



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, the Supreme Court of New Zealand and the Hong Kong Court of Final Appeal. Admiralty, arbitration and constitutional decisions of the Court of Appeal of Singapore.

Administrative Law

Canada Post Corp v Canadian Union of Postal Workers

Supreme Court of Canada: [2019 SCC 67](#)

Judgment delivered: 20 December 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Administrative law – Judicial review – Labour relations – Federally-regulated employer’s workplace inspection obligation – Where health and safety officer found that employer failed to ensure that every part of workplace was inspected at least once a year – Where appeals officer concluded that employer’s workplace inspection obligation applies only to parts of workplace over which employer has control and rescinded contravention – Whether appeals officer’s interpretation of workplace inspection obligation reasonable – Framework for determining applicable standard of review and conducting reasonableness review set out in *Vavilov* applied – *Canada Labour Code*, RSC, 1985, c L-2, s 125(1)(z.12).

Held (7:2): Appeal allowed.

Bell Canada v Canada (Attorney General)

Supreme Court of Canada: [2019 SCC 66](#)

Judgment delivered: 19 December 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Administrative law – Appeals – Boards and tribunals – Regulatory boards – Jurisdiction – Canadian Radio-television and Telecommunications Commission (“CRTC”) decided that simultaneous substitution regime did not apply to Super Bowl broadcast – Canadians therefore able to view American commercials aired during Super Bowl – Whether CRTC had authority to prohibit simultaneous substitution for Super Bowl – Framework for determining applicable standard of review set out in *Vavilov* applied – *Broadcasting Act*, SC 1991, c 11, s 9(1)(h).

Held (7:2): Appeals allowed.

Canada (Minister of Citizenship and Immigration) v Vavilov

Supreme Court of Canada: [2019 SCC 65](#)

Judgment delivered: 19 December 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Administrative law – Judicial review – Standard of review – Proper approach to judicial review of administrative decisions – Proper approach to reasonableness review – Where Registrar of Citizenship cancelled certificate of Canadian citizenship issued to Canadian-born son of parents later revealed to be Russian spies – Where decision of Registrar based on interpretation of statutory exception to general rule that person born in Canada is Canadian citizen – Where exception provided that Canadian-born child not citizen if either parent a representative or employee in Canada of foreign government at time of child’s birth – Whether Registrar’s decision to cancel certificate of citizenship reasonable – *Citizenship Act*, RSC 1985, c 29, s 3(2)(a).

Held (9:0): Appeal dismissed.

R (on the application of Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs; R (on the application of NHS Property Services Ltd) v Surrey County Council & Anor

United Kingdom Supreme Court: [\[2019\] UKSC 58](#)

Judgment delivered: 11 December 2019

Coram: Lords Wilson and Carnwath, Ladies Black and Arden, and Lord Sales

Catchwords:

Administrative law – Statutory incompatibility – Registration of land as town or village green (“green”) under *Commons Act 2006* – Where local resident applied to register land adjacent to Moorside Primary School as green based on 20 years’ qualifying use – Where inspector appointed by Secretary of State determined that four of five areas comprising that land should be registered – Where application made to register site at Leach Grove Wood as green, relying on use over period of 20 years – Where inspector recommended refusal of registration, but Surrey County Council registered it – Where land held by public authority for statutory purposes in both appeals – Whether statutory incompatibility defence available to public authorities in challenging registration application by member of public.

Held (3:1 and 1 in part): Appeals allowed.

R (on the application of Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council

United Kingdom Supreme Court: [\[2019\] UKSC 53](#)

Judgment delivered: 20 November 2019

Coram: Lady Hale, Lords Reed, Lloyd-Jones, Sales and Thomas

Catchwords:

Administrative law – Judicial review – Where Council granted planning permission to Resilient Energy Severndale Ltd (“Resilient”) to change use of land from agriculture to wind turbine – Where Resilient proposed that turbine be built and run by community benefit society and annual donation be made to local community fund – Where Council took donation into account in granting planning permission and made permission conditional on community benefit society undertaking development and on donation – Whether promise to provide community fund donation is “material consideration” for purposes of s 70(2) of *Town and Country Planning Act 1990* and s 38(6) of *Planning and Compulsory Purchase Act 2004*.

Held (5:0): Appeal dismissed.

Arbitration

BNA v BNB & Anor

Court of Appeal of Singapore: [\[2019\] SGCA 84](#)

Judgment delivered: 27 December 2019

Coram: Menon CJ, Prakash and Chong JJA

Catchwords:

Arbitration – Interpretation of arbitration agreements – Where PRC corporation entered into contract with Korean company to purchase industrial gases – Where second PRC company took on Korean company’s rights and obligations under contract – Where contract included arbitration agreement – Where buyer failed to make necessary payments under the contract – Where sellers filed Notice of Arbitration – Where buyer challenged jurisdiction of Singapore International Arbitration Centre – Whether proper law of arbitration agreement Singapore law or PRC law – Whether Singapore was seat of arbitration – Whether arbitration agreement invalid under governing law of the agreement.

Held (3:0): Appeal allowed to a limited extent.

ST Group Co Ltd & Ors v Sanum Investments Limited

Court of Appeal of Singapore: [\[2019\] SGCA 65](#)

Judgment delivered: 18 November 2019

Coram: Menon CJ, Prakash JA, Loh J

Catchwords:

Arbitration – Enforcement of awards – Where respondent obtained arbitration award in its favour against appellants – Where Assistant Registrar granted leave for enforcement of arbitration award in Singapore – Where Judge of the High Court set aside leave order in respect of one appellant but affirmed leave order in respect of other award debtors – Where cross-appeals brought by both sides of dispute against High Court’s orders – Where six issues arose on appeal – Under which agreement did the dispute arise – Who the parties were to relevant agreement – Whether dispute resolution clause in relevant agreement was valid arbitration clause – Whether correct seat and composition of arbitral Tribunal were chosen – Whether any waiver or estoppel arose in relation to choice of seat or composition – Whether, in the event that High Court Judge’s findings on seat and composition were upheld, it would be necessary to show actual prejudice in order to resist enforcement of award.

Held (3:0): Award debtors’ cross-appeal allowed; respondent’s cross-appeal dismissed.

Civil Procedure

Rotkiske v Klemm

United States Supreme Court: [Docket 18-328](#)

Judgment delivered: 10 December 2019

Coram: Roberts CJ, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh JJ

Catchwords:

Civil procedure – Limitation periods – Where *Fair Debt Collection Practices Act* (“FDCPA”) authorised private civil actions against debt collectors who engaged in prohibited practices – Where actions under FDCPA must be brought “within one year from the date on which the violation occurs” – Where respondent commenced proceedings against petitioner to collect debt – Where originating process served at address where petitioner no longer lived and accepted by someone else – Where respondent obtained default judgment in debt proceedings in 2009 – Where petitioner claimed to have first learnt of 2009 judgment in 2014 – Where petitioner commenced proceedings against respondent alleging breach of terms of FDCPA by contacting him without lawful ability to collect – Where respondent moved to have later proceedings dismissed as barred by limitation period in FDCPA – Whether limitation period begins to run when alleged violation occurs or when violation discovered.

Held (8:1): Affirmed.

Constitutional Law

Canada (Attorney General) v British Columbia Investment Management Corp

Supreme Court of Canada: [2019 SCC 63](#)

Judgment delivered: 13 December 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Brown, Rowe and Martin JJ

Catchwords:

Constitutional law — Intergovernmental immunity from taxation — Goods and services tax — Scope of intergovernmental immunity — Taxation — Goods and services tax — Federal-provincial reciprocal taxation agreement — Provincial Crown corporation created by legislature to provide investment management services to province’s public sector pension plans and other Crown entities — Whether provincial Crown corporation required to collect and remit federal GST on costs it incurs in making investments in pooled investment portfolios — Whether provincial Crown corporation entitled to constitutional immunity from taxation —

Whether agreements entered into by federal and provincial governments to pay the other's sales taxes are binding on other Crown entities – Whether agreements have legal effect of removing immunity from taxation that would otherwise be enjoyed by Crown agent – *Constitution Act, 1867, s 125 – Excise Tax Act, RSC 1985, c E-15, Part IX.*

Held (6:1 in part): Appeal and cross-appeal dismissed.

Independent Institute of Education (Pty) Limited v Kwazulu-Natal Law Society & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 47](#)

Judgment delivered: 11 December 2019

Coram: Mogoeng CJ, Froneman, Jafta, Khampepe and Madlanga J, Mathopo AJ, Mhlantla and Theron J, and Victor AJ

Catchwords:

Constitutional law – Invalidity – Meaning of “university” in s 26(1)(a) of *Legal Practice Act 2014* – Where applicant brought review application against refusal of KwaZulu-Natal Law Society to recognise its LLB degree as compliant with requirements for entry into attorneys’ profession, based on Society’s interpretation of term “university” in s 26(1)(a) – Where applicant challenged constitutional validity of s 26(1)(a) to extent that term “university” unjustifiably excluded it – Where High Court held s 26(1)(a) is constitutionally invalid to extent that “university” excludes private higher education institutions duly registered and accredited to offer LLB degree, in violation of ss 9(1), 22 and 29(3) of Constitution – Whether 26(1)(a) reasonably capable of being given constitutionally-compliant interpretation.

Held (9:0): Order declaring s 26(1)(a) of *Legal Practice Act 2014* constitutionally invalid not confirmed.

Centre for Child Law and Ors v Media 24 Limited & Ors

Constitutional Court of South Africa: [\[2019\] ZACC 46](#)

Judgment delivered: 4 December 2019

Coram: Mogoeng CJ, Cameron, Froneman, Jafta and Khampepe JJ, Ledwaba AJ, Madlanga and Mhlantla JJ, Nicholls AJ and Theron J

Catchwords:

Constitutional law – Invalidity – Scope of protection provided by s 154(3) of *Criminal Procedure Act 1977* for child participants in criminal proceedings – Where child taken from biological parents whilst in maternity ward at hospital and raised by female abductor – Where child

found by biological parents when aged 17 – Where child potential witness in trial of abductor, scheduled to begin after child turns 18 years old – Where interim order prohibiting publication of any information that would reveal child’s identity sought against media respondents – Where High Court held s 154(3) could be purposively interpreted to extend identity protection to child victims in criminal proceedings, but should not be interpreted to provide ongoing protection to child participants once they turn 18 – Where Supreme Court of Appeal majority held s 154(3) not extend to child victims in criminal proceedings and constitutionally invalid – Whether declaration of invalidity should be confirmed – Whether failure to provide ongoing protection justified.

Held (7:3 in part): Supreme Court of Appeal’s declaration of invalidity confirmed; appeal against part of Supreme Court of Appeal’s order upheld; s 154(3) of *Criminal Procedure Act* declared constitutionally invalid to extent that protection of children does not extend beyond their reaching age of 18 years; declaration of constitutional invalidity suspended, with provision to be read-in in interim.

Desgagnés Transport Inc v Wärtsilä Canada Inc

Supreme Court of Canada: [2019 SCC 58](#)

Judgment delivered: 28 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Constitutional law — Division of powers — Navigation and shipping — Property and civil rights — Canadian non-statutory maritime law — Double aspect doctrine — Where shipping company and supplier entering into contract for sale of marine engine parts for use on commercial vessel — Where ship’s main engine suffering major failure caused by latent defect in parts supplied — Where shipping company commencing action against supplier for damages and lost profit — Where choice of law clause providing that laws in force in Quebec govern contract — Whether body of law governing dispute falls within federal power over navigation and shipping or provincial power over property and civil rights — Whether Canadian maritime law or Quebec civil law governs contract — *Constitution Act, 1867*, ss 91(10), 92(13) — *Civil Code of Québec*, art 1733.

Held (9:0): Appeal allowed; trial judge’s conclusions restored.

R v KJM

Supreme Court of Canada: [2019 SCC 55](#)

Judgment delivered: 15 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Constitutional law — Charter of Rights — Right to be tried within reasonable time — Young persons — Where delay of almost 19 months between charges and end of youth accused's trial — Whether presumptive ceilings established in *Jordan* apply to youth justice court proceedings — Whether youth accused's right to be tried within reasonable time under s 11(b) of *Canadian Charter of Rights and Freedoms* infringed.

Held (5:4): Appeal dismissed.

Contract Law

Resolute FP Canada Inc v Ontario (Attorney General)

Supreme Court of Canada: [2019 SCC 60](#)

Judgment delivered: 6 December 2019

Coram: Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe and Martin JJ

Catchwords:

Contract law — Interpretation — Indemnity — Where river system contaminated by mercury waste discharged by operation of pulp and paper mill — Where action for damages commenced against mill owners in relation to contamination — Where province granting indemnity in context of settlement of action to current and former mill owners in relation to environmental damage caused by mercury discharge — Where remediation order later issued by provincial environment regulator in relation to waste disposal site on mill property — Whether indemnity applies to cover costs of complying with remediation order.

Held (4:3 in part): Ontario's appeal allowed and summary judgment granted in its favour; Resolute and Weyerhaeuser's appeals dismissed.

Costs

Peter v NantKwest Inc

United States Supreme Court: [Docket 18-801](#)

Judgment delivered: 11 December 2019

Coram: Sotomayor J delivered the opinion for a unanimous Court

Catchwords:

Costs – “American Rule” that subject to statute or contract each party bears own costs – Where *Patent Act* provided dissatisfied applicant with method for challenging adverse decision of Patent and Trademark Office (“PTO”) by filing civil action against PTO Director in US District Court for Eastern District of Virginia (35 USC §145) – Where applicant in §145 proceedings must pay “[a]ll the expenses of the proceedings” – Where respondent filed §145 proceeding – Where District Court granted summary judgment for PTO, affirmed by Federal Circuit – Where PTO moved for reimbursement of expenses including salaries of PTO attorneys and paralegal – Where District Court denied motion holding that “[a]ll the expenses of the proceedings” did not include attorney’s fees – Where Federal Circuit affirmed – Whether plain text of §145 sufficiently broad to exclude operation of “American Rule” that each litigant pay own attorney’s fees.

Held (9:0): Affirmed.

Criminal Law

Mark Edward Lundy v The Queen

New Zealand Supreme Court: [\[2019\] NZSC 152](#)

Judgment delivered: 20 December 2019

Coram: William Young, O’Regan, Williams, Arnold, and Miller JJ

Catchwords:

Criminal law – Appeals – Application of proviso – Where appellant convicted of murders of his wife and daughter – Where appellant appealed against convictions to Court of Appeal on ground that immunohistochemical and DNA evidence should not have been admitted – Where Court of Appeal held that evidence based on messenger RNA analysis should not have been admitted but applied proviso and dismissed Mr Lundy’s appeal – Whether Court of Appeal erred in applying proviso.

Held (5:0): Appeal dismissed.

Tshabalala v S; Ntuli v S

Constitutional Court of South Africa: [\[2019\] ZACC 48](#)

Judgment delivered: 11 December 2019

Coram: Mogoeng CJ, Froneman, Jafta, Khampepe and Madlanga J, Mathopo AJ, Mhlantla and Theron J, and Victor AJ

Catchwords:

Criminal law – Application of doctrine of common purpose to common law rape – Where group of young men went on rampage, breaking into houses and causing malicious damage to property – Where eight women occupants raped – Where men convicted of various offences, including eight counts of common law rape of which seven were on basis of doctrine of common purpose – Where Full Court held doctrine of common purpose cannot be applied to crimes that can be committed only through instrumentality of person’s own body – Where Supreme Court of Appeal reversed findings of High Court on application of common purpose, upheld appeal and set aside conviction of being accomplice to rape – Where other co-offenders subsequently applied to Constitutional Court for leave to appeal against convictions and sentences in light of Supreme Court of Appeal’s decision – Whether doctrine of common purpose does not apply to common law rape because instrumentality of one’s body required for commission of that crime.

Held (9:0): Appeal dismissed.

HKSAR v Harjani Haresh Murlidhar

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 47](#)

Judgment delivered: 5 December 2019

Coram: Ma CJ, Fok and Cheung PJJ, Stock and Lord Phillips of Worth Matravers NPJJ

Catchwords:

Criminal law – Conviction appeals – Where appellant convicted in District Court of conspiring with others to deal with property, knowing or having reasonable grounds to believe that it represented proceeds of an indictable offence – Where trial judge held appellant did not know property represented proceeds of indictable offence but closed his eyes to obvious indicia of illegality – Where Court of Appeal dismissed appeal against conviction but held that trial judge had misinterpreted the phrase “reasonable grounds to believe” – Where Court of Final Appeal raised questions for determination on appeal – What is the meaning of “having reasonable grounds to believe that any property ... represents any person’s proceeds of an indictable offence” – Whether defendant’s actual belief is relevant in determining whether statutory test satisfied – Whether “wilful blindness” relevant in determining whether statutory test satisfied – Whether, in light of s 159A of the *Crimes Ordinance* there can be offence of conspiracy to deal with property having reasonable grounds to believe that such property represents any person’s proceeds of an indictable offence – Whether, in light of s 159A, defendants who have reasonable grounds to believe property tainted guilty of conspiracy if they

agree to deal with property notwithstanding that those grounds may not exist at time of dealing.

Held (5:0): Appeal dismissed; questions answered.

Lemuel Misa v The Queen

New Zealand Supreme Court: [\[2019\] NZSC 134](#)

Judgment delivered: 2 December 2019

Coram: Winkelmann CJ, Glazebrook, Ellen France, Williams and Arnold JJ

Catchwords:

Criminal law – Appeals – Miscarriage of justice – Where appellant convicted of 20 counts of physical and sexual offending against two former partners, AB and BC – Where agreed summary of facts at trial noted that appellant had pleaded guilty to assault on AB – Where appellant argued on appeal that similarity in accounts indicated collusion between AB and BC and that trial counsel inadequately prepared – Where appellant submitted new evidence would have affected outcome – Where Court of Appeal dismissed conviction appeal and Supreme Court granted leave to appeal against conviction – Whether appellant’s trial affected by miscarriage of justice.

Held (5:0): Appeal dismissed.

HKSAR v Chau Yui Ming

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 39](#)

Judgment delivered: 15 November 2019

Coram: Ma CJ, Ribeiro, Fok and Cheung PJJ, and Lord Neuberger of Abbotsbury NPJ

Catchwords:

Criminal law – Drug trafficking – Single indictment – Where appellant intercepted by police who found two packets of ice in his sling bag (“First Batch”) and ten packets of ice and one packet of ketamine in black bag in his flat (“Second Batch”) – Where appellant charged with single count of trafficking in all drugs found – Where trial judge directed jury that they could only convict if satisfied that appellant was in possession of both bags – Where appellant convicted – Whether trial judge under duty to place before jury all possible alternative scenarios open on evidence, even if such alternatives not raised by parties and even if inconsistent with defence case – Whether trial judge should have split indictment into three counts.

Held (5:0): Appeal dismissed.

R v Javanmardi

Supreme Court of Canada: [2019 SCC 54](#)

Judgment delivered: 14 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Côté, Brown and Rowe JJ

Catchwords:

Criminal law — Unlawful act manslaughter — Criminal negligence causing death — Elements of offence — Where naturopath charged and acquitted at trial in death of patient — Where Court of Appeal setting aside acquittals — Whether Crown must prove that underlying unlawful act was objectively dangerous to establish actus reus of unlawful act manslaughter — Whether Court of Appeal erred in intervening — *Criminal Code*, RSC 1985, c C-46, ss 220, 222(5)(a).

Held (5:2): Appeal allowed; acquittals restored.

R v TRA

United Kingdom Supreme Court: [\[2019\] UKSC 51](#)

Judgment delivered: 13 November 2019

Coram: Lady Hale, Lords Reed, Wilson, Hodge and Lloyd-Jones

Catchwords:

Criminal Law – Torture – Correct interpretation of “person acting in an official capacity” in s 134(1) of *Criminal Justice Act 1988* – Where appellant charged with one count of conspiracy to commit torture and seven counts of torture, contrary to s 134 of Act – Where offences alleged to have occurred in early stages of first Liberian civil war in 1990 – Where appellant denies involvement in offences – Where appellant asserts that at no time did she act in official capacity for National Patriotic Front of Liberia (“NPFL”), nor was NPFL de facto government authority in relevant locations within Liberia – Whether s 134 is confined to individuals acting on behalf of State – Whether s 134 covers any person who acts otherwise than in a private and individual capacity for or on behalf of organisation or body which exercises or purports to exercise functions of government over civilian population, whether in peace time or during armed conflict.

Held (4:1): Appeal allowed; Court of Appeal determination quashed; matter remitted for further consideration.

R v Rafilovich

Supreme Court of Canada: [2019 SCC 51](#)

Judgment delivered: 8 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Criminal law — Proceeds of crime — Fine instead of forfeiture — Return of seized property for legal expenses — Where property believed to be proceeds of crime seized from accused — Where judge ordering that property be returned to accused for payment of reasonable legal expenses for his defence — Where accused convicted — Where sentencing judge deemed returned property to be proceeds of crime subject to forfeiture — Where property used for legal expenses and no longer available for forfeiture — Whether fine instead of forfeiture may be imposed in relation to funds that have been judicially returned for payment of legal expenses for accused's defence — *Criminal Code*, RSC 1985, c C-46, ss 462.34(4)(c)(ii), 462.37(3).

Held (6:3 in part): Appeal allowed; Court of Appeal's order set aside.

Employment Law

Royal Mail Group Ltd v Jhuti

United Kingdom Supreme Court: [\[2019\] UKSC 55](#)

Judgment delivered: 27 November 2019

Coram: Lady Hale, Lord Wilson, Lord Carnwath, Lord Hodge, Lady Arden

Catchwords:

Employment Law – Unfair dismissal – Protected disclosures – Where appellant employed by respondent – Where appellant made protected disclosures within meaning of *Employment Rights Act 1996* about possible breaches of company policy and regulator's guidance – Where, in response to disclosures, appellant's line manager pretended that appellant's performance of duties inadequate – Where company appointed another officer to determine whether appellant's employment should be terminated – Where that officer supplied with incomplete records of correspondence between appellant and line manager and between appellant and HR – Where officer recommended that appellant's employment be terminated on basis that appellant had not met required standards of performance and was unlikely to going forward – Where s 103A of *Employment Rights Act* provided that dismissal is unfair if "the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure" – Whether in a claim for unfair

dismissal the reason for the dismissal can be other than that given to the employee by the decision-maker.

Held (5:0): Question answered: "Yes, if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

Amalungelo Workers' Union and Ors v Philip Morris South Africa (Pty) Limited & Anor

Constitutional Court of South Africa: [\[2019\] ZACC 45](#)

Judgment delivered: 26 November 2019

Coram: Mogoeng CJ, Froneman, Jafta, Khampepe, Madlanga JJ, Mathopo AJ, Mhlantla and Theron JJ, and Victor AJ

Catchwords:

Employment law – Jurisdiction of Labour Court – Where applicant union and 75 members alleged that two employers deducted tax in respect of company cars from employees' salaries – Where Union and employees commenced proceedings in Labour Court seeking orders for refund of deducted amounts – Where Labour Court held that it lacked jurisdiction to enforce provisions of *Basic Conditions of Employment Act 1997* ("BCEA Act") in absence of assertion that relevant provisions of BCEA Act form part of contractual terms – Whether Labour Court erred in holding that it lacked jurisdiction to determine dispute.

Held (9:0): Appeal allowed; matter remitted to Labour Court.

Family Law

Yared v Karam

Supreme Court of Canada: [2019 SCC 62](#)

Judgment delivered: 12 December 2019

Coram: Wagner CJ, Abella, Karakatsanis, Côté, Brown, Rowe and Martin JJ

Catchwords:

Family law — Family patrimony — Trusts — Partition of family patrimony — Family residence held under trust — Whether residence of family held in trust or rights which confer use of it included in family patrimony — *Civil Code of Québec*, art 415.

Held (5:2): Appeal allowed.

Insolvency Law

MacDonald & Anor v Carnbroe Estates Ltd

United Kingdom Supreme Court: [\[2019\] UKSC 57](#)

Judgment delivered: 4 December 2019

Coram: Lords Reed, Wilson, Hodge, Briggs and Sales

Catchwords:

Insolvency law – “Adequate consideration” in s 242(4)(b) of *Insolvency Act 1986* – Where Scottish company (“Grampian”) had its principal asset and place of business (“Property”) valued at £1.2m on open market and at £800,000 on restricted marketing period of 180 days – Where Grampian was sold to Mr Quinn when it owed more than £500,000 to each of bank (“NatWest”) and HM Revenue and Customs (“HMRC”) – Where Grampian’s cash flow collapsed and Mr Quinn sold Property to Carnbroe Estates Ltd (“the appellant”) at reduced price of £550,000 in quick, off-market sale in light of risk of repossession by NatWest and fact that buildings needed repairs and refurbishment – Where, instead of paying agreed consideration to Grampian, appellant repaid NatWest loan directly to obtain discharge of standard security – Where HMRC unpaid and presented petition for winding up Grampian – Where joint liquidators of Grampian commenced proceedings to challenge sale – Whether sale of Property made for “adequate consideration” within meaning of s 242(4)(b) of Act.

Held (5:0): Appeal allowed to extent of remitting matter to First Division of Inner House to consider appropriate remedy under s 242(4) of Act.

Migration Law

Patel v Secretary of State for the Home Department; Secretary of State for the Home Department v Shah

United Kingdom Supreme Court: [\[2019\] UKSC 59](#)

Judgment delivered: 16 December 2019

Coram: Lady Hale, Lords Carnwath and Briggs, Lady Arden and Lord Sales

Catchwords:

Migration law – *Zambrano* principle – Citizenship – Right to reside – Third country national without right of residence responsible for primary care of

parents (*Patel*) or child (*Shah*) – Where parents/child British citizens and residents of United Kingdom – Whether refusal of residence to son/father deprived parents/child of enjoyment of rights as EU citizen – Derivative residence.

Held (5:0): Mr Shah’s appeal allowed; Mr Patel’s appeal dismissed.

R (on the application of Hemmati and Ors) v Secretary of State for the Home Department

United Kingdom Supreme Court: [\[2019\] UKSC 56](#)

Judgment delivered: 27 November 2019

Coram: Lady Hale, Lords Reed and Wilson, Lady Arden and Lord Kitchin

Catchwords:

Migration law – Asylum – Detention pending removal – Damages – *Factortame* principle – Where five respondents arrived in United Kingdom illegally and claimed asylum having travelled via at least one other member state of European Union in which they had already claimed asylum – Where those member states agreed to take responsibility for examining asylum claims pursuant to Parliament and Council Regulation (EU) No 604/2013 of 2013 (“Regulation”) – Where each respondent detained for period of time pending removal from United Kingdom pursuant to para 16(2) of Schedule 2 to *Immigration Act 1971* – Where Secretary of State published policy in relation to such detention in Chapter 55 of Enforcement Instructions and Guidance – Where respondents challenged lawfulness of detention – Whether detention of each respondent lawful, given that art 28 of Regulation permits detention where there is “significant risk of absconding” – Whether, if detention unlawful, damages payable under domestic law for false imprisonment or pursuant to *Factortame* principle.

Held (5:0): Appeal dismissed.

Municipal Law

Montréal (Ville) v Octane Stratégie inc

Supreme Court of Canada: [2019 SCC 57](#)

Judgment delivered: 22 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Municipal law — Contracts — Restitution of prestations — Receipt of payment not due — Where large-scale media event designed and produced within short period of time by public relations and communications firm and its subcontractor at request of municipality — Where mandate granted to firm without rules of public order for awarding municipal contracts having been complied with and without grant of mandate having been approved by resolution of municipal council or by officer authorized by valid delegation of powers — Where municipality refusing to pay firm's invoice for subcontractor's services — Whether rules on restitution of prestations set out in *Civil Code of Québec* apply under municipal law — Whether contract exists between municipality and firm — Whether restitution of prestations is necessary — *Civil Code of Québec*, arts 1491, 1699.

Held (6:3): City's appeal dismissed; Octane's appeal is moot.

Police

Kosoian v Société de transport de Montréal

Supreme Court of Canada: [2019 SCC 59](#)

Judgment delivered: 29 November 2019

Coram: Wagner CJ, Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ

Catchwords:

Police — Civil liability — Fault — Offence non-existent in law — Legal person established in public interest — Immunity — Fault — Public transit authority providing police officers designated as subway inspectors with training indicating that holding escalator handrail was obligation under by-law — Where police officer arrested and searched appellant after she refused to hold escalator handrail in subway and to identify herself — Where appellant brought civil liability action against police officer, his employer and public transit authority for which he acted as inspector — Whether police officer incurred civil liability and engaged his employer's civil liability by acting as he did — Whether public transit authority incurred civil liability — If so, whether it can claim public law relative immunity — Whether appellant must bear share of liability because of refusal to cooperate with police officer — *Civil Code of Québec*, art 1457.

Held (9:0): Appeal allowed.

Social Security

RR v Secretary of State for Work and Pensions
United Kingdom Supreme Court: [\[2019\] UKSC 52](#)

Judgment delivered: 13 November 2019

Coram: Lady Hale, Lord Reed, Lady Black, Lord Briggs and Lady Arden

Catchwords:

Social security – Housing benefit system – Where Supreme Court declared in *R (Carmichael) v Secretary of State for Work and Pensions* [2016] UKSC 58 that where there was “transparent medical need for an additional bedroom” not catered for in reg B13(5) and (6) of *Housing Benefit Regulations 2006*, there was unjustified discrimination on ground of disability contrary to art 14 of European Convention on Human Rights – Where reg B13 was amended to reflect this ruling, but operation not retrospective – Where appellant lives with severely disabled partner in two bedroom social housing property for which he claims housing benefit – Where they require separate bedrooms because of partner’s disabilities and need to accommodate medical equipment and supplies – Whether and how decision in *Carmichael* affects decision-makers hearing appeals from local authority decisions in claims relating to periods prior to amendment – Whether account should be taken of any discretionary housing payments received by claimant during earlier period, if deduction to housing benefit should not have been applied.

Held (5:0): Appeal allowed.

Statutory Interpretation

Employees Compensation Assistance Fund Board v Wo Chun Wah
Hong Kong Court of Final Appeal: [\[2019\] HKCFA 48](#)

Judgment delivered: 20 December 2019

Coram: Ma CJ, Ribeiro and Fok PJJ, Stock and McLachlin NPJJ

Catchwords:

Statutory interpretation – Employment – Where Employee Compensation Assistance Fund Board established to provide relief for employees and others entitled to compensation under *Employee’s Compensation Ordinance* (“ECO”) – Where plaintiff decorator sustained injuries at work and brought claims for compensation under ECO and for common law damages – Where Board intervened – Where trial judge gave judgment for plaintiff but declined to order costs against Board – Whether courts have jurisdiction to order costs against Board in certain proceedings – Whether Board empowered to enter into binding settlements regarding claims or potential claims for payments out of fund it administers –

Employment Compensation Assistance Ordinance ss 20A, 20B, 25, 25A, 25B, 29 – *High Court Ordinance* s 52A.

Held (5:0): Appeal dismissed.

Miller & Ors v Ministry of Justice

United Kingdom Supreme Court: [\[2019\] UKSC 60](#)

Judgment delivered: 16 December 2019

Coram: Lady Hale, Lords Reed, Wilson and Carnwath, Lady Arden

Catchwords:

Statutory interpretation – Discrimination – Regs 5 and 8 of *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000* (SI 2000/1551) (“PTWR”) – Where appellants are four judges, each of whom has held one or more appointments as fee-paid-part-time judges – Where appellants not paid on “salaried basis” excluded from definition of “qualifying judicial office” in s 1 of *Judicial Pensions and Retirement Act 1993* and therefore excluded from rights to pension – Where appellants brought claims under PTWR on basis that they had been subject of less favourable treatment in provision to them of judicial pension – Whether point of unequal treatment occurs at time when pension falls to be paid – Time limit – Whether three month time limit under Regulations runs from retirement or cessation of appointment.

Held (5:0): Appeals allowed.

Taxation

Commissioner of Inland Revenue v Poon Cho-ming, John

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 38](#)

Judgment delivered: 14 November 2019

Coram: Ribeiro, Fok and Cheung PJJ, Bokhary and Lord Neuberger of Abbotsbury NPJJ

Catchwords:

Taxation – Income – Salaries tax – Where taxpayer was Group CFO and executive director of employer company – Where taxpayer and employer entered into agreement terminating taxpayer’s employment and taxpayer was paid money (“Sum”) described as substitute for discretionary bonus and given share options which resulted in gain for taxpayer (“Share Option Gain”) – Whether Sum and Share Option Gain were income “from

employment” under s 8(1) of *Inland Revenue Ordinance* (Cap 112) – Whether Sum and/or Share Option Gain were rewards for past services.

Held (5:0): Appeal dismissed.

Torts Law

IQ EQ (NTC) Trustees Asia (Jersey) Limited & Anor v Bruno Arboit and Roderick John Sutton & Anor

Hong Kong Court of Final Appeal: [\[2019\] HKCFA 45](#)

Judgment delivered: 22 November 2019

Coram: Ribeiro, Fok and Cheung PJJ, Tang and Lord Neuberger of Abbotsbury NPJJ

Catchwords:

Torts Law – Negligence – Breach of trust – Equitable compensation – “Anti-Bartlett” provisions – Where family trust (“Trust”) set up under Jersey law – Where first appellant (“DBS Trustee”) was trustee and held only share of second respondent (“Wise Lords”) as sole trust asset – Where second appellant (“DHJ Management”) was sole director of Wise Lords – Where DBS Trustee and DHJ Management gave after-the-event approvals for three transactions entered into by Wise Lords (“Transactions”) that resulted in Wise Lords suffering significant losses – Where courts below found DBS Trustee liable for grossly negligent breach of trust as trustee and DHJ Management liable for grossly negligent breach of fiduciary duty as director in approving Transactions and ordered them to pay equitable compensation – Whether, despite “anti-Bartlett” provisions, appellants owed “high level supervisory duty” to respondents – Whether, if “high level supervisory duty” owed, such duty breached – Whether, if appellants liable, correct approach to equitable compensation applied below.

Held (5:0): If case had not settled post-hearing, Court would have allowed appeal.

Edwards on behalf of the Estate of the late Thomas Arthur Watkins v Hugh James Ford Simey Solicitors

United Kingdom Supreme Court: [\[2019\] UKSC 54](#)

Judgment delivered: 20 November 2019

Coram: Lady Hale, Lords Reed, Lloyd-Jones, Sales and Thomas

Catchwords:

Torts law – Professional negligence – Loss of chance – Where compensation scheme (“Scheme”) set up to provide tariff-based compensation to miners employed by British Coal who suffered from medical condition called vibration white finger (“VWF”) as result of excessive exposure to vibration through use of vibratory tools – Where deceased developed VWF and instructed appellant to act for him in relation to claim under Scheme – Where deceased accepted offer of full and final settlement after telephone conversation with employee of appellant – Where deceased instructed new solicitors to bring professional negligence claim against appellant on basis that he lost opportunity to bring services claim under Scheme as result of appellant’s negligence – Where jointly instructed medical expert, instructed not to apply presumption that would have applied under Scheme, provided report concluding symptoms would have been insufficient to succeed on services claim – Whether, in assessing prospects of success of negligence claim, court should have taken account of further medical report.

Held (5:0): Appeal dismissed; matter remitted for assessment of value of loss of opportunity to pursue services claim.
