



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.

Aboriginal Law

Musqueam Indian Band v. Musqueam Indian Band (Board of Review)
Supreme Court of Canada: [2016 SCC 36](#)

Judgment delivered: 9 September 2016

Coram: McLachlin CJ and Cromwell, Moldaver, Karakatsanis, Wagner, Côté and Brown JJ

Catchwords:

Aboriginal law — Indian reserves — Taxation — Property assessments — Assessment of leased reserve lands for taxation purposes — Indian Band surrendering portion of reserve lands to Crown for lease to third party — Lease restricting use of lands to golf and country club — Whether applicable Band property assessment by-law allows assessor to consider use restriction under lease in determining value of lands for taxation purposes — Musqueam Indian Band Property Assessment Bylaw, PR-96-01, s. 26(3.2).

Held (7:0): Appeal dismissed.

Arbitration

Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA

Singapore Court of Appeal: [\[2016\] SGCA 53](#)

Judgment delivered: 5 September 2016

Coram: Sundaresh Menon CJ, Judith Prakash JA and Steven Chong J

Catchwords:

Arbitration – Where Rals International Pte Ltd purchased equipment through a contract with Oltremare SRL – Where contract contained an arbitration clause – Where contract provides for payment through both cash instalments and promissory notes – Where Oltremare assigned the promissory notes to Cassa di Risparmio di Parma e Piacenza SpA (the “bank”) at a discount – Where promissory notes were dishonoured by Rals International Pte Ltd – Where bank sued for payment – Where Rals International Pte Ltd sought stay of proceedings on the basis that the subject matter of the proceedings was the subject of the arbitration agreement – Whether an arbitration agreement contained within a contract extends to bills of exchange issued in respect of that contract.

Held (3:0): Appeal dismissed.

Banking

Absa Bank Limited v Moore and Another

Constitutional Court of South Africa: [\[2016\] ZACC 34](#)

Judgment delivered: 21 October 2016

Coram: Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mbha AJ, Mhlantla J and Musi AJ

Catchwords:

Banking — Reinstatement of mortgage bonds cancelled as a result of a fraudulent scheme — Validity of cancellation — Unjustified enrichment claim against the mortgagor whose debt was extinguished in the course of the fraud — Proprietary remedy for unjustified enrichment claim bond debt validly discharged — Mortgage bonds accessory to debt — Whether lack of evidence to support enrichment claim.

Held (9:0): Leave to appeal refused.

Civil Procedure

Morasse v Nadeau-Dubois

Supreme Court of Canada: [2016 SCC 44](#)

Judgment delivered: 27 October 2016

Coram: McLachlin CJ and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ

Catchwords:

Civil procedure — Contempt of court — Required knowledge and intent — Statutory provision creating offence of contempt of court for anyone who disobeys any process or order of court or judge, or acts in such way as to interfere with orderly administration of justice or to impair authority or dignity of court — Student organization holding protests and forming picket lines at university — Student obtaining provisional interlocutory injunction mandating free access to university facilities and classes — Spokesperson of student organization commenting on injunctions and picket lines in interview — Whether spokesperson guilty of contempt — Code of Civil Procedure, CQLR, c. C-25, art. 50 para. 1.

Held (6:3): Appeal dismissed.

Confidential Information

Regina (Ingenious Media Holdings plc and another) v Revenue and Customs Commissioners

Supreme Court of the United Kingdom: [\[2016\] UKSC 54](#)

Judgment delivered: 19 October 2016

Coram: Lady Hale, Lord Mance, Lord Kerr, Lord Reed, Lord Toulson

Catchwords:

Confidential information—Disclosure—Public interest—Revenue official disclosing information relating to taxpayers in off-record briefing with journalists—Journalists publishing articles containing information disclosed in briefing—Whether disclosure “made for the purposes of a function of the Revenue and Customs” so as to escape statutory prohibition on disclosure of information held by revenue—Whether disclosure infringing taxpayers' right to confidentiality— Commissioners for Revenue and Customs Act 2005 (c 11), s 18.

Held (5:0): Appeal allowed.

Constitutional Law

McBride v Minister of Police and Another

Constitutional Court of South Africa: [\[2016\] ZACC 30](#)

Judgment delivered: 6 September 2016

Coram: Mogoeng CJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J.

Catchwords:

Constitutional Law — Constitutional validity — Confirmation proceedings — Independence of police complaints body — Section 206(6) of the Constitution — Whether decision by Minister to suspend and institute disciplinary proceedings against Executive Director of the Independent Police Investigative Directorate invalid.

Declaration of invalidity — Section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 — Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 — Regulation 13 of the IPID Regulations.

Held (10:0): Declaration invalid.

University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC v University of Stellenbosch Legal Aid Clinic and Others; Mavava Trading 279 (Pty) Ltd and Others v University of Stellenbosch Legal Aid Clinic and Others

Constitutional Court of South Africa: [\[2016\] ZACC 32](#)

Judgment delivered: 13 September 2016

Coram: Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

Catchwords:

Constitutional law — Constitutional validity — Magistrates' Courts Act, 1944 — Constitutionality of section 65J(2)(a) and (b) — Emoluments attachment orders — Failure to provide judicial oversight — Issue of emoluments attachment orders without court authorisation inconsistent with the Constitution — Reading-in — Notional severance — Appropriate remedy

Held (10:1): Appeals dismissed.

Conférence des juges de paix magistrats du Québec v. Québec (Attorney General)

Supreme Court of Canada: [2016 SCC 39](#)

Judgment delivered: 14 October 2016

Coram: McLachlin CJ and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ

Catchwords:

Constitutional law — Judicial independence — Financial security — Justices of peace — Judicial reform — Provincial legislation amending status of justices of peace, including employment conditions, remuneration and pension plan — Whether new judicial office created — Whether committee review of remuneration and pension plan necessary and if so, when should review occur — Whether legislation infringes constitutional guarantee of judicial independence — If so, whether infringement justifiable — Constitution Act, 1867 , preamble — Canadian Charter of Rights and Freedoms, ss. 1 , 11 (d) — Act to amend the Courts of Justice Act and other legislative provisions as regards the status of justices of the peace, S.Q. 2004, c. 12, ss. 27, 30 and 32 — Décret 932-2008, (2008) 140 G.O. 2, 5681.

Constitutional law — Judicial independence — Financial security — Pensions — Justices of peace — Judicial reform — Section 178 of Courts of Justice Act, CQLR, c. T-16, mandates participation of justices of peace in public service pension plan — Whether pension plan, as part of overall remuneration, meets minimum constitutional threshold required for judicial office.

Held (9:0): Appeal allowed in part.

Criminal Law

HKSAR v Yang Sigai

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 65](#)

Judgment delivered: 23 September 2016

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Neuberger of Abbotsbury NPJ

Catchwords:

Criminal law – Organized and Serious Crimes Ordinance (“OSCO”) – Where appellant was convicted of three counts of dealing with property contrary to s 25(1) of OSCO – Where relevant property had emanated

from overseas activity – Whether under s 25(4) the prosecution had to prove that accused knew of the nature of such activities – Where the relevant property is a chose in action – Whether a global charge aggregating a number of different items would offend the rule against duplicity – Whether the trial judge wrongly regarding the facts as being sufficient to establish the elements of the offence.

Held (5:0): Appeal dismissed.

Best v The Queen

Supreme Court of New Zealand: [\[2016\] NZSC 122](#)

Judgment delivered: 8 September 2016

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

Catchwords:

Criminal law – Evidence – Veracity evidence rules – Evidence Act 2006, s 37 – Examination of complainant in sexual cases on prior sexual experience – Evidence Act 2006, s 44 – Where appellant was convicted of one count of sexual violation by rape and two counts of sexual violation by unlawful sexual connection – Where at trial appellant was refused leave to cross-examine the complainant and call evidence on a prior complaint made by the complainant with the view to establish that the prior complaint was false – Miscarriage of justice proviso.

Held (5:0): Appeal dismissed.

Taniwha v The Queen

Supreme Court of New Zealand: [\[2016\] NZSC 123](#)

Judgment delivered: 8 September 2016

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

Catchwords:

Criminal law – Evidence – Where appellant was convicted of six counts involving physical and sexual violence – Where prosecutor referred to demeanour of complainant during submissions – Where prosecutor referred to complainant's reaction to evidence during submissions – Where trial judge did not provide tailored demeanour direction during summing up – Whether miscarriage of justice to not provide tailored demeanour direction.

Criminal law – Evidence – Where appellant was convicted of six counts involving physical and sexual violence – Where appellant was served Police safety order in relation to the complainant – Where appellant

breached Police safety order – Where prosecutor used evidence of Police safety order to demonstrate appellant’s controlling tendencies – Whether Police safety order evidence’s probative value outweighed its prejudicial effect – Whether Police safety order evidence admissible – Whether a ‘proper use’ direction was required.

Held (5:0): Appeal dismissed.

R v Mitchell

Supreme Court of the United Kingdom: [\[2016\] UKSC 55](#)

Judgment delivered: 19 October 2016

Coram: Lord Kerr, Lord Clarke, Lord Hughes, Lord Toulson, Lord Hodge

Catchwords:

Criminal law – Propensity evidence – Jury directions – Where respondent stabbed victim to death – Where respondent argued that she acted self-defence – Where respondent argued that she was provoked – Where prosecution applied to adduce evidence of respondent’s previous bad character for the purpose of showing that she had a propensity to use knives in order to threaten and attack others – Where evidence related to two incidents in 2003 and 2007 in which the respondent threatened and stabbed others with knives – Where neither prior incident led to conviction – Where judge directed the jury to ‘take [this evidence] into account or leave it out of account as your consider appropriate’ – Whether prosecution relying on non-conviction bad character evidence is required to prove allegations beyond reasonable doubt.

Held (5:0): Appeal dismissed.

R v Anthony-Cook

Supreme Court of Canada: [2016 SCC 43](#)

Judgment delivered: 21 October 2016

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

Catchwords:

Criminal law — Sentencing — Sentencing procedure — Guilty plea — Joint submission on sentence from Crown and defence counsel — Whether trial judge erred in departing from joint submission — Proper legal test trial judges should apply in deciding whether it is appropriate in a particular case to depart from joint submission.

Held (7:0): Appeal allowed.

Evidence

Marwood v Commissioner of Police

Supreme Court of New Zealand: [\[2016\] NZSC 139](#)

Judgment delivered: 26 October 2016

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

Catchwords:

Evidence – Where respondent commenced proceedings under the Criminal Proceeds (Recovery) Act 2009 against the appellants – Where claim is based on evidence that was obtained unlawfully and in breach of s 21 of the New Zealand Bill of Rights Act 1990 – Whether Court has jurisdiction to exclude unlawfully obtained evidence under the Criminal Proceeds (Recovery) Act 2009 – Test to exclude evidence under the Criminal Proceeds (Recovery) Act 2009.

Held (5:0): Appeal dismissed.

Industrial Relations

Transport and Allied Workers Union of South Africa obo MW Ngedle and 93 Others v Unitrans Fuel and Chemical (Pty) Limited

Constitutional Court of South Africa: [\[2016\] ZACC 28](#)

Judgment delivered: 1 September 2016

Coram: Mogoeng CJ, Moseneke DCJ, Bosielo AJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J

Catchwords:

Industrial relations – Labour Relations Act, 1995 – Dismissal – Strike action – Fairness – Principles in Afrox Ltd v SA Chemical Workers Union and Others – Reinstatement – Strike protected throughout – Strike may cease to be protected – Automatically unfair – Meaning of workers solidarity principle – No strike if no obligation to work – Appeal from Labour Appeal Court – Retrospective reinstatement.

Held (6:5): Appeal allowed.

Insurance

Ledcor Construction Ltd v Northbridge Indemnity Insurance Co

Supreme Court of Canada: [2016 SCC 37](#)

Judgment delivered: 15 September 2016

Coram: McLachlin CJ and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ

Catchwords:

Insurance — Property insurance — All risks policy — Exclusion clauses — Interpretation — Builders' risk policy excluding from coverage cost of making good faulty workmanship — Windows of building under construction scratched by contractor hired to clean them and windows needing replacement — Whether faulty workmanship exclusion to coverage applicable.

Appeals — Courts — Standard of review — Contractual interpretation — Standard of appellate review applicable to trial judge's interpretation of standard form insurance contract.

Held (9:0): Appeals allowed.

Impact Funding Solutions Ltd v Barrington Support Services Ltd (formerly Lawyers At Work Ltd)

Supreme Court of the United Kingdom: [\[2016\] UKSC 57](#)

Judgment delivered: 26 October 2016

Coram: Lord Mance, Lord Sumption, Lord Carnwath, Lord Toulson, Lord Hodge

Catchwords:

Insurance — Liability insurance — Professional indemnity — Agreement between claimant and solicitors for provision of loans to solicitors' clients to fund disbursements — Solicitors acting in breach of agreement and becoming liable to repay loans — Solicitors entering liquidation and claimant seeking to recover sums from professional indemnity insurers — Whether obligations arising out of loans assumed by solicitors in respect of professional duties to clients — Whether liabilities within exclusion to professional indemnity cover.

Held (4:1): Appeal allowed.

Jurisdiction

Endean v. British Columbia

Supreme Court of Canada: [2016 SCC 42](#)

Judgment delivered: 20 October 2016

Coram: McLachlin CJ and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ

Catchwords:

Jurisdiction — Class actions — Hearings outside superior court’s home province — Superior court judges in three provinces supervising implementation of pan-national class action settlement — Motions relating to settlement brought before supervisory judges — Class counsel proposing that supervisory judges sit together in fourth province to hear motions — Parties agreeing that judges have discretionary power to sit together outside their home provinces, but disagreeing on source of power and conditions under which it may be exercised — Whether source of authority is statutory or an aspect of inherent powers of superior court — Whether video link to open courtroom in judges’ home jurisdiction is condition for exercise of authority — Class Proceedings Act, 1992, S.O. 1992, c. 6, s. 12 — Class Proceedings Act, R.S.B.C. 1996, c. 50, s. 12.

Held (9:0): Appeals allowed.

Nationality

Regina (Johnson) v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2016\] UKSC 56](#)

Judgment delivered: 19 October 2016

Coram: Lady Hale, Lord Kerr, Lord Reed, Lord Hughes, Lord Toulson

Catchwords:

Nationality—British citizenship—Acquisition—Claimant born in Jamaica to unmarried Jamaican mother and British father—Jamaican but not British citizenship acquired under law then in force—Claimant living in United Kingdom but not applying for British citizenship—Subsequently claimant convicted of serious offences so unable to acquire citizenship—Home Secretary serving deportation notice on claimant as foreign criminal—Whether good character requirement for claimant to acquire citizenship unlawfully discriminatory—Whether statute incompatible with Convention—Claimant contending discrimination in breach of Convention right because he would not have been liable to deportation had his

parents married—Whether Home Secretary erring in certifying Convention rights claim as clearly unfounded—Whether deportation breaching Convention rights— British Nationality Act 1981 (c 61), s 41A(1) (as inserted by Borders, Citizenship and Immigration Act 2009 (c 11), s 47(1) and amended by Immigration Act 2014 (c 22), s 73, Sch 9, para 70(3))— UK Borders Act 2007 (c 30), ss 32, 33 — Human Rights Act 1998 (c 42), Sch 1, Pt I, arts 8, 14.

Held (5:0): Appeal allowed.

Statutory Construction

Booth v The Queen

Supreme Court of New Zealand: [\[2016\] NZSC 127](#)

Judgment delivered: 22 September 2016

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

Catchwords:

Statutory construction – Parole Act 2002 – Calculation of parole period – Where under the Act periods of detention before a person is sentenced to a period of imprisonment are treated as time served – Where s 90 deems pre-sentence detention to count as time served towards any sentence of imprisonment – Where s 91 defines pre-sentence detention as detention that occurs at any stage during the proceedings leading to the conviction – Whether time served relates to any charge on which the person was eventually convicted, any other charge on which the person was originally arrested or any charge that the person faced between arrest and conviction – Application of s 91.

Held (5:0): Appeal allowed.

HKSAR v Tse Yee Ping

Hong Kong Court of Final Appeal: [\[2016\] HKCFA 68](#)

Judgment delivered: 28 September 2016

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ and Lord Neuberger of Abbotsbury NPJ

Catchwords:

Statutory construction – Where Buildings Authority issued order under s 24(1) of the Buildings Ordinance (Cap 123) requiring the appellant to remove canopy – Where appellant did not comply and was charged and convicted of failing, without reasonable excuse, to comply with Order

contrary to s 40(1BA) – Whether appellants house fell within height exemption of Buildings Ordinance (Application for the New Territories) Regulations – Calculation of ‘height’ of a building.

Held (5:0): Appeal dismissed.

Taxation

Canada (Attorney General) v Igloo Vikski Inc

Supreme Court of Canada: [2016 SCC 38](#)

Judgment delivered: 29 September 2016

Coram: McLachlin CJ and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ

Catchwords:

Taxation — Customs and excise — International trade — Tariff classification of goods — Importation of hockey gloves — Whether goods should be classified as “gloves, mittens and mitts” or “other articles of plastics and articles of other materials” under Harmonized Commodity Description and Coding System — Whether Canadian International Trade Tribunal’s interpretation and application of Rules 1 and 2 of General Rules for Interpretation of Harmonized System was reasonable — Customs Tariff, S.C. 1997, c. 36 , Schedule, General Rules for the Interpretation of the Harmonized System.

Held (8:1): Appeal allowed.
