



# 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.

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## Administrative Law

*Wilson v British Columbia (Superintendent of Motor Vehicles)*  
Supreme Court of Canada: [2015 SCC 47](#).

**Judgment delivered:** 16 October 2015.

**Coram:** McLachlin CJ, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Cote JJ.

**Catchwords:**

Administrative law - Judicial review - Superintendent of Motor Vehicles - Automatic roadside driving prohibition regulatory regime - Peace officer issued notice to driver imposing immediate driving prohibition after roadside breath sample obtained - Driver applied to Superintendent for review of driving prohibition - Whether peace officer entitled to rely on results of approved screening device used to collect breath samples to impose driving prohibition or whether other confirmatory evidence required - Whether Superintendent's interpretation of statutory provision imposing immediate driving prohibition was reasonable - *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, ss. 215.41(3.1), 215.5.

**Held (7:0):** Appeal dismissed.

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## Arbitration

*Tomolugen Holdings Ltd & Anor v Silica Investors Ltd and other Appeals*  
Court of Appeal of Singapore: [\[2015\] SGCA 57](#).

**Judgment delivered:** 26 October 2015.

**Coram:** Sundaresh Menon CJ, Chao Hick Tin JA and Chan Sek Keong SJ.

**Catchwords:**

Arbitration – Arbitrability and public policy – Stay of Court proceedings – Concurrent Court and arbitration proceedings – Whether disputes regarding minority oppression or unfairly prejudicial conduct arbitrable – Whether Court proceedings should be stayed in favour of arbitral proceedings.

**Held (3:0):** Appeals allowed in part.

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## Carriage of Goods

*British American Tobacco Denmark A/A and others v Kazermier Transport BV; British American Tobacco Switzerland SA v H Essers Security Logistics BV & Anor*  
Supreme Court of the United Kingdom: [\[2015\] UKSC 65](#).

**Judgment delivered:** 28 October 2015.

**Coram:** Lord Neuberger, Lord Mance, Lord Clarke, Lord Sumption and Lord Reed.

**Catchwords:**

Carriage of Goods – Where there were thefts from two cargo containers – Whether consignors can found jurisdiction in England against appellants within the meaning of the Convention on the Contract for the International Carriage of Goods by Road 1956.

**Held (5:0):** Appeals allowed.

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## Constitutional Law

*Mtyhopo v South African Municipal Workers Union National Provident Fund*  
Constitutional Court of South Africa: [\[2015\] ZACC 32](#).

**Judgment delivered:** 1 October 2015.

**Coram:** Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Matojane AJ, Nkabinde J, Van der Westhuizen J, Wallis AJ and Zondo J.

**Catchwords:**

Constitution – Section 16 – Freedom of Expression – Defamation – Unconstitutional prior restraint of speech – Whether words defamatory.

**Held (11:0):** Appeal allowed.

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*Goodwin v British Columbia (Superintendent of Motor Vehicles)*

**Supreme Court of Canada:** [2015 SCC 46](#).

**Judgment delivered:** 16 October 2015.

**Coram:** McLachlin CJ, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Cote JJ.

**Catchwords:**

Constitutional law — Division of powers — Criminal law — Property and civil rights — Highways — Impaired driving — Provincial legislation creating automatic license suspensions, penalties and remedial programs following roadside analysis using approved screening device — Whether automatic roadside prohibition scheme ultra vires the province as being exclusively within federal government's criminal law power — Constitution Act, 1867 , ss. 91(27) , 92(13) — Motor Vehicle Act, R.S.B.C. 1996, c. 318.

Constitutional law — Charter of Rights — Presumption of innocence — Search and seizure — Impaired driving — Provincial legislation creating automatic license suspensions, penalties and remedial programs following roadside analysis using approved screening device — Whether automatic roadside prohibition regime creates an offence within meaning of s. 11 of Charter and infringes the presumption of innocence — Whether automatic roadside prohibition scheme infringes right to be secure against unreasonable search or seizure — If so, whether infringement can be justified — Canadian Charter of Rights and Freedoms , ss. 1 , 8 and 11 (d) — Motor Vehicle Act, R.S.B.C. 1996, c. 318.

**Held (6:1):** Appeal dismissed.

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## Criminal Law

*Dixon v R*

**Supreme Court of New Zealand:** [\[2015\] NZSC 147](#).

**Judgment delivered:** 20 October 2015.

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

**Catchwords:**

Criminal law – Conviction – Accessing a computer system for a dishonest purpose and thereby obtaining property – Where appellant obtained and posted a video of the English Rugby squad vice-captain leaving a bar with a female patron – Whether the digital files were “property” pursuant to the provision.

**Held (5:0):** Appeal dismissed.

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*R v McGeough*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 62](#).

**Judgment delivered:** 21 October 2015.

**Coram:** Lord Neuberger, Lord Kerr, Lord Hughes, Lord Toulson and Lord Hodge.

**Catchwords:**

Criminal law - Evidence – Admissibility Information provided in asylum application – Defendant making unsuccessful application for asylum in Sweden – Swedish authorities lawfully providing material from asylum application to United Kingdom authorities – Criminal proceedings subsequently brought against defendant in Northern Ireland – Judge ruling that information provided in asylum application admissible in evidence – Whether evidence should have been excluded on grounds of fairness – Whether Council Directive providing for confidentiality of information supplied in support of asylum application Police and Criminal Evidence (Northern Ireland) Order 1989, art 76 Council Directive 2005/85/EC, arts 22, 41.

**Held (5:0):** Appeal dismissed.

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## Employment Law

*The United States of America v Nolan*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 63](#).

**Judgment delivered:** 21 October 2015.

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

**Catchwords:**

Employment Law – Termination of Employment – *Trade Union and Labour Relations (Consolidation) Act 1992* - Where appellant failed to consult with any employee representative when proposing to dismiss respondent as required pursuant to the Act – Whether Act should be read as not applying to public administrative, non-commercial activity – Whether Act could have a broader application than EU law requires.

**Held (4:1):** Appeal dismissed.

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## Family Law

*Sharland v Sharland*

Supreme Court of the United Kingdom: [\[2015\] UKSC 60](#).

**Judgment delivered:** 14 October 2015.

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

**Catchwords:**

Family law - Husband and Wife - Financial provision - Consent order - Disclosure of material facts - Parties reached agreement on financial provision - Before consent order sealed wife discovered non-disclosure by husband and applied for order not to be sealed and financial provision hearing to be resumed - Judge found husband had been dishonest and seriously misled court - Application refused on ground that husband's non-disclosure not material and sealing order — Whether consent order should be set aside.

**Held (7:0):** Appeal allowed.

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*Gohil v Gohil*

Supreme Court of the United Kingdom: [\[2015\] UKSC 61](#).

**Judgment delivered:** 14 October 2015.

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

**Catchwords:**

Family law - Husband and Wife - Financial provision - Disclosure of material facts - Parties' agreement on financial provision embodied in consent order which recorded wife's belief that husband not providing full and frank disclosure - Wife subsequently applied to set aside consent order on grounds of material non-disclosure by husband - Husband convicted of money-laundering and fraud - Judge permitted fresh

evidence to be adduced - Judge relied on evidence some of which subsequently held inadmissible setting aside part of consent order - Relevance of principles applicable on application to Court of Appeal to introduce fresh evidence at appellate stage - Whether appellate court should consider whether on admissible alone judge would still properly have set aside consent order - Whether judge's decision to be set aside.

**Held (7:0):** Appeal allowed.

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## Foreign Judgments

*Chevron Corp v Yaiguaje*

**Supreme Court of Canada:** [2015 SCC 42](#).

**Judgment delivered:** 4 September 2015.

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

**Catchwords:**

Private international law - Foreign judgments - Recognition - Enforcement - Foreign judgment creditor sought recognition and enforcement of foreign judgment in Ontario against U.S. foreign judgment debtor's and Canadian seventh-level indirect subsidiary - Foreign judgment debtor served ex juris at U.S. head office - Subsidiary served in juris at place of business in Ontario - Whether a real and substantial connection must exist between defendant or dispute and Ontario for jurisdiction to be established - Whether Ontario courts have jurisdiction over foreign judgment debtor's subsidiary when subsidiary is a third party to the judgment for which recognition and enforcement is sought.

**Held (7:0):** Appeal dismissed.

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## Freezing Orders

*JSC BTA Bank v Ablyazov*

**Supreme Court of United Kingdom:** [\[2015\] UKSC 64](#).

**Judgment delivered:** 21 October 2015.

**Coram:** Lord Neuberger, Lord Mance, Lord Kerr, Lord Clarke and Lord Hodge.

**Catchwords:**

Freezing orders - Where appellant is a Kazakhstan bank - Where respondent is the former chairman and majority shareholder - Where

appellant claimed respondent had presided over misappropriation – Where appellant successfully obtained judgments for 4.4 billion and a freezing order – Where respondent entered into four loan agreement – Whether right to draw down on loan agreement is an “asset” within the meaning of a freezing order – Whether exercise of right by directing lender to pay sum to third party is “disposing of” an asset – Whether proceeds of Loan Agreement were assets within the meaning of “asset”.

**Held (0):** Appeal allowed.

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## Legal Aid

*Legal Aid South Africa v Mzoxolo Magidiwana and Ors*  
**Constitutional Court of South Africa:** [2015 ZACC 28](#).

**Judgment delivered:** 22 September 2015.

**Coram:** Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Molemela AJ, Nkabinde J, Theron AJ, Tshiqi AJ.

**Catchwords:**

Legal Aid – Grants of aid – Whether legal aid can be granted for representation at a Commission of Inquiry.

**Held (8:1):** Appeal dismissed.

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## Liens

*Stuart Olson Dominion Construction Ltd v Structural Heavy Steel*  
**Supreme Court of Canada:** [2015 SCC 43](#).

**Judgment delivered:** 18 September 2015.

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

**Catchwords:**

Liens - Trusts - Relationship between lien and trust provisions in provincial legislation - By filing lien bond in court in order to vacate builder's lien, has contractor satisfied its trust obligations with respect to subcontractors who have registered liens against land upon which construction work was being done? - *The Builders' Liens Act*, C.C.S.M. c. B91, ss. 4(1), 4(3), 55(2), 66.

**Held (7:0):** Appeal dismissed.

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## Migration

*Guo & Anor v Minister for Immigration*

Supreme Court of New Zealand: [\[2015\] NZSC 132](#).

**Judgment delivered:** 2 September 2015.

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

**Catchwords:**

Migration – Deportation – Where the appellants’ father is subject to a deportation order as a consequence of conviction – Where deportation notices were served on the appellants – Whether exceptional circumstances of a humanitarian nature exist which would make the appellants deportation unjust and unduly harsh.

**Held (5:0):** Appeal allowed.

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*Mandalia v Secretary of State for the Home Department*

Supreme Court of the United Kingdom: [\[2015\] UKSC 59](#).

**Judgment delivered:** 14 October 2015.

**Coram:** Lady Hale, Lord Clarke, Lord Wilson, Lord Reed and Lord Hughes.

**Catchwords:**

Migration – Leave to remain – Points based system – Evidence – Overseas student with limited leave to remain in United Kingdom applying for extension of leave – Application form requiring enclosure of bank statements showing specified minimum balance over 28-day period as proof of funds – Applicant’s bank statement showing sufficient funds but covering only 22 days – Bank statement making reference to sequentially numbered earlier statement with similar level of funds – Border Agency published policy instructing caseworkers to seek clarification from applicant before rejecting application where reason to believe additional information in existence Border agency rejecting application without seeking provision of earlier statement – Whether breach of policy – Whether decision to stand.

**Held (5:0):** Appeal allowed.

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## Negligence



*Oppelt v Head: Health, Department of Health Provincial Administration: Western Cape*

**Constitutional Court of South Africa:** [\[2015\] ZACC 33](#).

**Judgment delivered:** 14 October 2015.

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

**Catchwords:**

Negligence – Wrongfulness – Delayed treatment of spinal cord injuries resulting in permanent paralysis – Both wrongful and negligent.

**Held (10:0):** Appeal allowed.

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## Prisons

*Shahid v Scottish Minister*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 58](#).

**Judgment delivered:** 14 October 2015.

**Coram:** Lord Neuberger, Lady Hale, Lord Sumption, Lord Reed and Lord Hodge.

**Catchwords:**

Prisons - Prisoners' rights - Segregation - Prisoner charged with and subsequently convicted of racially motivated murder of 15-year-old boy - Prisoner placed in segregation for protection following threats to safety from other prisoners and remaining in segregation for 56 months - Certain decisions to maintain segregation taken out of time and in deference to advisory body lacking statutory decision-making authority - Whether segregation lawful - Whether in breach of Convention rights - Whether damages award necessary to afford just satisfaction - Whether declaration and costs award sufficient - Human Rights Act 1998, s 8, Sch 1, Pt I, arts 3, 8 - Prisons and Young Offenders Institutions (Scotland) Rules 2006, r 94.

**Held (5:0):** Appeal allowed.

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## Public Utilities

*Ontario Energy Board v Ontario Power Generation Inc.,*

**Supreme Court of Canada:** [2015 SCC 44](#).

**Judgment delivered:** 25 September 2015.

**Coram:** McLachlin CJ, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Gascon JJ

**Catchwords:**

Public utilities - Electricity - Rate-setting decision by utilities regulator - Utility seeking to recover incurred or committed compensation costs in utility rates set by Ontario Energy Board - Whether Board bound to apply particular prudence test in evaluating utility costs - Whether Board's decision to disallow \$145 million in labour compensation costs related to utility's nuclear operations reasonable - Ontario Energy Board, 1998, S.O. 1998, c. 15, Sch. B, ss. 78.1(5)(6).

Administrative law - Boards and tribunals - Appeals - Standing - Whether Ontario Energy Board acted improperly in pursuing appeal and in arguing in favour of reasonableness of its own decision - Whether Board attempted to use appeal to "bootstrap" its original decision by making additional arguments on appeal.

**Held (6:1):** Appeal allowed.

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*ATCO Gas and Pipelines Ltd v Albera (Utilities Commission)*

**Supreme Court of Canada:** [2015 SCC 45](#).

**Judgment delivered:** 25 September 2015.

**Coram:** McLachlin, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Gascon JJ.

**Catchwords:**

Public utilities - Gas - Electricity - Rate-setting decision by utilities regulator — Utilities seeking to recover pension costs in utility rates set by Alberta Utilities Commission - Whether regulatory framework prescribes certain methodology in assessing whether costs are prudent - Whether Commission's interpretation and exercise of its rate-setting authority was reasonable - *Electric Utilities Act*, S.A. 2003, c. E-5.1, ss. 102, 121 and 122 - *Gas Utilities Act*, R.S.A. 2000, c. G-5, s. 36.

**Held (7:0):** Appeal dismissed.

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## Superannuation and Pensions

*Greenfield v The Chief Executive of the Ministry of Social Development*

**Supreme Court of New Zealand:** [\[2015\] NZSC 139](#).

**Judgment delivered:** 24 September 2015.

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

**Catchwords:**

Superannuation – Interpretation – *Superannuation and Retirement Income Act 2011* s 8(a) – Proper construction of “ordinary resident”.

**Held (5:0):** Appeal dismissed.

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