OF CONTENTS

PART I – OVERVIEW

1. All rights under the *Charter*, in practice, require both state restraint and state action for their meaningful realization. Traditionally, negative rights were understood as protections against state interference, while positive rights required state action to guarantee access to them. But this dichotomy is conceptually misleading. So-called "negative" rights often require positive implementation, such as legislation, enforcement, and resource allocation, to be effective.

2. This appeal is an opportunity for the Court to lay to rest the artificial distinction between "positive" and "negative" rights, particularly in the context of s. 7 of the *Charter*. The David Asper Centre for Constitutional Rights (the Centre) adopts the Respondents' position that Schabas J. did not create a positive right to bicycle lanes. Because the Appellants have argued they do, however, the Centre proposes to expand on the Respondents' alternative argument: that the positive/negative rights dichotomy relied upon by the Appellants is unhelpful and obsolete.[1] The Centre proposes an alternative framework to determine when state action engages s. 7 *Charter* rights. In the course of applying the framework, the Centre will address the proper interpretation of the decision in *Drover v. Canada (Attorney General)*.

PART II – FACTS

3. The Asper Centre accepts the facts agreed on by the parties and takes no position on disputed facts.

PART III – ISSUES AND THE LAW

A. Categorizing Rights as "Positive" or "Negative" Invokes a False and Outdated Binary

4. Canadian courts historically conceptualized constitutional rights using a "positive/negative" dichotomy. A positive right compels state action or resource allocation (e.g., a duty to provide education). A negative right prevents interference or prohibits the state from doing something (e.g., a duty to not

[1] Factum of the Respondents, at para 36.

interfere with expression).[2]

5. During its early years, the judicial conception of the *Charter* was as a vehicle for guaranteeing negative rights: its freedoms consisted primarily of "the absence of coercion or constraint" and a "major [purpose] of the *Charter* [was] to protect, within reason, from compulsion"[3] and "constrain governmental action inconsistent with [*Charter*] rights and freedoms."[4] This default conception set the stage for a "gate-keeping" justiciability analysis: adjudicators defined each *Charter* right as either positive or negative, and the state's corresponding duty as one of restraint or compulsion. If a right was, exceptionally, a positive one, claimants could seek to compel government action.[5] If it was negative, claimants could only seek to neutralize or prohibit government action. While the Supreme Court periodically acknowledged that some traditionally "negative" rights – like freedom of expression or association – could, in theory, require an order compelling government action to be vindicated, it consistently framed this observation in tentative, cautious terms, noting that a negative right could only give rise to a positive duty in "exceptional" cases.[6]

6. Around the turn of the century, and on something of a right-by-right basis, the Supreme Court started to depart from the positive/negative dichotomy in favour of a holistic recognition that *Charter* rights cannot be easily categorized. In *Eldrige* and *Vriend,* the Court found that state *inaction* breached the s. 15(1) equality guarantee and ordered the government to take positive steps to ameliorate the condition of disadvantaged groups.[7] In *Dunmore* and *Baier*, the Court applied a similar analysis in the s. 2 context, holding that "the distinction between positive and negative state obligations ought to be nuanced" and that

---

[2] Henry Shue, Basic Rights: Subsistence, Affluence, & U.S. Foreign Policy, 40th anniversary ed. (Princeton University Press, 2021), ch. 2 at p. 36 [Shue].
[3] *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 at para. 95.
[4] *Hunter v. Southam,* [1984] 2 S.C.R. 145 at p. 156.
[5] See, e.g., *Mahe v. Alberta*, [1990] 1 S.C.R. 342 at p. 365 [*Mahe*], which recognized the s. 23 right to minority language education as a "positive" right justifying an order directing the expenditure of resources and, indirectly, the creation of state programming.
[6] See *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989 [*Delisle*] at para. 26, 27, 33, in the context of the s. 2(d) freedom of association; *Haig v. Canada*, 1993 2 S.C.R. 955 at paras. 77, 78.
[7] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at paras. 73, 78, 90; *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at paras. 107, 179.

ss. 2(b) and 2(d) each had a positive dimension capable of underpinning a government duty to extend underinclusive legislation to unprotected groups.[8] In *Gosselin*, a majority of the Court, citing the "living tree" approach to constitutionalism and the importance of flexible *Charter* interpretation, acknowledged that, although s. 7 had so far only "been interpreted as restricting the state's ability to deprive people of [life, liberty and security of the person]", it could, in future, give rise to positive state obligations.[9]

7. This has now happened. Since *Gosselin,* the Supreme Court has repeatedly concluded that *Charter* rights generally have both positive and negative dimensions, and that their protection can require the government to act in certain ways and refrain from acting in others.[10] As Abella J. put it in *Toronto (City)* (dissenting but not on this issue), to distinguish between positive and negative rights is "unhelpful" because "[a]ll rights have positive dimensions since they exist within, and are enforced by, a positive state apparatus. They also have negative dimensions because they sometimes require the state *not* to intervene…There is no reason to superimpose onto our constitutional structure the additional hurdle of dividing rights into positive and negative ones for analytic purposes."[11]

8. Lower courts are therefore now bound by Supreme Court authority directing that there is *no meaningful distinction* between "positive" and "negative" rights and – implicitly – that these labels no longer play a substantive role in modern *Charter* analysis. This authority is consistent with the academic literature, which calls the positive/negative dichotomy a "crude polarity," and "a highly overabstracted and thereby oversimplified picture."[12] Every right and corresponding duty, on closer inspection, "turns

---

[8] *Dunmore v. Ontario (Attorney General),* 2001 SCC 94 at paras. 20, 43-48, 67; *Baier v. Alberta,* 2007 SCC 31 at paras. 20, 29-30.
[9] *Gosselin v. Quebec (Attorney General)*, 2002 SCC 84 at paras. 81-82 [*Gosselin*].
[10] *Toronto (City) v Ontario (Attorney General),* 2021 SCC 34 at para. 20 [*Toronto (City)*], citing Patrick Macklem, "Aboriginal Rights and State Obligations" (1997) 36 Alta. L. Rev. 97, at p. 101; see also Amartya Sen, The Idea of Justice (Harvard University Press, 2009), at p. 282.
[11] *Toronto (City)*, at para. 153-155; see also majority decision at para. 20; see also *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 at paras 67–72 generally [*Fraser*]; see also *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13 at para 27.
[12] Shue, at p. 154.

out in concrete cases to involve a mixed bag of actions and omissions."[13]

9. What was formerly a stark binary is now best understood as a continuum of precedent state actions, projects and/or programs (e.g., incarcerating offenders, building and maintaining highway infrastructure) and corresponding state duties (e.g., providing state-funded duty counsel, establishing road safety standards) that can be plotted on a Cartesian plane. Any given right is protected by both positive and negative state duties and, if breached, can give rise to a range of remedies that, at one end of the spectrum, are prohibitive in nature (e.g. striking down legislation, staying proceedings) and that, at the other end, require state action and expenditures (e.g. building and maintaining schools, establishing a fair voting system, including groups in benefit programs). Along that continuum or plane lie rights that engage a mix of positive and negative obligations. The s. 11(b) right to a speedy trial, for example, appears on the surface to attract a 'negative' remedy in the breach (a stay of proceedings), but in practice and in the aggregate requires the government tasked with administration of criminal justice to implement positive and potentially costly programs to prevent further breaches and a wholesale breakdown of the state project.

B. The Positive/Negative Rights Dichotomy is Unhelpful in the Section 7 Context

10. While articulated in the context of a s. 2 claim, Abella J.'s broad rejection of the positive/negative dichotomy as an analytical tool in *Toronto (City)* applies equally to the rights in ss. 7 to 14 of the *Charter*: as the Court put it in *Fraser*, "these provisions guarantee a mixture of negative and positive rights."[14] And as the Court noted in *Schachter*:

> [T]he right to life, liberty and security of the person is in one sense a negative right, but the requirement that the government respect the "fundamental principles of justice" may provide a basis for characterizing s. 7 as a positive right in some circumstances.[15]

---

[13] Shue, at p. 155; see also Sandra Fredman, "Human Rights Transformed: Positive Duties and Positive Rights" (2006) 38 Oxford Leg. Studies Research Paper 498; Nikita Tafazoli, "Recovering from the Inequality Virus: Gimme Shelter or Protection from Discrimination for Lack Thereof" (2024) 29 Appeal 123; Seth Kreimer, "Allocational Sanctions: The Problem of Negative Rights in a Positive State" (1984) 132 U. Pa. L. Rev. 1293.
[14] *Fraser*, at paras. 67–72.
[15] *Schachter v. Canada*, [1992] 2 S.C.R 679 at para 94.

11. The nature of the remedial orders routinely made in response to breaches of s. 7 and other rights reinforce their inherently 'mixed' or 'multifaceted' nature. Contrary to the submission of the Intervener Canadian Constitution Foundation, it is not only precedented but typical in *Charter* litigation for courts to issue so-called positive remedies: edicts that effectively compel government action to prevent or cure breaches of s. 7 and other rights (arguably subcategories of s. 7). These include orders:

- Staying criminal proceedings that remain outstanding for longer than 18 or 30 months;[16]
- Compelling full, or more fulsome, disclosure;[17]
- Directing the appointment and funding of counsel;[18]
- Excluding evidence due to the state's failure to offer '24/7' free legal advice; and[19]
- Requiring full and contemporaneous translation of trials.[20]

12. In practice, each of these remedial edicts effectively compelled the state to act by creating the same type of widespread ameliorative program that the courts prescribed in response to breaches of historically "positive" rights.[21] While it is technically possible to reframe these as "negative" conditional prohibitions (i.e., a prohibition on interrogation until a free duty counsel program is offered; a prohibition on prosecution until counsel is funded), the practical alternatives (i.e., no more interrogations or prosecutions,) are illusory – only one course of remedial action is available to the government. The rejoinder – "the state cannot constitutionally 'deprive' people of a service it could discontinue at any time"[22] – becomes academic and disingenuous when the service in question is both critical to the functioning of society and the subject of a state monopoly.[23] And the superficial ease with which these practical compulsions can be reframed as prohibitions reinforces the Centre's principal submission: that

---

[16] *R. v. Jordan,* 2016 SCC 27.
[17] *R. v. Stinchcombe*, [1991] 3 SCR 326; *Canada (Justice) v. Khadr*, 2008 SCC 28.
[18] *R. v. Rowbotham*, [1994] 2 S.C.R. 463; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46; *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9.
[19] *R. v. Brydges,* [1990] 1 S.C.R. 190; *R. v. Bartle*, [1994] 3 S.C.R. 173.
[20] *R. v. Tran,* [1994] 2 S.C.R. 951.
[21] See, e.g., *Doucet-Boudreau v. Nova Scotia (Minister of Education),* 2003 SCC 62 [*Doucet-Boudreau*]; *Mahe*.
[22] See, e.g., Factum of the Appellants, at para. 53.
[23] On this point, the Asper Centre adopts the submission of the Intervener Greenpeace Canada that government exclusivity triggers the application of s. 7 of the *Charter.*

prescribing a "positive" or "negative" remedy based on the inherently "positive" or "negative" nature of the corresponding right is an exercise in both semantics and futility.

13. Despite these practical realities, and the binding precedent dispensing with the positive/negative rights dichotomy, this analytical tool continues to creep into lower courts' s. 7 decision-making, often as a form of justiciability analysis. Parties continue to litigate the availability of s. 7 *Charter* claims in the non-criminal context by packaging them as either "negative" or "positive" rights and then relying on the packaging to assert or refute justiciability.[24] While it is attractive to impose rigid categories in an attempt to classify rights' claims as justiciable (or not), the *Charter* requires a more nuanced assessment of the nature of any given breach, the state's responsibility for the harm, and the proper remedy.

14. The false efficiency added by tacking a claim of non-justiciability onto the outset of the analysis is no reason to retain an unhelpful analytical tool. In most cases, these justiciability claims can only be litigated on a full record.[25] Any minor added efficiency is counteracted by the participants' unhelpful and extensive focus on whether the proposed right is "positive" or "negative."

C. A Dichotomy-Free Approach to Section 7 *Charter* Claims

15. The Centre submits that the evolution of *Charter* jurisprudence summarized above mandates a s. 7 analysis that avoids the preliminary characterization of rights as positive or negative. Justice Abella's approach in her dissenting opinion in *Toronto (City)* provides the roadmap. Rather than maintaining the dichotomy as a gatekeeping tool against s. 7 claims, the question of whether the government is responsible for the alleged harm must be answered by applying the "foundational framework" for s. 7 litigation claims.[26]

---

[24] See, e.g., *Ontario Health Coalition and Advocacy Centre for the Elderly v. Ontario,* 2025 ONSC 415 at para. 213; *Mathur v. Ontario,* 2020 ONSC 6918 (CanLII) at paras. 125-142; *Mathur v. Ontario*, 2024 ONCA 762 (CanLII) at para. 49.
[25] See, e.g., *Barbra Schlifer Commemorative Clinic v. Canada*, 2014 ONSC 5140; *Ontario Health Coalition and Advocacy Centre for the Elderly v Ontario,* 2025 ONSC 415.
[26] *Toronto (City)*, at paras. 153–155.

16. Specifically, the Court should ask itself the following questions:

1. Has the impugned legislation or government action negatively impacted the applicant's right to life, liberty, or security of the person?

2. Is the state reasonably accountable for the negative impact?

3. Has there been a violation of the principles of fundamental justice?

4. Can the negative impact be justified under s.1 of the *Charter*?[27]

17. The final section of this factum identifies principles that apply to this Court's determination of these questions in this case. Throughout, the "foundational principle" of *Charter* interpretation applies: *Charter* rights must be interpreted in a progressive way that acknowledges s. 7's evolution from a set of "procedural guarantees" to a "bulwark against indiscriminate or overbroad state action."[28]

a) Question 1: The determination of "negative impact" invokes the twin rationales underlying *Bedford*'s definition of causation

18. The first question in the s. 7 analysis is whether the law "negatively impacts" life, liberty or security of the person – i.e., physical or psychological integrity, or personal autonomy.[29] There must be, as Schabas J. found in this case, a "sufficient causal connection between the state-caused effect and the prejudice." The state action does not need to be the only or the dominant cause of the prejudice.[30]

19. Built into *Bedford*'s broad definition of state causation is the complementary principle that choice does not vitiate causation, because (a) the choice to engage in an activity (e.g., biking to work) does not change the fact that the government made that activity more dangerous; and (b) not all choice is meaningful (e.g., the "choice" to bike in mixed traffic on main roads is not meaningful if biking on

---

[27] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, at para. 47; *Canada (Attorney General)* v. *Bedford*, 2013 SCC 72 at paras. 124-127 [*Bedford*]
[28] *Drover v. Canada (Attorney General)*, 2025 ONCA 468 at paras. 145-147; *Hunter v. Southam,* [1984] 2 S.C.R. 145 at p. 156.
[29] *Bedford*, at para. 58.
[30] *Bedford*, at paras. 75-76.

secondary roads adds hours to a commute, and if the rider cannot afford a car).[31] Underlying both rationales is the implicit recognition of a practical reality: it is almost always possible to identify harmful external forces – dangerous third parties like pimps and motorists, or systemic pressures like poverty and climate change – that the state can label a more 'immediate' contributing cause of harm. This practical reality should not immunize the state from s. 7 scrutiny.

b) Question 2: Is the state accountable? Rejecting the "administration of justice threshold" in favour of a purposive approach to accountability

20. *Charter* analyses are contextual. The court's proper role "will vary according to the right at issue and the context of each case" and "cannot be reduced to a simple test or formula."[32] In the s. 7 context, a contextual, purposive approach to state accountability requires this Court to acknowledge two principles.

21. First, the argument that state programs are optional offerings (and can therefore be modified or withdrawn without violating the *Charter*) cannot apply to programs that are crucial to society's functioning and justify the state's very existence, such as policing, the administration of criminal justice, and the development of transport infrastructure.[33]

22. Second, the *Drover* dissent's proposed "administration of justice threshold" is no bar to state accountability.[34] This Court should reject the Appellants' invitation to circumscribe the s. 7 right to life and security of the person by applying this administration of justice threshold. The Appellants' submission that these rights are only engaged by "coercive" state measures like penal sanctions, civil committal, and child apprehension is misplaced.[35] It misrepresents both the *ratio* in *Drover* and the authority (*Blencoe*)

---

[31] *Bedford* at paras. 86-92**;** *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, at paras. 97, 104 [*PHS*]; *The Regional Municipality of Waterloo v Persons Unknown and to be Ascertained*, 2023 ONSC 670 at paras. 106-107. On this point, the Centre adopts the submissions of the Intervener Canadian Public Health Association on the relevance of s. 15 equality principles to the s. 7 analysis.
[32] *Doucet-Boudreau*, at para. 36.
[33] On this point, the Centre adopts the Intervener Greenpeace Canada's submissions about the relevance of the exclusivity principle and the character of state action in this case.
[34] On this point, the Centre adopts and expands on the Respondents' comments about the proper scope of *Drover* (Factum of the Respondents, at para. 38).
[35] Factum of the Appellants, at paras. 25, 27, 31, 34.

on which the Appellants purport to rely.[36]

23. In *Drover*, Gomery J.A. for the majority delivered a broad and principled rejection of the idea that an "administration of justice threshold" limits in any way the ambit of s. 7. She correctly observed that the scope of s. 7 has been unsettled for decades and that recent s. 7 jurisprudence has effectively "dropped" this idea from the justiciability analysis.[37] With respect to security of the person claims, she rejected the contention that *G. (J.)* bound her to apply any such threshold. The aspect of *G.(J.)* that might have required this threshold had been overruled by *Gosselin* and rested "on eroded legal foundations." On a fresh analysis, Gomery J.A. held that "an administration of justice threshold is out of step with contemporary s. 7 jurisprudence binding on [the] court, and serves no real purpose except to debar otherwise viable s. 7 claims."[38] In so holding, she explicitly relied on *Bedford* – a security of the person case – to support her rejection of the administration of justice threshold.[39] Her analysis was not restricted to the "liberty" context.

24. In *Blencoe,* the Court observed simply that the ambit of s. 7 extended to "at least" non-criminal contexts involving the operation of the justice system (i.e., it left open the possibility of expansion)[40]; the word "coercive" appears nowhere in that judgment. The Appellants appear to rely exclusively on the dissent in *Drover* for this terminology, and on overruled reasoning from the *Prostitution Reference* and *Morgentaler* for their legal propositions.[41]

25. If this Court affirms Schabas J.'s finding that the impugned legislation is both harmful and arbitrary, then the equities of the case, the principle of exclusivity, and the rule that no right can exist without a

---

[36] *Blencoe*, at para. 47.
[37] *Drover*, at paras. 148-166.
[38] *Drover*, at paras. 176, 182-185.
[39] *Drover*, at para. 181.
[40] *Blencoe*, at para. 46, citing *G.(J.)*, at para. 66.
[41] *Drover*, at para. 99; *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code*, [1990] 1 S.C.R. 1123; *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

remedy all require this Court to interpret s. 7 in a manner that ensures a remedy is available.[42] Rights carry with them enforceable duties and the functioning of the *Charter* presumes that the state will fund effective supervisory machinery to ensure the public spaces they control do not become hotbeds of non-compliance (e.g. by protecting people in custody against cruel and unusual punishment or schoolchildren from corporal punishment).[43] The very fact that the Appellants' proposed conception of the s. 7 right would give the courts no recourse to correct an arbitrary and harmful law is a sign that it is overly narrow.

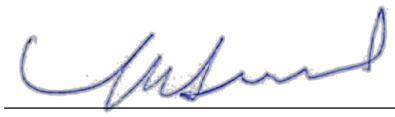
c) Questions 3 and 4: Government Accountability is Circumscribed by the Principles of Fundamental Justice and Reasonable Limits Under Section 1

26. The principles of fundamental justice under s. 7 and the reasonable limits under s. 1 contribute to the analysis as limiting factors that will prevent limitless state obligations. This draws on Arbour J.'s suggestion in *Gosselin* that the justification endeavor under s. 1 requires the state to take an active role in balancing competing rights. Limiting s. 7 to the recognition of purely negative rights detracts from the purpose of s. 1.[44] If the argument for the dichotomy is that it is a necessary threshold to maintain the government's ability to make policy decisions, there are existing mechanisms in the processes of constitutional analysis to address that.

PART IV – ORDER REQUESTED

27. The Asper Centre takes no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of January, 2026.



Megan Savard and Cheryl Milne
Counsel for the Intervener
David Asper Centre for Constitutional Rights

---

[42] *Doucet-Boudreau*, at para. 25.
[43] Stephen Holmes and Cass R. Sunstein, The Cost of Rights: Why Liberty Depends on Taxes (New York: Norton and Sons, 1999) at p. 219.
[44] *Gosselin*, at para. 356.

SCHEDULE A: AUTHORITIES CITED

Amartya Sen, The Idea of Justice (Harvard University Press, 2009)

Baier v. Alberta, 2007 SCC 31

Barbra Schlifer Commemorative Clinic v. Canada, 2014 ONSC 5140

Blencoe v. British Columbia (Human Rights Commission), 2000 SCC 44

Canada (Attorney General) v. Bedford, 2013 SCC 72

Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44

Canada (Justice) v. Khadr, 2008 SCC 28

Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9

Delisle v. Canada (Deputy Attorney General), [1999] 2 S.C.R. 989

Doucet-Boudreau v. Nova Scotia (Minister of Education), 2003 SCC 62

Drover v. Canada (Attorney General), 2025 ONCA 468

Dunmore v. Ontario (Attorney General), 2001 SCC 94

Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624

Gosselin v. Quebec (Attorney General), 2002 SCC 84

Haig v. Canada, 1993 2 S.C.R. 955.

Hunter v. Southam, [1984] 2 S.C.R. 145.

Henry Shue, Basic Rights: Subsistence, Affluence, & U.S. Foreign Policy, 40th anniversary ed. (Princeton University Press, 2021)

Mahe v. Alberta, [1990] 1 S.C.R. 342.

Mathur v. Ontario, 2020 ONSC 6918 (CanLII)

Mathur v. Ontario, 2024 ONCA 762 (CanLII)

New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46

Nikita Tafazoli, "Recovering from the Inequality Virus: Gimme Shelter or Protection from Discrimination for Lack Thereof" (2024) 29 Appeal 123

Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43

Ontario (Attorney General) v. Fraser, 2011 SCC 20

Ontario Health Coalition and Advocacy Centre for the Elderly v. Ontario, 2025 ONSC 415

Patrick Macklem, "Aboriginal Rights and State Obligations" (1997) 36 Alta. L. Rev. 97

R. v. Bartle, [1994] 3 S.C.R. 173

R. v. Big M Drug Mart, [1985] 1 S.C.R. 295

R. v. Brydges, [1990] 1 S.C.R. 190

R. v. Jordan, 2016 SCC 27.

R. v. Morgentaler, [1988] 1 S.C.R. 30

R. v. Rowbotham, [1994] 2 S.C.R. 463

R. v. Stinchcombe, [1991] 3 SCR 326

R. v. Tran, [1994] 2 S.C.R. 951

Reference re ss. 193 and 195.1(1)(c) of the Criminal Code, [1990] 1 S.C.R. 1123

Sandra Fredman, "Human Rights Transformed: Positive Duties and Positive Rights" (2006) 38 Oxford Leg. Studies Research Paper 498

Schachter v. Canada, 1992 CanLII 74 (S.C.C.)

Seth Kreimer, "Allocational Sanctions: The Problem of Negative Rights in a Positive State" (1984) 132 U. Pa. L. Rev. 1293

Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec, 2024 SCC 13

Stephen Holmes and Cass R. Sunstein, The Cost of Rights: Why Liberty Depends on Taxes (New York: Norton and Sons, 1999)

The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained, 2023 ONSC 670

Toronto (City) v. Ontario (Attorney General), 2021 SCC 34

Vriend v. Alberta, [1998] 1 S.C.R. 493

SCHEDULE "B"

RELEVANT STATUTES

Nil

COA-25-CV-1047

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO and MINISTER OF TRANSPORTATION

Appellants

-and-

CYCLE TORONTO, EVA STRANGER-ROSS, and NARADA KIONDO

Respondents

and-

DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN PUBLIC HEALTH ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, FOR OUR KIDS TORONTO, and GREENPEACE CANADA

Interveners

FACTUM OF THE INTERVENER DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

SAVARDS LLP
400-26 Soho Street,
Toronto, ON M5T 1Z7

Megan Savard (LSO# 587851)
Tel: (416) 849-9205
Email: megan@savards.ca

UNIVERSITY OF TORONTO
39 Queen's Park Crescent East
Toronto, ON M5S 2C3

Cheryl Milne (LSO #27022C)
Tel: (416) 978-0092
Email: cheryl.milne@utoronto.ca

Counsel for the David Asper Centre for Constitutional Rights