



OVERSEAS DECISIONS BULLETIN

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Decisions of the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa and the Supreme Court of New Zealand. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

Perez v Mortgage Bankers Association

Supreme Court of United States: [Docket 13-1041](#).

Judgment Delivered: 9 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Administrative law – Where the *Administrative Procedure Act* (“APA”) established the procedures that federal administrative agencies are to use for “rule making” – Where the Department of Labor’s Wage and Hour Division altered their interpretation as to whether mortgage loan officers qualified for the administrative exemption to overtime pay requirements under the *Fair Labour Standards Act 1938* (“Act”) – Whether the APA improperly imposes an obligation beyond the Act’s maximum requirements.

Held (9:0): Judgment reversed.

Department of Transportation v Association of American Railroads

Supreme Court of the United States: [Docket 13-1080](#).

Judgment Delivered: 9 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Administrative law - Where Congress created the National Railroad Passenger Corporation ("Amtrak") - Where Amtrak was given the authority to issue "metrics and standards" addressing the performance and scheduling of passenger railroad services - Whether Amtrak is a government entity - Where the Court held that Amtrak was a government entity for the purpose of the "metrics and standards" formulated together with the Federal Railroad Association.

Held (9:0): Judgment below vacated and case remanded.

Dorest County Council v R (on the application of Trail Riders Fellowship and another)

Supreme Court of the United Kingdom: [\[2015\] UKSC 18.](#)

Judgment Delivered: 18 March 2015.

Coram: Lord Neuberger, Lord Clarke, Lord Sumption, Lord Carnwath and Lord Toulson.

Catchwords:

Administrative law - *Wildlife and Countryside Act 1981 s 53* - Where Councils are required to maintain a definitive map and statement of the public rights of way in their local area - Where members of the public can apply to modify the definitive map and statement - Where the *Natural Environment and Rural Communities Act 2006 s 67* extinguished all unrecorded rights of way for mechanically propelled vehicles - Where an application for modification was made before the deadline contained in the Act was made but maps provided were not drawn to scale - Whether the Council was justified in rejecting the application for modification.

Held (3:2): Appeal dismissed.

Loyola High School v Quebec (Attorney-General)

Supreme Court of Canada: [2015 SCC 12.](#)

Judgment Delivered: 19 March 2015.

Coram: McLachlin CJ, LeBel J, Abella J, Rothstein, Cromwell, Moldaver and Karakatsanis J.

Catchwords:

Administrative law - Judicial review - Standard of Review - Ministerial discretion - Mandatory ethics and religious culture program - Private denominational school proposed alternative program — Request for exemption denied by Minister - Proper approach to judicial review of discretionary administrative decisions engaging Charter protections - Whether Minister's decision proportionately balanced religious freedom with statutory objectives of mandatory program - Regulation respecting the application of the Act respecting private education, CQLR, c E-9.1, r 1, s 22.

Constitutional law - Charter of Rights - Freedom of religion - Schools - Mandatory ethics and religious culture program - Private denominational school proposed alternative program - Request for exemption denied by Minister - Whether Minister's insistence that proposed alternative program be entirely secular in its approach was reasonable given the statutory objectives of mandatory program and s 2(a) of the *Canadian Charter of Rights and Freedoms*.

Human rights - Freedom of religion - Schools - Mandatory ethics and religious culture program - Private denominational school proposing alternative program - Request for exemption denied by Minister - Whether Minister's insistence that proposed alternative program be entirely secular in its approach was reasonable given the statutory objectives of mandatory program - Whether Minister's decision limits freedom of religion under s 3 of the *Charter of Human Rights and Freedoms*, CQLR, c C-12.

Held (4:3): Appeal allowed and the matter remitted to the Minister for reconsideration.

Quake Outcasts v Minister for Canterbury Earthquake Recovery; Fowler Developments Ltd v The Chief Executive of the Canterbury Earthquake Recovery Authority

Supreme Court of New Zealand: [\[2015\] NZSC 27](#).

Judgment Delivered: 24 March 2015.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Administrative law – Where Cabinet authorised a committee of senior Ministers to make decisions on land damage and remediation issues – Where the appellants' land was categorised as land in which "rebuilding may not occur in the short-to-medium term" and were offered 50% of their land valuation – Where the appellants issued proceedings for judicial review challenging the lawfulness of the 50% offers on the basis that the offers were not made in accordance with the *Canterbury Earthquake Recovery Act 2011* and were oppressive, disproportionate and in breach of their human rights.

Held (3:2): Appeal allowed in part.

R (on the application of Evans) and another v Attorney General
Supreme Court of United Kingdom: [\[2015\] UKSC 21](#).

Judgment Delivered: 26 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr, Lord Wilson, Lord Reed and Lord Hughes.

Catchwords:

Administrative law – Freedom of information – *Freedom of Information Act 2000* (“FOIA”) – Where the respondents made applications pursuant to FOIA for disclosure of communications passing between various government departments and HRH the Prince of Wales – Where the departments refused to disclose the letters – Whether the departments were entitled to refuse requests – Whether the reasons given for refusal constituted reasonable grounds.

Held (5:2): Appeal dismissed.

R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council
Supreme Court of United Kingdom: [\[2015\] UKSC 25](#).

Judgment Delivered: 29 April 2015.

Coram: Lord Neuberger, Lord Mance, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Administrative law – Licensing regulations – Where in order to trade, specific types of shops in Westminster are required to obtain a licence from Westminster City Council and pay a fee to obtain the licence – Where European Union law has placed limits upon the licence fees which can be charged – Whether the licensing system was illegitimate under domestic and European Union law.

Held (5:0): Appeal allowed.

R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs
Supreme Court of the United Kingdom: [\[2015\] UKSC 28](#).

Judgment Delivered: 29 April 2015.

Coram: Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption, and Lord Carnwath.

Catchwords:

Administrative law – Compliance with European Union Directives – Directive 2008/50/EC – Where the United Kingdom is required to comply with limits for nitrogen dioxide levels set by European Union law – Where the United Kingdom was not complying with the proposed limits – Whether the government was required to submit new air quality plans to the European Commission.

Held (5:0): Appeal allowed.

Arbitration

AKN and Anor v ALC and Ors and other appeals

Court of Appeal of Singapore: [\[2015\] SGCA 18](#).

Judgment Delivered: 31 March 2015.

Coram: Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong JA.

Catchwords:

Arbitration – Award – Recourse against award – Setting aside – the relationship between courts and arbitral tribunals – Whether the primary judge set aside an arbitral award on the basis of breaches of natural justice.

Held (3:0): Appeals allowed.

Banking

Paulsen and Another v Slip Knot Investments 777 (Pty) Limited
Constitutional Court of South Africa: [\[2015\] ZACC 5](#).

Judgment Delivered: 24 March 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J and Van der Westhuizen J.

Catchwords:

Banking - Arguable point of law — General public importance — Ought to be considered — *National Credit Act 2005* — Obligation to register as credit provider — Excluded credit agreements — *In duplum* rule — Development of common law — Public policy.

Held (8:1): Appeal granted.

Civil Procedure

Carey v Laiken

Supreme Court of Canada: [2015 SCC 17](#).

Judgment Delivered: 16 April 2015.

Coram: McLachlin CJ, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Civil procedure — Contempt of court — Required intent — Mareva injunction issued enjoining any person with knowledge of order from disposing of or otherwise dealing with assets of lawyer's client — Lawyer had knowledge of injunction but returned trust account funds to client — Lawyer not found in contempt on basis that terms of order not clear and lawyer's interpretation of order not deliberately and wilfully blind — Whether intent to interfere with administration of justice required to prove civil contempt — Whether lawyer in contempt.

Courts — Judges — Jurisdiction — Contempt of court — Motions judge's discretion to revisit contempt finding — Lawyer breaching terms of injunction found in contempt — Lawyer moving to reopen contempt hearing — Motions judge setting aside initial contempt finding — Whether motions judge erred in setting aside initial contempt finding — Rules of Civil Procedure, R R O. 1990, Reg 194, Rule 60.11.

Held (9:0): Appeal dismissed.

Competition Law

Oneok, Inc. v Learjet, Inc.

Supreme Court of the United States: [Docket 13-271](#).

Date Delivered: 21 April 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Competition and anti-trust – Where the respondents bought natural gas from the petitioner – Whether the petitioner had engaged in behaviour violating anti-trust law by basing the respondents’ gas contracts on natural-gas indices which were wrong – Whether the respondents’ claims fell within matters pre-empted by the *Natural Gas Act*.

Held (7:2): Judgment below affirmed.

Constitutional Law

AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others

Constitutional Court of South Africa: [\[2015\] ZACC 7](#).

Judgment Delivered: 24 March 2015.

Coram: Mogoeng CJ, Cameron J, Froneman J, Jappie AJ, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J and Tshiqi AJ.

Catchwords:

Constitutional law - Review application in light of previous Court order – agreed order issued by the Court – Judgment reserved on contested paragraph – Court retains supervisory jurisdiction – Paragraph added to order to provide that further relief may only be sought in this Court – Interests of the beneficiaries will be central to the exercise of the Court’s jurisdictional discretion.

Held (9:0): Order agreed, further relief can only be granted by the Court.

Alabama Legislative Black Caucus v Alabama

Supreme Court of the United States: [Docket 13-895](#).

Judgment Delivered: 25 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law – Elections – Electoral districts – Where Alabama redrew the boundaries of its House and Senate districts – Whether the new district boundaries created a “racial gerrymander” in violation of the Fourteenth Amendment – Where the Court held that the Court below had erred by considering the state “as a whole” rather than district by district – Where the Court held that the *Voting Rights Act* required the jurisdiction to maintain a minority’s ability to elect a preferred candidate of choice rather than for the jurisdiction to maintain a particular numerical minority.

Held (5:4): Judgment below vacated and case remanded.

Quebec (Attorney General) v Canada (Attorney General)

Supreme Court of Canada: [2015 SCC 14](#).

Judgment Delivered: 27 March 2015.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.

Catchwords:

Constitutional law — Division of powers — Criminal law — Constitutional classification of repealing enactment — Firearms — Federal legislation abolishing long-gun registry also containing provision requiring destruction of long-gun registration data — Quebec challenging constitutionality of destruction provision and seeking transfer of data connected with province from federal government — Whether principle of cooperative federalism prevents Parliament from legislating to destroy data — Whether destruction provision ultra vires criminal law power of Parliament — Whether Quebec has right to receive long-gun registration data from federal government — *Constitution Act, 1867*, s 91(27) — Ending the *Long-gun Registry Act*, S C 2012, c 6, s 29.

Held (5:4): Appeal dismissed.

R v Nur

Supreme Court of Canada: [2015 SCC 15](#).

Judgment Delivered: 14 April 2015.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.

Catchwords:

Constitutional law - Charter of Rights - Cruel and unusual treatment or punishment - Sentencing — Mandatory minimum sentence - Firearms - Accused convicted of possessing loaded prohibited firearms contrary to s 95(1) of *Criminal Code* - Accused sentenced under s 95(2)(a)(i) and (ii) to three and five year mandatory minimum imprisonment terms, respectively - Whether mandatory minimum imprisonment terms result in cruel and unusual punishment on accused - If not, whether s 95(2)'s reasonably foreseeable applications would impose cruel and unusual punishment on other offenders — If so, whether infringement justifiable - Canadian *Charter of Rights and Freedoms*, ss 1, 12 - *Criminal Code*, R.S.C. 1985, c. C-46, s 95.

Held (6:3): Appeals dismissed.

Coughlan N.O v Road Accident Fund

Constitutional Court of South Africa: [\[2015\] ZACC 9](#).

Judgment Delivered: 20 April 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jappie AJ, Khampepe J, Madlanga J, Molemela AJ, Nkbinde J and Tshiqi AJ.

Catchwords:

Constitutional law - Decision on whether foster child grants are *res inter alios acta* - Deductibility of foster child grants from compensation for loss of support payable to foster children - Duty of the State - Rights of vulnerable children - *Constitution Act* ss 27 and 28 - *Children's Act 2005* ss 1, 156(1)(e) and 181 - Foster child grants are not predicated on death of a parent - Nature and purpose different - Foster child grants not payable to the foster child but to the foster parent - Sections 18(2) and (3) of the *Road Accident Fund Act 1996*.

Held (9:0): Leave to appeal granted, appeal succeeds.

Association des parents de l'école Rose des vent v British Columbia (Education)

Supreme Court of Canada: [2015 SCC 21](#).

Judgment Delivered: 24 April 2015.

Coram: McLachlin CJ, Abella, Rothstein, Moldaver, Karakatsanis, Wagner and Gascon JJ.

Catchwords:

Constitutional law - Charter of Rights - Minority language educational rights - Substantive equality - Manner in which court should assess whether children of rights holders are provided with educational experience equivalent to that provided in schools of linguistic majority of province or territory - Are issues of costs and practicalities relevant to equivalence analysis - Whether a finding of lack of equivalence amounts to Charter breach - Whether it is necessary to determine responsibility as between province or territory and school board prior to finding prima facie breach of s 23 of Canadian *Charter of Rights and Freedoms*.

Constitutional law - Charter of Rights - Procedure - Hearing - Procedural fairness - Phasing of proceedings - Relevance of pleadings - Petition judge phasing proceedings, leaving determination of responsibility for Charter breach to later phase - Petition judge striking portions of province's pleadings as irrelevant to first phase - Whether procedures adopted by petition judge procedurally unfair.

Held (7:0): Appeal allowed.

Williams-Yulee v Florida Bar

Supreme Court of United States: [Docket 13-1499](#).

Judgment Delivered: 29 April 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Constitutional law - Elections - Electoral funding - Judicial elections - Where the Florida Supreme Court does not allow for judicial candidates to personally solicit campaign funds - Whether this rule infringes First Amendment rights to free speech - Where the Court concluded that the rule did not infringe First Amendment rights because it served a vital state interest in safeguarding public confidence in the judiciary.

Held (6:3): Judgment below affirmed.

Contract

Tael One Partners Ltd v Morgan Stanley & Co International plc

Supreme Court of the United Kingdom: [\[2015\] UKSC 12](#).

Date Delivered: 11 March 2015.

Coram: Lord Neuberger, Lord Kerr, Lord Reed, Lord Toulson and Lord Hodge.

Catchwords:

Contract — Construction — Loan agreement — Loan Market Association standard terms for par trade transactions — Facility agreement providing for payment premium to be paid by borrower on repayment of loan — Claimant lender transferring participation in loan to defendant — Defendant then transferring loan to third party — Whether defendant having to pay claimant payment premium on repayment of loan — Whether payment premium “expressed to accrue by reference to lapse of time”.

Held (5:0): Appeal dismissed.

Criminal Law

R v Grant

Supreme Court of Canada: [2015 SCC 9](#).

Judgment Delivered: 5 March 2015.

Coram: Abella J, Rothstein J, Cromwell J, Moldaver J, Karakatsanis J, Wagner J and Gascon J.

Catchwords:

Criminal law - Defences - Evidence - Admissibility - Unknown third party suspect - Accused denied involvement in abduction-murder case - Accused sought to adduce evidence at trial that unknown third party suspect involved in similar alleged abduction which accused could not have committed - Trial judge found on balance of probabilities that alleged abduction had not happened and refused to admit evidence - Appropriate framework for determining admissibility of defence-led evidence concerning unknown third party suspect - To what extent framework required trial judge to assess and weigh evidence of unknown third party suspect.

Held (7:0): Appeal dismissed.

R v Araya

Supreme Court of Canada: [2015 SCC 11](#).

Judgment Delivered: 13 March 2015.

Coram: McLachlin CJ, Rothstein J, Cromwell J, Moldaver J and Karakatsanis J.

Catchwords:

Criminal law - Charge to jury - Evidence - Admissibility - Limiting instructions - Characterisation of witness's testimony - Accused convicted of manslaughter - Accused's appearance changing between time of offence and time of trial - Whether photographs of accused taken days after offence admissible - Whether trial judge's instructions to jury on use it could make of photographs of accused insufficient - Whether trial judge erred in jury instructions by referring to witness's account of conversation with accused as confession.

Held (5:0): Appeal allowed.

DH v The Queen

Supreme Court of New Zealand: [\[2015\] NZSC 35](#).

Judgment Delivered: 16 April 2015.

Coram: McGrath CJ, William Young, Glazebrook, Arnold and O'Regan JJ.

Catchwords:

Criminal law – Expert evidence – Where “counter-intuitive evidence” was adduced to correct potentially erroneous beliefs a jury might hold about the behaviour of a complainant in a case involving sexual offending – Whether the evidence was inadmissible.

Held (5:0): Appeal dismissed.

Kohai v The Queen

Supreme Court of New Zealand: [\[2015\] NZSC 36](#).

Judgment Delivered: 16 April 2015.

Coram: McGrath CJ, William Young, Glazebrook, Arnold and O'Regan JJ.

Catchwords:

Criminal law – Expert evidence – Where “counter-intuitive evidence” was adduced to correct potentially erroneous beliefs a jury might hold about the behaviour of a complainant in a case involving sexual offending – Whether the evidence was inadmissible.

Held (5:0): Appeal dismissed.

Rodriguez v United States

Supreme Court of the United States: [Docket 13-9972](#).

Judgment Delivered: 21 April 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Criminal law – Where the appellant was stopped for driving on a highway shoulder and was issued a warning for a traffic offence – Where the appellant refused permission for the officer to walk his dog around the car – Where the Eight Circuit Court found that the vehicle search constituted a *de minimis* intrusion on the appellant’s personal liberty – Whether police entitled to conduct dog sniff as extension of traffic stop without reasonable suspicion.

Held (6:3): Appeal allowed, judgment below vacated and remanded.

R v GH

Supreme Court of United Kingdom: [\[2015\] UKSC 24](#).

Judgment Delivered: 22 April 2015.

Coram: Lord Neuberger, Lord Kerr, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Criminal law – Where the respondent was an associate who opened bank accounts to channel criminal proceeds for another – Whether the respondent had entered into or became concerned in an arrangement which he knew or suspected would facilitate the retention, use or control of criminal property, namely the money received into the accounts, by or on behalf of someone else.

Held (5:0): Appeal allowed.

Employment Law

Potter v New Brunswick Legal Aid Services Commission

Supreme Court of Canada: [2015 SCC 10](#).

Judgment Delivered: 6 March 2015.

Coram: McLachlin CJ, Abella J, Rothstein J, Cromwell J, Moldaver J, Karakatsanis J and Wagner J.

Catchwords:

Employment law - Constructive dismissal - Administrative suspension - Commission suspended Executive Director indefinitely with pay - Commission alleged that suspension was authorised by express or implied

term of contract - Whether administrative suspension constituted unilateral act that amounted to breach of employment contract - If so, whether decision to suspend could reasonably be perceived as having substantially changed essential terms of contract.

Employment law - Wrongful dismissal - Damages - Employee drawing pension benefits upon dismissal - Whether pension benefits should be deducted from damages for wrongful dismissal - If not, whether s 16 of Public Service Superannuation Act displaces private insurance exception and precludes employee from collecting both pension benefits and equivalent of salary - *Public Service Superannuation Act*, R.S.N.B. 1973, c P-26 [rep 2013, c 44, s 2], s 16.

Held (5:2): Appeal allowed.

Braganza v BP Shipping Limited and another
Supreme Court of the United Kingdom: [\[2015\] UKSC 17](#).

Judgment Delivered: 18 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Kerr, Lord Wilson and Lord Hodge.

Catchwords:

Employment law – Where the appellant’s husband disappeared whilst working as the Chief Engineer on an oil tanker in the mid-North Atlantic managed by the respondent – Where the respondents considered that the most likely explanation for his disappearance was suicide – Where his widow was not entitled to death benefits – What is the proper test to apply when construing the contract of employment which provided that compensation was not payable if the death resulted from the Officer’s wilful act, default or misconduct.

Held (3:2): Appeal allowed.

University and College Union v The University of Stirling
Supreme Court of the United Kingdom: [\[2015\] UKSC 26](#).

Judgment Delivered: 29 April 2015.

Coram: Lady Hale, Lord Wilson, Lord Sumption, Lord Reed and Lord Hughes.

Catchwords:

Employment law – *Trade Union and Labour Relations (Consolidation) Act 1992* s 188(1) – Where the Act required employers who propose to “dismiss as redundant” twenty or more employees at one establishment within a period of 90 days or less to consult with representatives of any employees who may be affected – Where the respondent did not consider

that it needed to engage in this process for employees with limited term contracts which would come to the end during the consultation period.

Held (5:0): Appeal allowed.

Equal Opportunity and Discrimination

Akerman-Livingstone v Aster Communities Limited

Supreme Court of the United Kingdom: [\[2015\] UKSC 15](#).

Judgment Delivered: 11 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Clarke, Lord Wilson and Lord Hughes.

Catchwords:

Equal opportunity and discrimination – Discrimination on the grounds of disability – *Equality Act 2010* (“Act”) – *European Convention on Human Rights* Art 8 – *Housing Act 1996* – Where the appellant suffered chronic and severe mental ill health amounting to a disability pursuant to the Act – Where pursuant to the *Housing Act* a local housing authority was required to secure accommodation for him – Duty would cease where the appellant refused suitable accommodation – Where the appellant refused accommodation and the respondent served notice on him and issued a claim for possession – Where the appellant argued that the possession order amounted to disability discrimination and breached Article 8 rights.

Held (5:0): Appeal dismissed.

R (on the application of SG and others) v Secretary of State for Work and Pensions

Supreme Court of United Kingdom: [\[2015\] UKSC 16](#).

Judgment Delivered: 18 March 2015.

Coram: Lady Hale, Lord Kerr, Lord Reed, Lord Carnwath, and Lord Hughes.

Catchwords:

Equal opportunity and discrimination – *Welfare Reform Act 2012* and *Benefit Cap (Housing Benefit) Regulations 2012* – Whether the Regulations capping benefits are unlawful under the *Human Rights Act 1998* – Whether the cap has a discriminatory impact on women in relation to their right to the peaceful enjoyment of their possessions contrary to Art 14 of the *European Convention on Human Rights*.

Held (3:2): Appeal dismissed.

Young v United States Parcel Service
Supreme Court of United States: [Docket 12-1226](#).

Judgment Delivered: 25 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Equal opportunity and discrimination – Discrimination on the grounds of sex – Pregnancy discrimination – *Pregnancy Discrimination Act* – Where the appellant was placed on a lifting restriction due to pregnancy – Where the respondent refused to accommodate the restriction – Where appellant argued that the denial of accommodation constituted disparate treatment – Court held that a plaintiff may make out a prima facie case by showing that she belongs to the protected class, that she sought accommodation and the employer did not accommodate her but did accommodate others similar in their inability to work.

Held (6:3): Judgment below reversed and case remanded.

Mach Mining, LLC v Equal Employment Opportunity Commission
Supreme Court of United States: [Docket 13-1019](#).

Judgment Delivered: 29 April 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Equal opportunity and discrimination – Whether the Equal Employment Opportunity Commission is required to endeavour to eliminate an employer’s alleged unlawful employment practice by informal means before bringing an action against that employer for employment discrimination pursuant to Title VII of the *Civil Rights Act 1964*.

Held (9:0): Judgment vacated and case remanded.

Evidence

White Burgess Langille Inman v Abbott and Haliburton
Supreme Court of Canada: [2015 SCC 23](#).

Judgment Delivered: 30 April 2015.

Coram: McLachlin CJ, Abella, Rothstein, Cromwell, Moldaver, Wagner and Gascon JJ.

Catchwords:

Evidence — Admissibility — Expert evidence — Basic standards for admissibility — Qualified expert — Independence and impartiality — Nature of expert's duty to court — How expert's duty relates to admissibility of expert's evidence — Forensic accountant provided opinion on whether former auditors were negligent in performance of duties — Former auditors applied to strike out expert's affidavit on grounds she was not an impartial expert witness — Whether elements of expert's duty to court go to admissibility of evidence rather than simply to its weight — If so, whether there is a threshold admissibility requirement in relation to independence and impartiality.

Held (7:0): Appeal dismissed.

Family Law

Wyatt v Vince

Supreme Court of the United Kingdom: [\[2015\] UKSC 14](#).

Judgment Delivered: 11 March 2015.

Coram: Lady Hale, Lord Clarke, Lord Wilson, Lord Hughes and Lord Hodge.

Catchwords:

Family law – Divorce proceedings – Application for strike out - *Family Law Procedure Rules 2010* ("Rules") r 4.4 – Where the appellant made an application in the divorce proceedings for financial provision in the form of a lump sum and interim payments to fund her legal costs – Where the respondent cross-appealed for the application to be struck out pursuant to the Rules – What is the test for a strike out in the Family Courts.

Held (5:0): Appeal allowed.

Thompson v Thompson

Supreme Court of New Zealand: .

Judgment Delivered: 13 March 2015.

Coram: Elias CJ, William Young J, Glazebrook J, Arnold J and O'Regan J

Catchwords:

Family law –Property – *Property (Relationships) Act 1976* – Division of assets – Where the parties were part owners of a business, the shares of which were held in a family trust – Where the parties separated and then divorced - Where the business was sold and a portion of the sale price was paid to the respondent in consideration for him agreeing to a restraint of trade covenant – whether the monies paid to the respondent should be treated as relationship property.

Held (5:0): Appeal allowed.

In the matter of S (A Child)

Supreme Court of the United Kingdom: [\[2015\] UKSC 20](#).

Judgment Delivered: 25 March 2015.

Coram: Lady Hale, Lord Kerr, Lord Wilson, Lord Hughes and Lord Toulson.

Catchwords:

Family law – Award of costs against public authority – Where the public authority brought an action for an order for the adoption of S with her father’s consent – Where S’s father successfully appealed the order and the public authority was ordered to pay costs – Whether costs should be ordered in children’s proceedings in the absence of reprehensible behaviour.

Held (5:0): Appeal allowed.

Human Rights

R (on the application of Catt) (Respondent) v Commissioner of Police of the Metropolis and another and R (on the application of T) (Respondent) v Commissioner of Police of the Metropolis (Appellant)

Supreme Court of the United Kingdom: [\[2015\] UKSC 9](#).

Judgment Delivered: 4 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Mance, Lord Sumption and Lord Toulson.

Catchwords:

Human rights – Privacy – *European Convention on Human Rights* – *Data Protection Act 1998* – *Police Act 1995* – Where Mr Catt is a peaceful protester – Where Ms T is alleged to have said a homophobic insult to her neighbour’s friend – Where the police held information related to them on a searchable database – Whether the holding of information of a

searchable database was contrary to their rights under Article 8 of the ECHR.

Held in the case of Catt (4:1): Appeal allowed.

Held in the case of T (5:0): Appeal allowed.

Mouvement Laïque québécois v Saguenay (City)

Supreme Court of Canada: [\[2015\] SCC 16](#).

Judgment Delivered: 15 March 2015.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner and Gascon JJ.

Catchwords:

Human rights - Freedom of conscience and religion - Right to equality - Discriminatory practices - Principle of religious neutrality of state - Whether practice of members of municipal council that is regulated by by-law and that consists of reciting prayer at start of each meeting of council is in breach of principle of religious neutrality of state and results in discriminatory interference with freedom of conscience and religion - If so, whether remedies granted by Human Rights Tribunal appropriate - *Charter of Human Rights and Freedoms*, CQLR, c C-12, ss 3, 10.

Administrative law - Appeals - Standard of review - Specialized administrative tribunal - Applicable standard of review on statutory appeal from final decision of Quebec Human Rights Tribunal - Whether decision subject to standards of review applicable to judicial review proceeding, or to appellate standards - Whether Court of Appeal erred in applying correctness standard to all Tribunal's conclusions, except for one with respect to expert evidence, for which it referred to palpable and overriding error - *Charter of Human Rights and Freedoms*, CQLR, c C-12, ss 132, 133.

Held (9:0): Appeal allowed.

Insolvency

Jetivia SA and another v Bilta Limited and others

Supreme Court of the United Kingdom: [\[2015\] UKSC 23](#).

Judgment Delivered: 22 April 2015.

Coram: Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath, Lord Toulson and Lord Hodge.

Catchwords:

Insolvency – *Insolvency Act 1986* s 213 – Where the respondents were compulsorily wound up – Where the respondents brought proceedings against the appellants alleging that the appellants were part of an “unlawful means conspiracy” to injure the respondent – Where the appellants applied to strike out the respondents’ claim on the basis of the defence of illegality and that the s 213 claim could not succeed because the provision does not have extra-territorial effect.

Held (5:0): Appeal dismissed.

Trustees of the Olympic Airlines SA Pension and Life Assurance Scheme v Olympic Airlines SA

Supreme Court of the United Kingdom: [\[2015\] UKSC 27](#).

Judgment Delivered: 29 April 2015.

Coram: Lord Neuberger, Lord Mance, Lord Sumption, Lord Reed and Lord Toulson.

Catchwords:

Insolvency – Where Olympic Airlines SA was wound up in Athens and the main liquidation proceedings are ongoing in Greece – Where the company pension scheme had a 16 million pound deficit – Where the members of the pension scheme are eligible for compensation under the *Pensions Act 1995* – What constitutes the qualifying insolvency event pursuant to the *Pensions Act*.

Held (5:0): Appeal dismissed.

Intellectual Property

B&B Hardware v Hargis Industries

Supreme Court of the United States: [Docket 13-352](#).

Judgment Delivered: 24 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Intellectual property – Trademarks – Where the respondent tried to register its trade mark with the United States Patent and Trademark Officer – Where the appellant opposed the registration claiming that the mark was similar to a trademark it held – Where the Trademark Trial and

Appeal Board (“TTAB”) concluded that the respondent’s trademark should not be registered because of the likelihood of confusion – Whether the respondent could later contest the likelihood of confusion in an infringement suit brought by the appellant – Court held that as long as the other ordinary elements of issue preclusion are met, where the usages adjudicated by the TTAB are materially the same issue preclusion applies.

Held (7:2): Judgment below reversed and case remanded.

Local Government

Nzolameso v Westminster City Council (Secretary of State for Communities and Local Government and another intervening)
Supreme Court of the United Kingdom: [\[2015\] UKSC 22](#).

Judgment Delivered: 2 April 2015.

Coram: Lady Hale, Lord Clark, Lord Reed, Lord Hughes and Lord Toulson.

Catchwords:

Local Government — Homeless person — Refusal of offer of accommodation — Applicant with young children refusing local housing authority’s offer of temporary out-of-area placement — Whether authority’s housing duty discharged following refusal — Factors to be considered when deciding whether “reasonably practicable” to offer accommodation within its own district — *Housing Act 1996*, s 208 — *Children Act 2004*, s 11 — *Homelessness (Suitability of Accommodation) (England) Order 2012* (SI 2012/2601).

Held (5:0): Appeal allowed.

City Power (Pty) Ltd v Grinpal Energy Management Services (Pty) Ltd and Others
Constitutional Court of South Africa: [\[2015\] ZACC 8](#).

Judgment Delivered: 20 April 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Froneman J, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J, Tshiqi AJ, Can der Westhuizen J and Zondo J.

Catchwords:

Local Government - *Labour Relations Act 1995* - section 197 — applicability on municipal entities regulated by Local Government: *Municipal Systems Act 2000* and *Local Government: Municipal Finance Management Act 2003* - Relationship between *Labour Relations Act 1995* and *Local Government: Municipal Systems Act 2000* in employment

matters — *Labour Relations Act* – section 210 — *Labour Relations Act* prevails.

Labour Relations Act 1995 — Section 197 not in conflict with sections 152 and 160 of the Constitution — Section 197 applicable to municipal entities unless specifically excluded in terms of section 197(6) of the Labour Relations Act — On the facts, there was transfer of business as a going concern in terms of section 197(2).

Held (9:0): Condonation is granted, Leave to appeal is granted, the appeal is dismissed.

Migration

R (on the application of Jamar Brown (Jamaica) (Respondent) v Secretary of State for the Home Department (Appellant)
Supreme Court of the United Kingdom: [\[2015\] UKSC 8](#).

Judgment Delivered: 4 March 2015.

Coram: Lady Hale, Lord Sumption Lord Carnwath, Lord Hughes and Lord Toulson.

Catchwords:

Migration – Categories of visas – Refugee and humanitarian visas – Determination of refugee status – *Nationality, Immigration and Asylum Act 2002* s 94(4) – Where Jamaica had been added to a list of states where it was determined that there was no serious risk of persecution in that State generally – Where the respondent applied for refugee status on the basis that he was homosexual and feared persecution if he returned to Jamaica – Where the respondent’s application was fast-tracked and his claim for asylum was refused – What standard of consideration applies to countries of the s 94(4) list.

Held (5:0): Appeal dismissed.

Pham v Secretary of State for the Home Department
Supreme Court of United Kingdom: [\[2015\] UKSC 19](#).

Judgment Delivered: 25 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Mance, Lord Wilson, Lord Sumption, Lord Reed and Lord Carnwath.

Catchwords:

Citizenship and migration – Citizenship and nationality – Deprivation of citizenship – Where the appellant was a Vietnamese refugee granted indefinite leave to remain and later acquired citizenship – Where the appellant was deprived of his British citizenship due to suspected involvement in terrorist activities – Whether the respondent was precluded from making an order depriving him of his British citizenship because to do so would render the appellant stateless.

Held (7:0): Appeal dismissed.

Minister of Home Affairs and Others v Johnson and Others; Minister of Home Affairs and Another v Delorie and Others
Constitutional Court of South Africa: [\[2015\] ZACC 6](#).

Judgment Delivered: 24 March 2015.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jappie AJ, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi J.

Catchwords:

Migration - Appeal against a High Court order granting temporary relief – Declaration of persons as “undesirable persons” – No requirements met to justify hearing an appeal against an order granting temporary relief – Application for leave to appeal dismissed – No order as to costs.

Held (11:0): Application dismissed.

Helu v Immigration and Protection Tribunal and Minister of Immigration
Supreme Court of New Zealand: [\[2015\] NZSC 28](#).

Judgment Delivered: 26 March 2015.

Coram: Elias CJ McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Migration – Appeal against order for deportation – Where the appellant had lived in New Zealand since the age of six and committed an aggravated robbery when he was 17 years old – Where the Minister had ordered the appellant’s deportation – Whether the Tribunal reviewing the decision of the Minister had correctly applied the applicable test when they found that whilst it was unduly harsh to deport the appellant it would not be contrary to the public interest.

Held (3:2): Appeal allowed.

Negligence

Montgomery v Lanarkshire Health Board

Supreme Court of the United Kingdom: [\[2015\] UKSC 11](#).

Judgment Delivered: 11 March 2015.

Coram: Lord Neuberger, Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson, Lord Reed and Lord Hodge.

Catchwords:

Torts – Negligence – Duty of care – Failure to warn – Where the appellant suffered complications during the delivery of her son and her son was born with serious disabilities – Where the appellant’s doctor did not warn her of potential risks related to her pregnancy because the doctor considered the chance of the risk occurring was low and if advised of the risk, women would opt for a caesarean section which the doctor considered would not be in the maternal interest – Whether the appellant’s doctor had a duty of care to warn her of the potential risk.

Held (7:0): Appeal allowed.

Securities

Omnicare v Laborers District Council Construction Industry Pension Fund

Supreme Court of United States: [Docket 13-425](#).

Judgment Delivered: 24 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Securities – *Securities Act 1933* – Where the Securities Act requires that a company wishing to issue securities must first file a registration statement containing specified information about the issuing company and the securities offered – Where the appellant was under investigation by the federal government for improper conduct – Whether the appellant’s registration statement which stated that it was compliant with all state and federal laws was misleading – Where the Court held that a statement of opinion does not constitute an untrue statement of fact because the stated opinion ultimately proves incorrect.

Held (9:0): Judgment below vacated and case remanded.

Theratechnologies inc. v 121851 Canada inc.
Supreme Court of Canada: [2015 SCC 18](#).

Judgment Delivered: 17 April 2015.

Coram: McLachlin CJ, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Securities — Statutory disclosure obligations — Action for damages — Prior judicial authorisation — Pharmaceutical company in process of obtaining approval to market new drug — Questions on drug’s potential side effects raised as part of approval process — Questions publicized by stock quotation enterprises resulting in drop of pharmaceutical company’s share price — Corporate shareholder seeking to institute class action for breach of company’s disclosure obligation — Action requiring prior judicial authorisation based on whether there is a “reasonable possibility that it will be resolved in plaintiff’s favour” — *Securities Act*, CQLR, c V-1.1, ss 5.3, 73, 225.4.

Held (7:0): Appeal allowed.

Statutes

Armstrong v Exceptional Child Centre
Supreme Court of the United States: [Docket 14-15](#).

Judgment Delivered: 31 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Statutes – *Medicaid Act* s 30A – Where providers of habilitation services under Idaho’s Medicaid plan are reimbursed by the State’s Department of Health and Welfare – Where the *Medicaid Act* requires Idaho’s plan to assure that payments are consistent with efficiency, economy and quality of care – Where the respondent claimed that the reimbursed rate was not consistent with s 30 of the *Medicaid Act*.

Held (5:4): Judgment below reversed.

Taxation

Direct Marketing Association v Brohl
Supreme Court of the United States: [Docket 13-1032](#).

Judgment Delivered: 3 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Taxation – Where Colorado required residents who purchased tangible personal property from a retailer that did not collect sales or use taxes to file a return and remit those taxes directly to the State Department of Revenue – Where retailers were required to inform customers and the Colorado Department of Revenue of that information – Where appellant claimed that law violated the United States and Colorado constitutions – Whether the *Tax Injunction Act* (“TIA”) deprived the District Court of jurisdiction – Where the Court held that the TIA did not deprive the District Court jurisdiction to determine the matter.

Held (9:0): Judgment below reversed and case remanded.

Alabama Department of Revenue v CSX Transportation Inc.
Supreme Court of the United States: [Docket 13-553](#).

Judgment Delivered: 4 March 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Taxation – *Railroad Revitalization and Regulation Reform Act 1976* – Where Alabama imposed sales and use tax on railroads where they purchase or consume diesel fuel but exempt from those taxes trucking transport companies and companies that transport goods interstate through navigable waters – Court considered that the exemption to motor carriers from sales and use taxes was justifiable through its decision to subject motor carriers to a fuel excise tax.

Held (7:2): Judgment below reversed and case remanded.

Torts

Sea Shepherd UK v Fish & Fish Limited
Supreme Court of the United Kingdom: [\[2015\] UKSC 10](#).

Judgment Delivered: 4 March 2015.

Coram: Lord Neuberger, Lord Mance, Lord Kerr, Lord Sumption and Lord Toulson.

Catchwords:

Torts – Accessory liability – Where the respondent suffered loss and damage when conservationists mounted an operation designed to disrupt the Bluefin tuna fishing activities of the respondent - Whether the incident was directed and/or authorised and/or carried out by the appellant, its servants or agents – Whether the appellant was liable, directly or vicariously, for any damage sustained by the respondent.

Held (5:0): Appeal allowed.

United States v Wong; United States v June
Supreme Court of United States: [Docket 13-1074](#).

Judgment Delivered: 22 April 2015.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Torts – *Federal Tort Claims Act* (“Act”) – Where the Act provides that a tort claim against the United States will be forever barred unless the claimant meets two deadlines – Where the respondents missed one of those deadlines – Statutes of limitation waiving the United States’ sovereign immunity were subject to the same rebuttable presumption of equitable tolling as statutes of limitations in actions between private parties.

Held (5:4): Judgment affirmed and remanded.
