



Supreme Court of Canada

2007 Year in Review

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This special year-end review is a complete legal snapshot of *all* the law from the S.C.C. in 2007, and includes:

- Appeal Judgments
- Leaves to Appeal granted
- Oral judgments

Each Appeal judgment (and each Leave to Appeal granted) is arranged in alphabetical order by area of law – that way you can more easily find the area of law you’re litigating/advising/supervising, or more easily find any particular case. This year we’ve also included direct quotes from judgments or headnotes in some cases if they provide a useful summary for the reader.

Appeal Judgments

Access to Justice: Provincial Tax on Legal Services

A.G. B.C. v. Dugald E. Christie, et al. (B.C.)(31324) May 25, 2007

B.C.’s 7 % tax on legal services, ostensibly to fund legal aid, is constitutionally valid.

scc.lexum.umontreal.ca/en/2007/2007scc21/2007scc21.html

Charter: Equality

Canada (A.G.) v. Hislop (Ont.)(30755) March 1, 2007

Sections 44(1.1) and 72(2) of the Canada Pension Plan are unconstitutional, but ss. 60(2) and 72(1) do not infringe s. 15(1). Sections 44(1.1) and 72(2) are struck down, leaving a same-sex surviving spouse entitled to survivor benefits subject only to the 12-month cap on arrears and the limitation on estate claims (as are all benefits claimants).

scc.lexum.umontreal.ca/en/2007/2007scc10/2007scc10.html

Charter: Freedom of Expression and Promotion of Tobacco

A.G. Canada v. JTI Macdonald Corp. (Que.)(30611) June 28, 2007

The federal *Tobacco Act* and the *Tobacco Products Information Regulations* are constitutional.

scc.lexum.umontreal.ca/en/2007/2007scc30/2007scc30.html

Charter: Freedom of Expression and School Board Elections

Baier v. Alberta (Alta.)(31526) June 29, 2007

Legislation limiting the ability of school employees to run for school election and serve as school trustees in Alberta is constitutional, not infringing ss. 2(b) and 15(1).

scc.lexum.umontreal.ca/en/2006/2006scc38/2006scc38.html

Charter: Right to Bargain Collectively

Health Services Bargaining Assn. v. B.C. (B.C.)(30554) June 8, 2007

Sections 6(2), 6(4) and 9 of the B.C. *Health and Social Services Delivery Improvement Act* are unconstitutional, but judgment is suspended for one year.

scc.lexum.umontreal.ca/en/2007/2007scc27/2007scc27.html

Charter: Search and Seizure Outside Canada

R. v. Hape (Ont.)(31125) June 7, 2007

Section 8 does not apply to searches and seizures conducted by police outside Canada (see paragraph 113 of the judgment as to methodology).

scc.lexum.umontreal.ca/en/2007/2007scc26/2007scc26.html

Civil Procedure: Advance Costs*Little Sisters v. Canada* (B.C.)(30894) January 19, 2007

A bookstore was frustrated after litigation with Customs and enlarged the scope of prior litigation to pursue a broad inquiry into Customs' practices. They applied for advance costs. The S.C.C. said no.

scc.lexum.umontreal.ca/en/2007/2007scc2/2007scc2.html**Constitutional Law: Division of Powers***A.G. B. C. v. Lafarge Canada Inc., et al.* (B.C.)(30317) May 31, 2007

Waterfront lands owned by the Vancouver Port Authority, a federal undertaking constituted pursuant to the *Marine Act*, are "public property" within the meaning of s. 91(1A) of the *Constitution Act, 1867*.

scc.lexum.umontreal.ca/en/2007/2007scc23/2007scc23.html**Constitutional Law: (In)Validity of Security Certificates***Charkaoui v. Canada (Citizenship and Immigration)*(Fed.) (30762, 30929, 31178) February 23, 2007

Chief Justice McLachlin wrote (at pp. 62–63): "The scheme set up under Division 9 of Part 1 of the IRPA [*Immigration and Refugee Protection Act*] suffers from two defects that are inconsistent with the *Charter*... The first is that s. 78(g) allows for the use of evidence that is never disclosed to the named person without providing adequate measures to compensate for this non-disclosure and the constitutional problems it causes... The second defect is found in s. 84(2) of the IRPA, which denies a prompt hearing to foreign nationals by imposing a 120-day embargo, after confirmation of the certificate, on applications for release... I conclude that the appropriate remedy is to strike s. 84(2) as well as to read foreign nationals into s. 83 and to strike the words 'until a determination is made under subsection 80(1)' from s. 83(2)."

scc.lexum.umontreal.ca/en/2007/2007scc9/2007scc9.html**Constitutional Law: Maritime Drinkin' and Fightin'; No, Thinkin' and Writin'***Kingstreet Investments Ltd. v. New Brunswick* (N.B.)(31057) January 11, 2007

Nightclubs in New Brunswick purchased alcohol from provincial liquor stores, paying a user charge, which was held to be constitutionally invalid, and taxes reimbursed.

scc.lexum.umontreal.ca/en/2007/2007scc1/2007scc1.html**Contracts: Joint Venture Agreements***Jedfro Investments (U.S.A.) Ltd. v. Jacyk* (Ont.)(31561) December 20, 2007

This case concerned a joint venture to hold and develop a property interest near Denver, Colorado. The S.C.C. concluded that the joint venture agreement remained in effect and was not breached (by the Respondents), and that the

Respondents were not liable for the monies advanced. The S.C.C. held:

- that the investment made, was just that, an investment, and if the investment was lost, it need not be returned
- the investment should not be returned on the basis of unjust enrichment.

scc.lexum.umontreal.ca/en/2007/2007scc55/2007scc55.html**Contracts: Tenders***Double N Earthmovers Ltd. v. Edmonton (City)* (Alta.)(30915) January 25, 2007

A call for tenders for equipment and operators stipulated equipment be made in 1980 or later. The contract went to Sureway. Sureway indicated that it would supply a 1979 unit. The matter was not pursued further. A rival bidder claimed breach of duties owed and sued for profits. The S.C.C. dismissed the action.

scc.lexum.umontreal.ca/en/2007/2007scc3/2007scc3.html**Criminal Law: Admissibility***R. v. Couture* (B.C.)(30975) June 15, 2007

Statements by a spouse are inadmissible.

scc.lexum.umontreal.ca/en/2007/2007scc28/2007scc28.html**Criminal Law: Confessions***R. v. Spencer* (B.C.) (31365) March 8, 2007

The trial judge's ruling on voluntariness is affirmed.

scc.lexum.umontreal.ca/en/2007/2007scc11/2007scc11.html**Criminal Law: Impaired, Appellate Intervention***R. v. Rhyason* (Alta.)(31772) July 27, 2007

The trial judge held that the police officer had reasonable and probable grounds to demand a breath sample. The S.C.C. wrote "This Court has repeatedly observed that a trial judge's reasons should be read as a whole, not held to some 'abstract standard of perfection.'"

scc.lexum.umontreal.ca/en/2007/2007scc39/2007scc39.html**Criminal Law/Extradition: Informer Privilege***Named Person v. Vancouver Sun* (B.C.)(30963) October 11, 2007

The S.C.C. gave a detailed structure for the procedure to be followed during *in camera* portions of extradition proceedings where there is a confidential police informer, which detailed structure is set out in the judgment at pages 19–26.

scc.lexum.umontreal.ca/en/2007/2007scc43/2007scc43.html

Criminal Law: Jury Instructions Re Intoxication

Daley v. R. (Sask.)(31616) December 13, 2007

The accused was charged with homicide of his common law wife. At trial he testified that due to his alcohol consumption on the night in question, he was unable to remember what happened after he arrived home. The jury found him guilty of second degree murder, and this was upheld by the C.A. and the S.C.C. At paragraphs 27–53, Justice Bastarache dealt with the following: legal principles of jury charges, trial judges' instructions on the relevant legal issues where intoxication is a defence, the development of the defence of voluntary intoxication, legally relevant degrees of intoxication, when trial judges must instruct on intoxication, the elements of an adequate jury charge on intoxication.

scc.lexum.umontreal.ca/en/2007/2007scc53/2007scc53.html

Criminal Law: Police Discretion; Obstructing Justice

R. v. Beaudry (Que.)(31195) January 31, 2007

A police officer was charged with obstructing justice for failing to gather the evidence needed to lay criminal charges against another police officer, whom he had reasonable grounds to believe had been driving while impaired. The S.C.C. upheld the conviction.

scc.lexum.umontreal.ca/en/2007/2007scc5/2007scc5.html

Criminal Law: Post-Hypnosis Evidence; Similar Fact Evidence

R. v. Trochym (Ont.)(30717) February 1, 2007

Post-hypnosis testimony and similar fact evidence was admitted by the trial judge, but jurors were not informed that a witness had been hypnotized, nor were they given expert evidence on the reliability of post-hypnosis testimony. Conviction was set aside and a new trial ordered.

scc.lexum.umontreal.ca/en/2007/2007scc6/2007scc6.html

Criminal Law: Post-Trial Expert Fresh Evidence

R. v. Trotta (Ont.)(30987) November 8, 2007

Because of expert evidence by pathologist Charles Smith, both appellants were entitled to a new trial.

scc.lexum.umontreal.ca/en/2007/2007scc49/2007scc49.html

Criminal Law: Presence at Scene

R. v. Jackson (Ont.)(31847) December 6, 2007

The accused was arrested with four others at a marijuana "plantation" in a remote area of a forest and was convicted of illegal production of marijuana. The C.A. upheld the conviction, as did the S.C.C.

scc.lexum.umontreal.ca/en/2007/2007scc52/2007scc52.html

Criminal Law: Right to Silence; Confessions

R. v. Singh (B.C.)(31558) November 1, 2007

This 5:4 decision held that s. 7 of the *Charter* cannot expand the existing right to silence.

scc.lexum.umontreal.ca/en/2007/2007scc48/2007scc48.html

Criminal Law: Roadblocks

R. v. Clayton (Ont.)(30943) July 6, 2007

Where the police receive a 911 "gun call" identifying vehicles in front of a club, the police can stop cars in the area.

scc.lexum.umontreal.ca/en/2007/2007scc32/2007scc32.html

Criminal Law: Sufficiency of Judgments

R. v. Teskey (Alta.)(31544) June 7, 2007

Trial judges cannot give reasons essentially saying the Crown has proved the essential elements of the offence beyond a reasonable doubt.

scc.lexum.umontreal.ca/en/2007/2007scc25/2007scc25.html

Criminal Law: Using Firearm in Commission of Offence

R. v. Steele (B.C.)(31447) July 20, 2007

Four individuals broke into what they thought was a marijuana grow operation, hoping no one was home, and instead broke into a residence adjacent to what had once been a marijuana grow operation. The only issue was whether they had used a firearm while committing the break and enter. The trial judge, C.A., and S.C.C. all held yes.

scc.lexum.umontreal.ca/en/2007/2007scc36/2007scc36.html

Duty to Accommodate: Collective Agreement

McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal (Que.)(30941) January 26, 2007

B took a leave of absence from her job at a hospital for health reasons, and was off work for two years. She tried to return to work, was involved in a motor vehicle accident, and was terminated. The union's grievance was dismissed by the arbitrator, as was the application for judicial review.

scc.lexum.umontreal.ca/en/2007/2007scc4/2007scc4.html

Family Law: Enforcement of Orders

Dickie v. Dickie (Ont.) (31550) February 9, 2007

Mr. Dickie was found in contempt for failing to comply with court orders that support obligations be secured by an irrevocable letter of credit and failing to post security for costs. The contempt order was upheld.

Family Law: Jewish Divorce*Bruker v. Marcovitz* (Que.)(31212) December 14, 2007

In a consent to corollary relief a husband agreed to provide his spouse with a *get* (Jewish religious divorce). When he refused, the spouse sued and obtained damages. The S.C.C. confirmed that the obligation was justiciable, met the requirements of Québec law, and did not unjustifiably violate the husband's *Charter* religious rights.

scc.lexum.umontreal.ca/en/2007/2007scc54/2007scc54.html**Insurance: Use or Operation of a Motor Vehicle***Lumbermens Mutual Casualty Co. v. Herbison* (Ont.)(31079) October 19, 2007

A negligent shooting after someone got out of his motor vehicle was “an act independent of the ownership use or operation of” that motor vehicle, and therefore not claimable under the insurance policy for that vehicle.

scc.lexum.umontreal.ca/en/2007/2007scc47/2007scc47.html**Insurance: Too Far from the Car***Citadel General Assurance Co. v. Vytingam* (Ont.)(31083) October 19, 2007

A vehicle used to transport rocks thrown from a bridge on top of passing motorists was not something that could be claimed under the insurance policy for that vehicle, on the basis that negligence/criminal activity did not arise “directly or indirectly from the use or operation of” the motor vehicle as a motor vehicle.

scc.lexum.umontreal.ca/en/2007/2007scc46/2007scc46.html**Intellectual Property: Copyright Infringement***Euro-Excellence Inc. v. Kraft Canada Inc.* (Fed.)(31327) July 26, 2007

Justice Rothstein wrote for the majority as follows: “...In my view, the exclusive licensee’s property interest in the copyright is limited. An exclusive licence is not a complete assignment of copyright. The owner-licensor retains a residual ownership interest in the copyright. The owner-licensor’s residual ownership interest precludes it from being liable for copyright infringement. An owner-licensor is liable to its exclusive licensee for breach of the licensing agreement but not for copyright infringement.”

scc.lexum.umontreal.ca/en/2007/2007scc37/2007scc37.html**Interjurisdictional Immunity: Banking and Insurance***Canadian Western Bank, et al. v. Alberta* (Alta.)(30823) May 31, 2007

Alberta can amend its *Insurance Act* to make federally chartered banks subject to a provincial licensing scheme governing the promotion of insurance products.

scc.lexum.umontreal.ca/en/2007/2007scc22/2007scc22.html**Jurisdiction of Quebec Courts: Injunction with Extraterritorial Effects***Impulsora Turistica Occidente, et al. v. Transat Tours, et al.* (Que.)(31456) May 25, 2007

The S.C.C. adopted by quotation a portion of the judgment of Dussault J.A. of the Québec C.A. holding that trial judges must weigh 10 criteria developed by the courts.

scc.lexum.umontreal.ca/en/2007/2007scc20/2007scc20.html**Lawyers: Conflict of Interest***Davis & Company, et al. v. 3464920 Canada Inc., et al.* (B.C.)(30838) June 1, 2007

This is a key case for all of us lawyers, so here are some direct quotes from the S.C.C. reasons (by Binnie, J.): “A fundamental duty of a lawyer is to act in the best interest of his or her client to the exclusion of all other adverse interests, except those duly disclosed by the lawyer and willingly accepted by the client... When a lawyer is retained by a client, the scope of the retainer is governed by contract. It is for the parties to determine how many, or how few, services the lawyer is to perform, and other contractual terms of the engagement. The solicitor-client relationship thus created is, however, overlaid with certain fiduciary responsibilities, which are imposed as a matter of law. The Davis factum puts it well: ‘The source of the duty is not the retainer itself, but all the circumstances (including the retainer) creating a relationship of trust and confidence from which flow obligations of loyalty and transparency.’ Not every breach of the contract of retainer is a breach of a fiduciary duty. On the other hand, fiduciary duties provide a framework within which the lawyer performs the work and may include obligations that go beyond what the parties expressly bargained for. The foundation of this branch of the law is the need to protect the integrity of the administration of justice.”

scc.lexum.umontreal.ca/en/2007/2007scc24/2007scc24.html**Maritime Law: “Physical Nexus” or “Identifiability” Approach***Phoenix Bulk Carriers v. Kremikovtzi* (Fed.)(31347) March 16, 2007

In the context of the arrest of a ship’s cargo, the narrow “physical nexus” interpretation of s. 43(2) [of the *Federal Courts Act*] should be rejected, in favour of an “identifiability” test that asks whether the cargo is the cargo designated in the contract alleged to be breached.

scc.lexum.umontreal.ca/en/2007/2007scc13/2007scc13.html**Municipal Law: Public Meetings***London (City) v. RSJ Holdings Inc.* (Ont.)(31300) June 21, 2007

Municipal council and committee meetings must be held in public.

scc.lexum.umontreal.ca/en/2007/2007scc29/2007scc29.html

Municipal Police: Conflicting Legislation

Lévis (City) v. Fraternité des policiers de Lévis Inc. (Que.)(31103)
March 22, 2007

In the context of a police officer's dismissal, the S.C.C. discussed three main issues: what is the proper standard of review; is s. 116(6) of the *Cities and Towns Act* in conflict with s. 119(2) of the *Police Act*; how should that conflict be resolved.

scc.lexum.umontreal.ca/en/2007/2007scc14/2007scc14.html

Québec Class Actions: Arbitration

Dell Computer Corp. v. Union des consommateurs (Que.)(31067)
July 13, 2007

An arbitration clause in the terms and conditions of sale is enforceable and overrides a class action.

scc.lexum.umontreal.ca/en/2007/2007scc34/2007scc34.html

Quebec Class Actions: Arbitration

Rogers Wireless Inc. v. Muroff (Que.)(31383) July 13, 2007

An arbitration clause in the terms and conditions of sale is enforceable and overrides a class action.

scc.lexum.umontreal.ca/en/2007/2007scc35/2007scc35.html

Railways: Duty to Accommodate Passengers with Disabilities

Council of Canadians with Disabilities v. Via Rail (Fed.)(30909)
March 23, 2007

The S.C.C. held that Via Rail has a duty to accommodate passengers with disabilities.

scc.lexum.umontreal.ca/en/2007/2007scc15/2007scc15.html

Securities: Prospectus Information

Kerr v. Danier Leather Inc. (Ont.)(31321) October 12, 2007

This case deals with the continuous disclosure obligations of an issuer selling its shares to the public by a prospectus (in this case governed by the Ontario *Securities Act*). Three key paragraphs by Justice Binnie summarize the decision: "...In summary, when (as here) a prospectus (or an amendment) contains no misrepresentation *on the date the document is filed*, information amounting to material *facts* (but not material *changes*) that arises subsequently cannot support an action under s. 130(1)... In the case at bar, however, the trial judge found that the intra-quarterly results were *not* a material change...I agree with the trial judge in this regard...The respondents invoke the Business Judgment Rule. The Court of Appeal held that the trial judge had paid insufficient deference to management's expertise in forecasting sales based on years of hands-on retail experience... On the broader legal proposition, however, I agree with the appellants that while forecasting is a matter of business judgment, disclosure is a matter of legal obligation."

scc.lexum.umontreal.ca/en/2007/2007scc44/2007scc44.html

Tax: Charities

A.Y.S.A. Amateur Youth Soccer Association v. Canada
(Revenue Agency) (Fed.)(31476) October 5, 2007

Only amateur athletic associations that operate on a nationwide basis are entitled to federal charity-like treatment.

scc.lexum.umontreal.ca/en/2007/2007scc42/2007scc42.html

Tax: Judicial Review

Canada v. Addison & Leyen Ltd. (Fed.)(31451) July 12, 2007

Section 18.5 of the *Federal Courts Act* is available to a taxpayer to challenge a Revenue Canada assessment under s. 160 of the *Income Tax Act*, but judicial review is not available on the facts of this case.

scc.lexum.umontreal.ca/en/2007/2007scc33/2007scc33.html

Tax: Partner Retiring from Partnership

Dunne v. Revenue Quebec (Que.)(31180) May 10, 2007

Revenue Quebec's tax assessment of retirement benefits from a partnership received by a resident of Ontario is constitutionally valid.

scc.lexum.umontreal.ca/en/2007/2007scc19/2007scc19.html

Temporary Ban on Publication of Election Results

R. v. Bryan (B.C.)(31052) March 15, 2007

Section 329 of the *Canada Elections Act*, which prohibits the transmission of election results in one electoral district to another electoral district before the close of all polling stations in that other district, is constitutional.

scc.lexum.umontreal.ca/en/2007/2007scc12/2007scc12.html

Torts: Duty of Care

Syl Apps Secure Treatment Centre v. B.D. (Ont.)(31404)
July 27, 2007

In the child protection context, the S.C.C. held that there is no tort for breach of a court order, on the basis that there is no "proximity" to the family of a child subject to a child protection order.

scc.lexum.umontreal.ca/en/2007/2007scc38/2007scc38.html

Torts: Duty of Care; Foreseeability; Causation

Resurface Corp. v. Hanke (Alta.)(31271) February 8, 2007

The operator of an ice-resurfacing machine was burned when hot water overflowed the gasoline tank, releasing vapourized gasoline causing an explosion and fire. H sued the manufacturer and distributor, alleging the tanks were similar in appearance and confusingly placed close together. The trial judge dismissed the action, which the S.C.C. upheld.

scc.lexum.umontreal.ca/en/2007/2007scc7/2007scc7.html

Torts: Negligent Investigation

Hill v. Hamilton-Wentworth Regional Police Services Board (Ont.)(31227) October 4, 2007

The tort of “negligent investigation” is available in Canadian law, and in this particular case, no negligence held on behalf of the police.

scc.lexum.umontreal.ca/en/2007/2007scc41/2007scc41.html

Wills and Estates: Presumptions of Resulting Trust and Advancement

Madsen Estate v. Saylor (Ont.)(31262) May 3, 2007

The trial judge was incorrect in applying the law of resulting trust and should have applied the presumption of advancement – but added (the C.A. added) the judge was not

required to consider either presumption because the intention of the father at the time of the transfer was demonstrated on the evidence. The SCC dismissed the appeal.

scc.lexum.umontreal.ca/en/2007/2007scc18/2007scc18.html

Wills and Estates: Presumptions of Resulting Trust and Advancement

Pecore v. Pecore (Ont.)(31202) May 3, 2007

The trial judge is upheld in concluding that the evidence failed to rebut the presumption of advancement, but also the presumption is only relevant in the absence of evidence of actual intention or where the evidence is evenly balanced.

scc.lexum.umontreal.ca/en/2007/2007scc17/2007scc17.html

Leaves to Appeal Granted

Aboriginal Law: Oil and Gas Royalties

Chief John Ermineskin, et al. v. R., et al. (Fed.)(31875) August 30, 2007

Is the federal government liable to pay oil and gas royalties on the basis of treaties, *Indian Act*, or Orders-in-Council. Does s. 15 of the *Charter* protect only “personal rights” as distinct from collective or communal rights of First Nation members.

Aboriginal Law: Oil and Gas Royalties

Chief Victor Buffalo, et al. v. R., et al. (Fed.)(31869) August 30, 2007

Is the federal government liable to pay oil and gas royalties on the basis of treaties; *Indian Act*, or Orders-in-Council. Does s. 15 of the *Charter* protect only “personal rights” as distinct from collective or communal rights of First Nation members.

Aboriginal Law: Right to a Trial

A.G. Canada v. Rose Lameman, et al. (Alta.)(31871) June 21, 2007

The Respondents are former members of the Papaschase Indian Band (the Respondent is the great granddaughter of Chief Papaschase) and brought an action on the following bases: their reserve was improperly surrendered, breach of fiduciary duty, malice, bad faith, and fraud. In a summary judgment application, AG Canada was successful in dismissing the claim but the descendants were successful at the C.A. Do they have a right to a trial.

Administrative Law: Permits and Licences

620 Connaught Ltd., et al. v. A.G. Canada, et al. (Fed.)(31661) February 1, 2007

Did the C.A. err by: reversing a finding of fact which had not been appealed and without hearing argument; denying a fair comment defence by reversing a finding that the impugned words were comment; and misapplying the principles governing the distinction between comment and statements of fact.

Administrative Law: Procedural Fairness

Société de l'assurance automobile du Québec v. Yvan Cyr, et al. (Que.)(31657) January 25, 2007

Do principles of procedural fairness apply in contractual dealings between a public authority and a person appointed to act on behalf of that authority are actions of a Crown corporation subject to procedural fairness when exercising purely contractual rights of “resiliation.”

Banking

B.M.P. Global Distribution Inc. v. Scotiabank (B.C.)(31930) October 25, 2007

What principles should govern in a contest between a collecting bank and a drawee bank with regard to forged cheques.

Charter: Access to Information

Ministry of Public Safety and Security (Formerly the Solicitor General), et al. v. Criminal Lawyers' Association (Ont.)(32172) November 29, 2007

The case involves s. 23 of the Ontario *Freedom of Information and Protection of Privacy Act*. Issues include whether s. 2(b) of

the *Charter* includes a right to compel government to disclose information, and whether the *Charter* requires that government documents protected by solicitor-client privilege be subject to a balancing test on a case-by-case basis to determine if they will be disclosed.

Charter: Disclosure of Information Collected by Canadian Authorities

Minister of Justice, et al. v. Khadr (Fed.)(32147) October 25, 2007

What principles govern the disclosure of information collected by Canadian authorities, and does section 7 of the *Charter* apply.

Charter: Freedom of Expression

B.C. Transit v. Canadian Federation of Students, et al. (B.C.)(31845) May 3, 2007

Can advertisements of a political nature be placed on the outside of buses.

Charter: Freedom of Religion; Freedom to Drive

R. v. Hutterian Brethren of Wilson Colony and Hutterian Brethren Church of Wilson Colony (Alta.)(32186) November 29, 2007

Issues include whether section 3 of Alberta Regulation 137/2003 (that implements a mandatory photo requirement for all driver licences) is an unjustified infringement of ss. 2(a) and 15(1) of the *Charter*.

Charter: Right to Remain Silent

Singh v. R. (B.C.) (31558) January 11, 2007

Each time an accused raised his right to silence during a police interview the officer said he had a duty or desire to place the evidence before the accused and continued. Should the statements go in.

Charter: Security Certificates

Charkaoui v. Minister of Citizenship (Fed.)(31597) March 15, 2007

Is a review, pursuant to a security certificate, tainted by the destruction of sources of evidence, and so should be quashed.

Charter: Sentencing

M. E. F. v. R. (Alta.)(31692) February 1, 2007

There is a publication ban in this case, where the main issue is: does Canadian law recognize a stand-alone “constitutional exemption” from mandatory minimum sentences as a remedy when the sentence is “cruel and unusual punishment.”

Civil Procedure: Choice of Forum

Teck Cominco Metals Ltd., et al. v. Lombard General Insurance Company of Canada, et al. (B.C.)(32116) November 29, 2007

What is the role of comity in the application of the principle of *forum non conveniens*.

Civil Procedure: Right to Remain Silent

Suzette F. Juman v. Jade Doucette, et al. (B.C.)(31590) January 25, 2007

Does the implied undertaking of confidentiality prevent discovery evidence being disclosed to police without consent or court order. Can police use investigative powers to obtain discovery evidence otherwise protected. Are s. 7 *Charter* rights engaged if evidence is released.

Civil Procedure: When Is a Safety Report Privileged

Sikorsky v. Hayes Helilog (B.C.)(31736) February 22, 2007

Is a crash report prepared by the Canadian Transportation Accident Investigation and Safety Board privileged.

Class Actions

A.L. v. Ontario (Ont.)(31825) May 10, 2007

Can there be a class action against a province where services for profoundly disabled children are reduced for budgetary reasons.

Class Actions in Quebec

Domfer v. Comité d'environnement de Ville-Émard, et al. (Que.)(31841) May 3, 2007

Should a class action have been dismissed on the basis that the health of individuals and the existence of property were not at stake, and that the target company had made serious efforts in good faith to improve the situation.

Class Actions in Quebec

Marcotte v. City of Longueuil (Que.)(32213) December 13, 2007

Can a class action in Québec be used to challenge municipal tax rates after amalgamation.

Class Actions in Quebec

Usinage Pouliot Inc. v. City of Longueuil (Que.)(32214) December 13, 2007

Can a class action be allowed at the same time as the target company being absolved of any wrongdoing.

Class Actions in Quebec

St. Lawrence Cement v. Barrette, et al. (Que.)(31782) October 31, 2006

Same summary as above.

Commercial Law: Bankruptcy and Insolvency

Superintendent of Financial Services v. National Bank of Canada, et al. (Ont.)(31761) October 17, 2006

Are provincial deemed trusts and statutory liens designed to protect pension plans effective in proceedings under the CCAA; what are the respective responsibilities of a CCAA debtor, the Court Appointed Monitor, and the Court to protect the statutory and fiduciary rights of the CCAA debtors' employees and pensioners.

Constitutional Law: Division of Powers

Chatterjee v. Attorney General of Ontario (Ont.)(32204)
December 20, 2007

Does provincial jurisdiction include the ability to enact legislation to forfeit cash and materials used in grow-ops, where no federal criminal charges are laid.

Constitutional Law: Employment Insurance

Confédération des syndicats nationaux v. A.G. Canada, A.G. Quebec (Que.)(31809) May 24, 2007

Is the federal *Employment Insurance Act* constitutional on the basis that funds recovered have become a generalized source of federal funding.

Constitutional Law: Employment Insurance

Syndicat national des employés de l'aluminium d'Arvida Inc. v. A.G. Canada, A.G. Quebec (Que.)(31810) May 24, 2007

Is the federal *Employment Insurance Act* constitutional on the basis that funds recovered have become a generalized source of federal funding.

Criminal Law: Firearms

Grant v. R. (Ont.)(31892) June 21, 2007

Can the police stop an individual, ask him questions, and depending on those answers, arrest him.

Criminal Law: Forfeiture

Craig v. R. (B.C.)(32102) November 29, 2007

Where and under what circumstances is a forfeiture order appropriate.

Criminal Law: Forfeiture

R. v. Ouellette (Que.)(32057) November 29, 2007

Where and under what circumstances is a forfeiture order appropriate.

Criminal Law: Historic Sexual Abuse

F.H. v. Oblates & R. (B.C.)(32085) April 13, 2007
October 25, 2007

There is a publication ban in this case, issues here include whether evidence be assessed in the context of age at the time of alleged abuse; what is the appropriate civil burden of proof; is corroboration required.

Criminal Law: Homicide

Pritchard v. R. (B.C.)(31970) October 25, 2007

What is sufficient planning and deliberation to justify conviction for first-degree murder.

Criminal Law: Interpretation

Telus Mobility v. R. (Ont.)(31644) February 1, 2007

Does s. 487.012(4) allow a judge issuing a production order to require police pay compensation to the person named as

“terms and conditions”; must lack of compensation be shown to cause significant harm before a court can find compliance would be “unreasonable” per of s. 487.015(4)(b).

Criminal Law: Investigative Detention; Right to Counsel

Suberu v. R. (Ont.)(31912) August 16, 2007

What is the right to counsel where an individual is held under investigative detention outside a store by a police officer.

Criminal Law: Jury

Rojas v. R. (B.C.)(32080 and 32087) October 25, 2007

In a homicide case what are the appropriate jury instructions with regard to inculpatory and exculpatory statements.

Criminal Law: O'Connor Applications

A.G. Ontario, et al. v. McNeil, et al. (Ont.)(31852) July 5, 2007

Can an *O'Connor* application be used to obtain records from A.G. Ontario and the police relating to criminal charges and police discipline proceedings against a police officer.

Criminal Law: Proof of Breach of Conditional Sentence

R. v. McIvor (B.C.)(31642) January 25, 2007

Does a report from a conditional sentence supervisor support a finding of breach of a conditional sentence if there's no signed witness statement from persons with first-hand knowledge; is appellate law in conflict with the nature of the evidence required to support a finding of breach.

Criminal Law: Sentencing

F. J. v. R. (Que.)(32091) August 3, 2007

What principles are to be used by a sentencing judge where an individual has spent time in pre-sentenced custody.

Criminal Law: Sentencing

Solowan v. R. (B.C.)(32237) November 29, 2007

The issue is whether, for the purposes of the application of the principles of sentencing, in a case where the Crown proceeds summarily, the maximum sentence is the sentence available had the Crown proceeded by indictment.

Criminal Law: Sexual Offences

D.E.W. v. R. (B.C.)(32130) October 25, 2007

There is a publication ban in this case, the issues include whether police are required to inform an accused at the commencement of an interrogation that prior admissions may be admissible in evidence against him.

Criminal Law: Sexual Offences

R. v. R.E.M. (B.C.)(32038) October 25, 2007

There is a publication ban in this case, the issues include whether the trial judge made palpable and overriding errors.

Criminal Law: Sexual Offences *Vis-à-Vis* “Pathway to Conviction”
R. v. H.S.B. (B.C.)(32046) October 25, 2007

There is a publication ban in this case, the issues include the role of the trial judge *vis-à-vis* how “pathway to conviction” referred to in *R. v. Sheppard*, [2003] 1 S.C.R. 869 and *R. v. Braich*, [2002] 1 S.C.R. 903 is to be interpreted and applied.

Criminal Law: The “Honest Officer, I Thought an Ambulance Was Chasing Me” Defence

Shepherd v. R. (Sask.)(32037) August 23, 2007

Is the above a defence.

Criminal Law: *Vetrovec* Warning

G. K. v. R. (B.C.)(31933) June 21, 2007

There is a publication ban in this case, but the issues include a *Vetrovec* warning and whether the trial judge’s “proven facts” error was prejudicial to the Applicant.

Criminal Law: *Vetrovec* Warning

James v. R. (N.S.)(31980) June 21, 2007

What is a sufficient *Vetrovec* warning.

Criminal Law: *Vetrovec* Warning

J. S. v. R. (B.C.)(32325) December 18, 2007

There is a publication ban in this case, but the issues include whether the C.A. erred in failing to: find that the learned trial judge’s *Vetrovec* instructions were in error; find that the learned trial judge’s “proven facts” error was prejudicial to the Applicant.

Criminal Law: *Vetrovec* Warning

Smith v. R. (N.S.)(32323) December 18, 2007

Was the *Vetrovec* caution sufficient.

Criminal Law: Young Offender

L.T.H. v. R. (N.S.)(31763) March 29, 2007

There is a publication ban on this case. The issues concern s. 146 of the *Youth Criminal Justice Act*.

Criminal Law: Youth Crimes

S.A.C. v. R. (N.S.)(32104) October 25, 2007

There is a publication ban in this case, but the issues include: Is a custody and supervision order mandated by the federal *Youth Criminal Justice Act*; pre-sentence reports; DNA samples.

Employment Law: Solicitor-Client Privilege

Privacy Commissioner of Canada v. Blood Tribe Department of Health (Fed.)(31755) March 29, 2007

In the context of employment termination, what documents are privileged.

Employment Law: Wrongful Dismissal

Evans v. Teamsters Local Union No. 31 (Yuk.) (31733)

February 22, 2007

Should an employee’s damage award for wrongful dismissal be eliminated because of a failure to mitigate damages by accepting a new offer of employment from the employer.

Extradition: *Charter*

Lake v. U.S. (Ont.)(31631) February 1, 2007

What is the standard of review of the Minister’s decisions on *Charter* issues in surrender proceedings.

Family Law in Quebec: Partition of Family Patrimony

M.T. v. J.Y.T. (Que.)(31748) May 3, 2007

There is a publication ban in this case, but the issue is in what circumstances should family patrimony be divided into unequal shares.

Family Law: Division of Contingent Future Liabilities

Stein v. Stein (B.C.)(31704) March 29, 2007

Should contingent future debt relating to uncertain liabilities from motion picture tax shelters be taken into account in the division of assets.

Family Law: Mature Minor

A.C., et al. v. Manitoba (Man.)(31955) October 25, 2007

There is a publication ban in this case, but the main issue is the right of a mature minor to make his or her own medical decisions.

Family Law: Separation Agreements

Nancy Rick also known as Nanc Rick v. Berend Brandsema also known as Ben Brandsema, Brandy Farms LTA (B.C.)(32098) November 29, 2007

What is the duty on a spouse, if any, to provide accurate values of assets within his or her control both in the mediation process and the finalization of the agreements, and what constitutes *res judicata* where statutory rights are involved.

Immigration: Removal Orders; Humanitarian and Compassionate Grounds

Citizenship and Immigration v. Khosa (Fed.)(31952) October 25, 2007

To what extent are humanitarian and compassionate grounds to be considered in removal orders from Canada.

Insurance: Builders All-Risk

Canadian National Railway, et al. v. Royal and Sun Alliance Insurance (Ont.)(32062) October 25, 2007

There is a sealing order in this case, but the issues include the standard similar to that applied in *Manufacturers’ Mutual*

Insurance Co. v. Queensland Government Railways (1968), 1 Lloyd's Rep. 214 (Aust. H.C.), rather than the one applied in *Foundation Co. of Canada Ltd. v. American Home Assurance Co.* (1995), 25 O.R. (3d) 36 (Gen. Div.).

Labour and Employment Law: Mandatory Retirement

N.B. Human Rights Commission v. Potash Corporation (N.B.) (31652) March 29, 2007

Does s. 31 of the N.B. *Human Rights Act* apply to mandatory retirement under a *bona fide* pension plan.

Labour and Employment Law: Punitive Damages

Honda v. Keays (Ont.) (31739) March 29, 2007

Can punitive damages be awarded in the employment law area.

Official Languages

Desrochers, et al. v. Industry Canada, et al. (Fed.) (31815) June 21, 2007

What are the proper bilingual policies where the federal Minister of Industry funds an economic development program.

Pharmaceuticals: "Racemates"

Apotex Inc. v. Sanofi-Synthelabo Canada Inc., et al. (Fed.) (31881) July 5, 2007

There is a sealing order in this case, which concerns the patentability of a generic version of clopidogrel bisulfate to treat blood clots, clopidogrel being an isomer, one half of a larger chemical compound known as a "racemate."

Québec Human Rights: Erasure of Criminal Record

City of Montréal v. Commission des droits de la personne et des droits de la jeunesse and S.N. (Que.) (31551) January 11, 2007

There is a publication ban in this case, the main issue being the effect of erasure of a criminal record.

Real Estate Law in Quebec

Association des courtiers et agents immobiliers du Québec, et al. v. Proprio Direct (Que.) (31664) March 8, 2007

What's the effect of a real estate brokerage contract that provides for compensation payable in advance by an individual to a broker without the possibility of reimbursement if no sale occurs.

Tax: Deduction of Exploration Expenses

R. v. McLarty (Fed.) (31516) February 22, 2007

What appropriate deductions can be claimed under Canadian Exploration Expenses.

Tax: GAAR

Lipson v. R. (Fed.) (32041 and 32042) October 25, 2007

How does GAAR affect a series of transactions involving borrowing money to purchase a principal residence and deduct the interest expense paid under the mortgage.

Tax: Source Deductions

Caisse populaire Desjardins v. R. (Fed.) (31787) May 24, 2007

What is the deductibility where a loan is made to a company that has failed to remit source deductions to Revenue Canada.

Torts and Contracts: Non-Competes and Fiduciary Duty

RBC Dominion Securities v. Merrill Lynch, et al. (B.C.) (31904) June 21, 2007

What are the duties where investment advisors and their assistants leave one investment house to accept positions at another.

Torts: Crown Liability

Roger Holland v. Government of Saskatchewan, et al. (Sask.) (31979) August 30, 2007

Is there government liability where animal control regulations adversely affect those in the industry.

Torts: Defamation

WIC Radio Ltd. and Rafe Mair v. Kari Simpson (B.C.) (31608) February 1, 2007

Did the C.A. err by: reversing a finding of fact which had not been appealed and without hearing argument; denying a fair comment defence by reversing a finding that the impugned words were comment, and misapplying the principles governing the distinction between comment and statements of fact.

Torts: Forseeability (of Dead Flies) (Well, One and a Half Dead Flies)

Mustapha v. Culligan (Ont.) (31902) June 21, 2007

The Applicant and his wife saw a dead fly, and later another half of a dead fly, in an unopened bottle of drinking water supplied to their home. How is the (Scottish) case of *Donoghue v. Stevenson* to be applied in Canada.

Torts: Tendering Process

Design Services Limited, et al. v. R. (Fed.) (31618) January 25, 2007

Are subcontractors owed a duty of care in tort not to award a contract to a non-compliant bidder.

Oral judgments

Criminal Law: Defence of Property

McKay v. R (Man.)(31641) March 23, 2007

This oral judgment held the defence of property under s. 41 of the *Criminal Code* alone could not justify the commission of the aggravated assault alleged in this case.

Last Word: Chief Justice Lamer

Chief Justice Lamer died on Saturday, November 24, 2007. He was appointed to the Supreme Court of Canada on March 28, 1980, became Chief Justice on July 1, 1990 and stepped down on January 6, 2000.

There is so much that one could say about any Chief Justice, particularly this one.

One small memory only: I was his Executive Legal Officer from 1990–1992, and in that capacity assisted Chief Justice Lamer and members of the Canadian Judicial Council on a series of projects to reduce and eliminate delays in different jurisdictions in Canada. Two provincial Chief Justices (members of the Canadian Judicial Council) came to Ottawa for a meeting, and Chief Justice Lamer invited me to come to attend that meeting. The meeting was preceded by lunch. Lunch itself was preceded by the usual social discourse: how was your flight, did it arrive in time, how's the weather, I understand they're building a casino across the river in Gatineau, etc. Chief Justice Lamer asked the views (on gambling) of each of the invited learned gentlemen and each gave them, with the Chief Justice then moving on to me. I demurred, saying I was simply there to assist the Chief with this particular project and he really wouldn't be interested in my views on such a topic, but I was happy to be there to listen and learn from those more learned and experienced than I. He pressed again and said "no Eugene, tell me exactly what you think." I again demurred saying "Chief, being Scottish, we have a certain reputation for frugality, it's not something we do." He pressed further and said, "Tell me what you really think." I said "Well Chief, I think gambling is a voluntary tax upon the stupid." He simply said "OK."

Next morning I am sitting in front of his desk with the Chief's judicial legal assistant beside me, the Chief Justice across the desk in his chair. At the end of the morning organizational meeting, he:

- reaches into his shirt pocket
- looks squarely at me
- takes out a 6/49 ticket
- hands it over to his judicial legal assistant
- while doing so, stares at me saying "Tell me if I won."
- I did. He didn't.

Torts: Meaning of "Owner" of Motor Vehicle

Transportation Lease Systems Inc. v. Jennifer Yeung, by her litigation guardian Heidi Yeung, et al. (B.C.)(31549)
October 19, 2007

"The meaning of s. 86 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, is plain, and for this reason we are in agreement with the conclusions of the Court of Appeal of British Columbia. The appeal is dismissed with costs."

Other memories from other lawyers (with permission)

Eugene: liked your story in the recent SCC update. My friend Jeremy Fraiberg clerked for CJ Lamer in 1999, his last year, and always had stories that reflected his humanity or down-to-earth-ness (going to Tony & Pina's for a haircut etc.) as well as precision on the law (scope of section 7 etc.).

—Adam Dodek, *Visiting Scholar, Faculty of Law, University of Toronto*

I met the CJ in the fall of 1991 when he came out west to hunt with the late Justice J.W. "Buzz" McClung, my father and their buddies.

We were in a wheat field in southern Alberta on land owned by a Hutterite Colony. The cattle or land Manager, Ben had given us permission and the next day he came out to the field after his morning work was done, just as we were packing up. To make conversation, Buzz said to Ben that "Tony here come all the way from Ottawa to hunt in Alberta."

Ben said that was nice and asked, "What do you do in Ottawa Tony?"

The CJ said, "I'm a judge."

Ben asked, "Tony, did you ever do any judging in Calgary?"

As we all watched the conversation with interest the CJ said, "No, why do you ask?"

Ben said (somewhat angrily), "Because you look a lot like the judge who took away my drivers licence!"

After that exchange the rest of us could barely keep it together.

Another time we sat together at a dinner when he was out here and "Tony" corrected me, telling me that we don't have versions of the *Charter* in English and French, we have a *Charter*.

I say if you're going to get corrected by a judge may as well have been the top one.

He was a very nice man and his loss is noted.

—Jim Wachowich, *Wachowich & Company, Edmonton*

Dear Mr. Meehan,

I have long-intended to write to you to thank you for the L@wletter series which I always read, at least in its English version, and from which I always learn something of value, interest, or both. I have finally acted on my long-standing intention given your Last Word comments concerning the late former Chief Justice of the Supreme Court of Canada, the Right Honourable Justice Lamer.

Many years ago, I had one occasion to appear before a three-judge panel seeking Leave to Appeal. I had no idea how to conduct what needed to be done, and I had keyed on the previous litigant whom I had thought was a lawyer but who was actually a self-represented litigant. My flowery introductory remarks were cut off and I was gently guided by a comment from the Chief Justice that he believed I had two points to make, after which he asked me which one I wished to present first. He could, very easily, have made me feel (and look) the fool and he deliberately did not do so. Later he posed a question which I did not, for whatever reason, hear. I should have apologized and asked him to repeat the query. Foolishly, instead, I took a stab at an answer and realized I had stumbled badly when counsel sitting behind me waiting their turns, laughed out loud at my reply. The Chief Justice did not. As always, I learned more from the mistakes I made than I would have had everything been handled with precision and I know that many things which I have done since then were done better because of those past faux pas. Nevertheless, I have always been grateful for the courtesy

and the decency displayed by the Court through the Chief Justice and I have always felt that if ever I had occasion to return, I would not be somewhere where I did not belong or where what I had come to say was going to be targeted by those more sophisticated (and more at home there) than I.

I do not have the deep link to Justice Lamer which you have but I, too, mourn his passing. All of Canada is the poorer that he is gone from us, but his legacy will form a part of our history as long as records are kept.

—John Ecclestone, *Ecclestone & Ecclestone LLP, Kingston*

Hi Eugene,

I have two memories:

Lamer CJC singing Loch Lomond in your living room at your Robbie Burns party; and,

at the hearing of the *Cuddy Chicks* case, Lamer CJC was presiding over a full panel. George Adams (later Justice Adams) was counsel for one of the parties. He rose and said, “My Lords, My Ladies, before I begin I wanted to indicate that there are a number of students from the Faculty of Law at the University of Ottawa in the public gallery, who are here for the express purpose of seeing their professor sweat.” Lamer CJC peered back at us, nodded, and said, “Well Mr. Adams, we’ll do our best.” They did. So did Mr. Adams.

—Ross Macfarlane, *Flett Beccario, Welland, Ontario*



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