



OVERSEAS DECISIONS BULLETIN

Produced by the Legal Research Officer,
High Court of Australia Library

Volume 15 Number 3 (1 May – 30 June 2018)

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

New Health New Zealand Incorporated v South Taranaki District Council & Anor

New Zealand Supreme Court: [\[2018\] NZSC 60](#)

Judgment delivered: 27 June 2018

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

Catchwords:

Administrative law – Judicial review – Regulations – Improper purpose – Where High Court dismissed application for declaration fluoridating agents “medicines” under *Medicines Act* 1981 – Where prior to hearing of appeal, *Medicines Amendment Regulations* 2015 (“2015 Regulations”) inserted reg 58B into *Medicines Regulations* 1984 – Where reg 58B provides “[f]luoridating agents for use in fluoridating drinking water are not medicines” – Where High Court dismissed application for judicial review of 2015 Regulations – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find 2015 Regulations made for improper purpose or on basis of error of law – Whether Court of Appeal erred in finding question whether fluoridating agents “medicines” prior to 2015 Regulations moot.

Held (5:0): Appeals dismissed.

New Health New Zealand Incorporated v South Taranaki District Council & Anor

New Zealand Supreme Court: [\[2018\] NZSC 59](#)

Judgment delivered: 27 June 2018

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

Catchwords:

Administrative law – Judicial review – Scope of Council power – Where Council decided to add fluoride to drinking water – Where appellant sought judicial review on basis Council lacked power to add fluoride under *Local Government Act 2002* and *Health Act 1956* and addition of fluoride breached right under s 11 of *Bill of Rights Act 1990* to refuse medical treatment – Where High Court dismissed application – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find Council lacked power to add fluoride and addition breached right under s 11 of *Bill of Rights*.

Held (4:1): Appeal dismissed.

Canadian Human Rights Commission v Attorney General of Canada

Supreme Court of Canada: [\[2018\] SCC 31](#)

Judgment delivered: 14 June 2018

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

Catchwords:

Administrative law – Judicial review – Standard of review – Where Human Rights Tribunal dismissed complaints alleging provisions of *Indian Act* R.S.C. 1985 c I-5 precluding registration of children as “Indians” constituted discriminatory provision of services – Where Tribunal found complaints involved direct challenge to s 6 of *Indian Act* and legislation not “services” under s 5 of *Canadian Human Rights Act* R.S.C. 1985 c H-6 – Where Federal Court concluded Tribunal’s decision reasonable – Where Federal Court of Appeal dismissed appeal – Whether Tribunal’s decision reviewable on standard of reasonableness or correctness – Whether complaints constituted direct attack on legislation or concerned discrimination in provision of service.

Held (9:0): Appeal dismissed.

R (on the application of Gallaher Group Ltd & Ors) v The Competition and Markets Authority

United Kingdom Supreme Court: [\[2018\] UKSC 25](#)

Judgment delivered: 16 May 2018

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

Catchwords:

Administrative law – Judicial review – Investigation – Equal treatment – Where Office of Fair Trading identified respondents and others as having infringed *Competition Act 1998* – Where respondents and others entered into Early Resolution Agreements with Office – Where Office gave assurance to one party that if it did not appeal, it would get benefit of any successful appeal by any other party – Where Competition Appeal Tribunal allowed appeals of other parties – Where Office repaid penalty to party who received assurance – Where Office refused to repay respondents – Where High Court dismissed application for judicial review – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding Office’s failure to repay penalties to respondents was breach of duty to treat all under investigation equally.

Held (5:0): Appeal allowed.

Arbitration

Epic Systems Corp v Lewis; Ernst & Young LLP et al v Morris et al; National Labor Relations Board v Murphy Oil USA, Inc et al

Supreme Court of the United States: [Docket No 16-285, 16-300, 16-307](#)

Judgment delivered: 21 May 2018

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

Catchwords:

Arbitration – Arbitration agreements – Enforcement – *Federal Arbitration Act* – Where employers and employees entered into contract providing for individualised arbitration proceedings to resolve employment disputes – Where employees sought to bring claims under *Fair Labor Standards Act* and related state law claims through class or collective actions – Whether arbitration agreements fall within “saving clause” of *Federal Arbitration Act* on basis agreements violate federal law – Whether agreements violated *National Labor Relations Act*.

Held (5:4): Reversed and remanded; reversed and remanded; affirmed.

Bankruptcy

Lamar, Archer & Cofrin, LLP v Appling

Supreme Court of the United States: [Docket No 16-1215](#)

Judgment delivered: 4 June 2018

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

Catchwords:

Bankruptcy – Nondischargeable debts – False representations – Where respondent told petitioner legal expenses could be covered by expected tax refund – Where respondent used refund for business expenses and told petitioner still waiting on refund – Where respondent filed for bankruptcy – Where petitioner initiated proceeding against respondent in Bankruptcy Court on basis debt to petitioner nondischargeable pursuant to 11 U.S.C. s 523(a)(2)(A) – Where s 523(a)(2)(A) provides certain debts arising from “false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s ... financial condition” not dischargeable – Where Bankruptcy Court concluded debt nondischargeable – Where Eleventh Circuit reversed – Whether statement about single asset can be “statement respecting the debtor’s financial condition”.

Held (9:0): Affirmed.

Competition Law

Ohio et al v American Express Co et al

Supreme Court of the United States: [Docket No 16-1454](#)

Judgment delivered: 25 June 2018

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

Catchwords:

Competition law – Antitrust law – *Sherman Act* s 1 – Where respondents provide services to cardholders and merchants – Where respondents charge merchants higher fees than rivals to fund cardholder rewards program – Where respondents place antisteering provisions in contracts with merchants to prevent merchants dissuading cardholders from using respondents’ cards at point of sale – Where petitioners sued respondents claiming antisteering provisions violate s 1 – Where District Court concluded credit-card market comprised of separate merchant and cardholder markets and antisteering provisions anticompetitive – Where Second Circuit reversed – Whether respondent’s antisteering provisions violate federal antitrust law.

Held (5:4): Affirmed.

Animal Science Products, Inc et al v Hebei Welcome Pharmaceutical Co Ltd et al

Supreme Court of the United States: [Docket No 16-1220](#)

Judgment delivered: 14 June 2018

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

Catchwords:

Competition law – Price fixing – *Sherman Act* – Where petitioners filed class action alleging Chinese corporations agreed to fix price and quantity of vitamin C exported to United States – Where respondents moved to dismiss on ground respondents required by Chinese law to fix price and quantity – Where District Court denied motion – Where jury returned verdict for petitioners – Where Second Circuit reversed on basis District Court erred in denying motion to dismiss – Whether Second Circuit erred in concluding federal courts bound to defer to foreign government’s construction of foreign law whenever construction reasonable.

Held (9:0): Vacated and remanded.

Constitutional Law

Fareed Moosa NO & Ors v Minister of Justice and Correctional Services & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 19](#)

Judgment delivered: 29 June 2018

Coram: Mogoeng CJ, Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Constitutional law – Declaration of constitutional invalidity – *Wills Act 1953* s 2C(1) – Where s 2C(1) provides if descendant of testator renounces benefit, benefit vests in surviving spouse of testator – Where deceased married second and third applicants under Islamic law – Where children renounced benefits under will – Where Deeds Registrar declined to register family property for third applicant on basis “surviving spouse” in s 2C(1) only covers spouses recognised formally under South African law – Where High Court declared s 2C(1) unconstitutional due to omission

to recognise right of surviving spouse in polygamous Muslim marriage – Whether declaration of invalidity should be confirmed.

Held (11:0): Declaration of invalidity confirmed.

Janus v American Federation of State, Country and Municipal Employees, Council 31 et al

Supreme Court of the United States: [Docket No 16-1466](#)

Judgment delivered: 27 June 2018

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

Catchwords:

Constitutional law – First Amendment – Collective bargaining – Agency fees – Where non-members of union required to pay annual agency fee to cover union expenditures attributable to collective bargaining – Where petitioner refused to join union because petitioner opposes union’s positions including those taken in collective bargaining – Where petitioner filed complaint challenging constitutionality of agency fees – Where District Court granted respondents’ motion to dismiss on ground claim foreclosed by *Abood v Detroit Board of Education* 431 US 209 (1977) – Where Seventh Circuit affirmed – Whether District Court had jurisdiction – Whether extraction of agency fees from non-consenting employees violates First Amendment – Whether *Abood* should be overruled.

Held (5:4): Reversed and remanded.

National Institute of Family and Life Advocates et al v Becerra, Attorney General of California et al

Supreme Court of the United States: [Docket No 16-1140](#)

Judgment delivered: 26 June 2018

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

Catchwords:

Constitutional law – First Amendment – Freedom of speech – Where *California Reproductive Freedom, Accountability, Comprehensive Care and Transparency Act* requires licensed clinics to notify women California provides free or low-cost services including abortion and requires unlicensed clinics to notify women California has not licenced clinics – Where petitioners filed suit alleging notice requirements infringe freedom of speech – Where District Court denied motion for preliminary injunction

– Where Ninth Circuit affirmed – Whether Ninth Circuit erred in concluding no likelihood of success on merits.

Held (5:4): Reversed and remanded.

Abbott, Governor of Texas et al v Perez et al

Supreme Court of the United States: [Docket No 17-586](#)

Judgment delivered: 25 June 2018

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

Catchwords:

Constitutional law – Fourteenth Amendment – Racial gerrymandering – *Voting Rights Act* 1965 s 2 – Where Texas adopted new congressional districting plans and maps for State Legislature in 2011 – Where challenge to plans brought in State court – Where State court drew up interim plans – Where Legislature repealed 2011 plans and enacted State court’s interim plans in 2013 with minor modifications – Where State court invalidated multiple districts in 2013 plans on basis Legislature failed to cure “taint” of discriminatory intent harboured by Legislature in 2011 – Where State court further held three districts invalid under s 2 of *Voting Rights Act* because had effect of depriving group of equal opportunity to elect candidates of choice and one district invalid as racial gerrymander – Whether Supreme Court has jurisdiction to review orders – Whether State court erred in requiring Texas to show 2013 Legislature purged “taint” attributed to 2011 plans – Whether State court erred in finding three districts violated s 2 of *Voting Rights Act* and one district was racial gerrymander.

Held (5:4): Reversed in part, affirmed in part, and remanded.

Carpenter v United States

Supreme Court of the United States: [Docket No 16-402](#)

Judgment delivered: 22 June 2018

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

Catchwords:

Constitutional law – Fourth Amendment – Search and seizure – Where Federal Bureau of Investigation obtained petitioner’s cell phone records under *Stored Communications Act* – Where petitioner moved to suppress data on basis seizure of records without obtaining warrant supported by probable cause violated Fourth Amendment – Where District Court denied

motion – Where Sixth Circuit affirmed on basis petitioner lacked reasonable expectation of privacy because shared information with wireless carriers – Whether acquisition of petitioner’s cell phone records constituted Fourth Amendment search – Whether acquisition violated Fourth Amendment.

Held (5:4): Reversed and remanded.

Ortiz v United States

Supreme Court of the United States: [Docket No 16-1423](#)

Judgment delivered: 22 June 2018

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

Catchwords:

Constitutional law – Appointments Clause – Courts-martial – Where petitioner convicted by court-martial of possessing and distributing child pornography and dishonourably discharged from Air Force – Where Air Force Court of Criminal Appeals affirmed – Where Court of Criminal Appeals panel included judge appointed to Court of Military Commission Review (“CMCR”) – Where petitioner appealed to Court of Appeals for Armed Forces on ground appointment to CMCR barred judge’s continued service on Court of Criminal Appeals – Where Court of Appeals for Armed Forces dismissed appeal – Whether Supreme Court has jurisdiction to review decision – Whether simultaneous service on Air Force Court of Criminal Appeals and CMCR violates Appointments Clause or 10 U.S.C. s 973(b)(2)(A).

Held (7:2): Affirmed.

Lucia et al v Securities and Exchange Commission

Supreme Court of the United States: [Docket No 17-130](#)

Judgment delivered: 21 June 2018

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

Catchwords:

Constitutional law – Appointments Clause – Securities and Exchange Commission – Administrative law judges – Where petitioner charged with violating securities law – Where Commission assigned administrative law judge to adjudicate case – Where judge concluded petitioner violated law – Where petitioner appealed to Commission on basis proceeding invalid because administrative law judges are “Officers of the United States” and

under Appointments Clause may only be appointed by President, "Courts of Law" or "Heads of Department" – Where Commission rejected submission – Where Court of Appeals dismissed appeal – Whether courts below erred in failing to conclude Commission's administrative law judges are "Officers of the United States" subject to Appointments Clause.

Held (6:3): Reversed and remanded.

My Vote Counts NPC v Minister of Justice and Correctional Services & Anor

Constitutional Court of South Africa: [\[2018\] ZACC 17](#)

Judgment delivered: 21 June 2018

Coram: Mogoeng CJ, Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga JJ, Petse AJ and Theron J

Catchwords:

Constitutional law – Declaration of constitutional invalidity – *Promotion of Access to Information Act 2002* – Where appellant sought information relating to private funding of political parties under Act – Where parties refused to disclose information under provisions of Act – Where High Court declared Act inconsistent with ss 7(2), 19 and 32 of Constitution – Whether declaration of invalidity should be confirmed.

Held (11:0): Declaration of invalidity confirmed.

Gill et al v Whitford et al

Supreme Court of the United States: [Docket No 16-1161](#)

Judgment delivered: 18 June 2018

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

Catchwords:

Constitutional law – Article III – Standing – Where Wisconsin Legislature passed legislation redrawing legislative district boundaries – Where plaintiffs brought action asserting legislation "packed" Democratic voters into districts in which Democratic candidates win by large margins harming Democratic Party's ability to convert votes into seats in violation of plaintiffs' First Amendment right of association and Fourteenth Amendment right to equal protection – Where defendants moved to dismiss on basis plaintiffs lacked standing – Where District Court denied motion and concluded legislation unconstitutional – Whether District Court erred in concluding plaintiffs had standing.

Held (9:0): Vacated and remanded.

Lozman v City of Riviera Beach, Florida

Supreme Court of the United States: [Docket No 17-21](#)

Judgment delivered: 18 June 2018

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

Catchwords:

Constitutional law – First Amendment – Freedom of speech – Where petitioner arrested at public meeting – Where petitioner brought suit against City alleging arrest was retaliation for earlier law suit and public criticism of officials – Where District Court instructed jury petitioner required to prove arresting officer motivated by impermissible animus against petitioner’s protected speech and lacked probable cause to make arrest – Where Eleventh Circuit affirmed – Whether Eleventh Circuit erred in concluding existence of probable cause for arrest barred First Amendment retaliation claim.

Held (8:1): Vacated and remanded.

Levenstein & Ors v Estate of the Late Sidney Lewis Frankel & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 16](#)

Judgment delivered: 14 June 2018

Coram: Zondo ACJ, Cameron, Froneman, Jafta JJ, Kathree Setiloane, Kollapen AJJ, Madlanga, Mhlantla, Theron JJ and Zondi AJ

Catchwords:

Constitutional law – Declaration of constitutional invalidity – *Criminal Procedure Act 1977 s 18* – Where deceased allegedly sexually assaulted appellants – Where s 18 provides for 20 year prescription period for sexual offences subject to limited exceptions – Where appellants applied to High Court for declaration s 18 irrational and arbitrary and therefore unconstitutional – Where High Court declared s 18 unconstitutional – Whether s 18 unconstitutional.

Held (10:0): Declaration of invalidity confirmed.

Minnesota Voters Alliance et al v Mansky et al

Supreme Court of the United States: [Docket No 16-1435](#)

Judgment delivered: 14 June 2018

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

Catchwords:

Constitutional law – First Amendment – Freedom of speech – Where Minnesota law prohibits wearing “political badge, political button, or other political insignia” inside polling place on election day – Where petitioners argued ban unconstitutional – Where District Court granted motion to dismiss – Where Eighth Circuit affirmed – Whether political apparel ban violates First Amendment.

Held (7:2): Reversed and remanded.

City of Johannesburg Metropolitan Municipality v Chairman of the National Building Review Board

Constitutional Court of South Africa: [\[2018\] ZACC 15](#)

Judgment delivered: 7 June 2018

Coram: Mogoeng CJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta, Khampepe, Madlanga, Petse and Theron JJ

Catchwords:

Constitutional law – *National Building Regulations and Building Standards Act 1977 s 9* – Where s 9 provides all decisions of local authority on matters of land use and building regulations subject to appeal to Review Board – Where City sought declaration s 9 unconstitutional on basis building regulations and municipal planning subject to exclusive executive power of municipalities – Where High Court held s 9 unconstitutional and made declaration of invalidity – Whether s 9 unconstitutional.

Held (10:0): Declaration of invalidity confirmed.

Sveen et al v Melin

Supreme Court of the United States: [Docket No 16-1432](#)

Judgment delivered: 11 June 2018

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

Catchwords:

Constitutional law – Contracts Clause – Where deceased purchased life insurance policy naming wife as primary beneficiary and children as contingent beneficiaries – Where deceased and wife divorced prior to

death – Where District Court held children entitled to insurance money under Minnesota law which provides for revocation of any beneficiary designation upon dissolution or annulment of marriage – Where Eighth Circuit reversed – Whether retroactive application of Minnesota’s law violates Contracts Clause.

Held (8:1): Reversed and remanded.

Minister of Safety and Security v South African Hunters and Game Conservation Association

Constitutional Court of South Africa: [\[2018\] ZACC 14](#)

Judgment delivered: 7 June 2018

Coram: Zondo DCJ, Cachalia, Dlodlo AJJ, Froneman J, Goliath AJ, Jafta J, Petse AJ and Theron J

Catchwords:

Constitutional law – Vagueness and irrationality – Equality – Right to property – *Firearms Control Act 2000* – Where respondent brought application for declaration ss 24 and 28 of Act constitutionally invalid – Where High Court declared provisions invalid – Whether High Court erred in concluding provisions irrational and vague – Whether High Court erred in concluding provisions provided for differential treatment between gun owners protected by interim order who did not have to apply for relicensing and gun owners not protected by order – Whether High Court erred in concluding provisions violated right to property under s 25 of Constitution by failing to provide procedure for surrender of firearm after termination of licence.

Held (8:0): Appeal allowed.

Masterpiece Cakeshop, Ltd et al v Colorado Civil Rights Commission et al

Supreme Court of the United States: [Docket No 16-111](#)

Judgment delivered: 4 June 2018

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

Catchwords:

Constitutional law – First Amendment – Free exercise of religion – Where bakery owned and operated by devout Christian – Where owner told same-sex couple he would not create cake for wedding because opposed to same-sex marriages – Where Colorado Civil Rights Commission referred matter to Administrative Law Judge – Where Administrative Law

Judge rejected owner's First Amendment claims – Where Commission and Colorado Court of Appeals affirmed – Whether Commission's actions violated First Amendment.

Held (7:2): Reversed.

Murphy, Governor of New Jersey et al v National Collegiate Athletic Association et al

Supreme Court of the United States: [Docket No 16-476](#)

Judgment delivered: 14 May 2018

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

Catchwords:

Constitutional law – Tenth Amendment – Anticommandeering rule – Where *Professional and Amateur Sports Protection Act* 28 U.S.C. s 3702 makes it unlawful for State to “sponsor, operate, advertise, promote, license, or authorize” sports gambling – Where New Jersey enacted law in 2014 repealing earlier provisions prohibiting gambling schemes in relation to certain sporting events – Where District Court held 2014 law violates Act – Where Third Circuit affirmed – Whether courts below erred in concluding that when State repeals old laws banning sports gambling schemes, it “authorises” those schemes for purposes of s 3702 – Whether s 3702 violates anticommandeering rule.

Held (6:3): Reversed.

United States v Sanchez-Gomez et al

Supreme Court of the United States: [Docket No 17-312](#)

Judgment delivered: 14 May 2018

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

Catchwords:

Constitutional law – Federal judiciary – Mootness – Where Southern District of California adopted policy permitting use of full restraints on in-custody defendants in court – Where respondents challenged policy and use of restraints on respondents – Where District Court dismissed challenges – Where respondents appealed to Ninth Circuit – Where respondents' criminal cases ended – Where Ninth Circuit held case not moot because “class-like claim” and policy unconstitutional – Whether Ninth Circuit erred in concluding case not moot.

Held (9:0): Vacated and remanded.

Centrale des syndicats du Québec v Quebec (Attorney General)

Supreme Court of Canada: [\[2018\] SCC 18](#)

Judgment delivered: 10 May 2018

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

Catchwords:

Constitutional law – *Canadian Charter of Rights and Freedoms* s 15 – Right to equality – Discrimination based on sex – Pay equity – Where *Pay Equity Act*, CQLR c E-12.001 came into force in 1997 – Where s 38 provides that in “enterprise where there are no predominantly male job classes”, pay equity adjustments to be determined within time limit set out in s 37 or within two years of coming into force of regulation made by Pay Equity Commission under s 114, whichever expires last – Where time limit under s 37 expired in 2001 – Where Commission promulgated regulation in 2005 such that grace period under s 38 expired in 2007 – Where appellants brought proceedings seeking declaration six year delay in access to pay equity resulting from s 38 breached s 15 of Charter – Where trial judge dismissed application – Where Court of Appeal dismissed appeal – Whether s 38 of Act unconstitutional.

Held (8:1): Appeal dismissed.

Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux

Supreme Court of Canada: [\[2018\] SCC 17](#)

Judgment delivered: 10 May 2018

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

Catchwords:

Constitutional law – *Canadian Charter of Rights and Freedoms* s 15 – Right to equality – Discrimination based on sex – Pay equity – Where Quebec amended *Pay Equity Act*, CQLR c E-12.001 by replacing continuous obligation to maintain pay equity with obligation to conduct audits every five years – Where s 76.5 provides adjustments in compensation apply from date of posting of audit results – Where s 76.3 does not require audit posting to include date on which any pay inequity emerged – Where s 103.1 provides no compensation adjustments can be assessed prior to date of audit posting – Where respondents brought proceedings seeking declaration amendments violated s 15 of Charter –

Where trial judge held ss 76.3 and 76.5 breached s 15 of Charter – Where Court of Appeal concluded s 103.1 also violated s 15 of Charter – Whether ss 76.3, 76.5 and 103.1 unconstitutional.

Held (6:3): Appeal dismissed; cross-appeal dismissed.

Contracts

Navigators Insurance Company Ltd & Ors v Atlasnavios-Navegacao LDA (formerly Bnavios-Navegacao LDA)

United Kingdom Supreme Court: [\[2018\] UKSC 26](#)

Judgment delivered: 22 May 2018

Coram: Lord Mance, Lord Sumption, Lord Hughes, Lord Hodge and Lord Briggs

Catchwords:

Contracts – Insurance contracts – Construction – Where appellant’s vessel used by unknown third parties in attempt to export cocaine from Venezuela – Where vessel detained by Venezuelan authorities – Where appellant sought to recover vessel’s insured value from respondents – Where cl 1 of insurance policy provided policy covered loss or damage caused by “seizure arrest restraint or detainment”, “any terrorist or any person acting maliciously or from a political motive” and “confiscation or expropriation” – Where cl 4.1.5 provided policy excludes “arrest restraint detention confiscation or expropriation ... by reason of infringement of any customs or trading regulations” – Where trial judge held appellant entitled to recover because cl 4.1.5 did not apply to infringement of customs regulations due to malicious acts of third parties – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in concluding claim excluded under cl 4.1.5.

Held (5:0): Appeal dismissed.

Rock Advertising Ltd v MWB Business Exchange Centres Ltd

United Kingdom Supreme Court: [\[2018\] UKSC 24](#)

Judgment delivered: 16 May 2018

Coram: Lady Hale, Lord Wilson, Lord Sumption, Lord Lloyd-Jones, Lord Briggs

Catchwords:

Contracts – Variation – No oral modification clause – Consideration for variation – Where appellant entered into licence agreement with respondent – Where cl 7.6 provided “variations ... must be agreed, set out in writing and signed on behalf of both parties” – Where respondent

brought claim against appellant for arrears – Where County Court held parties orally agreed to revised payment schedule but variation unenforceable because did not satisfy requirements of cl 7.6 – Where Court of Appeal allowed appeal on basis oral variation amounted to agreement to dispense with cl 7.6 – Whether contractual term precluding amendment of agreement other than in writing legally effective – Whether variation of agreement to pay money by substituting obligation to pay less money or same money later is supported by consideration.

Held (5:0): Appeal allowed.

Costs

Cartier International AG & Ors v British Telecommunications Plc & Anor
United Kingdom Supreme Court: [\[2018\] UKSC 28](#)

Judgment delivered: 13 June 2018

Coram: Lord Mance, Lord Kerr, Lord Sumption, Lord Reed, Lord Hodge

Catchwords:

Costs – Where respondents sought injunctions requiring internet service providers (“ISPs”) to block or attempt to block websites advertising and selling counterfeit copies of respondents’ goods – Where primary judge granted injunction and ordered ISPs to pay costs of implementing website-blocking order – Where Court of Appeal dismissed appeal – Whether courts below erred in failing to conclude respondents must bear costs of implementing website-blocking order.

Held (5:0): Appeal allowed.

Designing Hong Kong Ltd v Town Planning Board
Hong Kong Court of Final Appeal: [\[2018\] HKCFA 16](#)

Judgment delivered: 15 May 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Bokhary NPJ, Lord Collins NPJ

Catchwords:

Costs – Protective costs order – Where appellant brought judicial review proceedings against respondent – Where appellant applied for protective costs order – Where Court of First Instance refused application – Where Court of Appeal dismissed appeal – Whether courts below erred in requiring appellant to prove unable to bear respondent’s costs – Whether financial resources of directors and members of appellant relevant in

determining whether to make protective costs order – Relevant factors in exercise of discretion.

Held (5:0): Appeal dismissed.

Criminal Law

R v Suter

Supreme Court of Canada: [\[2018\] SCC 34](#)

Judgment delivered: 29 June 2018

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

Catchwords:

Criminal law – Sentencing – Mitigating factors – Where appellant drove vehicle onto restaurant patio killing two year old child – Where appellant refused to provide breath sample on advice of lawyer – Where appellant charged with refusing to provide breath sample contrary to *Criminal Code* R.S.C. 1985, c C-46, s 255(3.2) – Where appellant abducted by vigilantes who cut off thumb for role in child’s death – Where appellant pleaded guilty to offence under s 255(3.2) and sentenced to four months’ imprisonment – Where sentencing judge found refusal to provide breath sample was result of bad advice and mistake of law which reduced appellant’s moral culpability and took into account vigilante actions against appellant – Where Court of Appeal allowed appeal, increasing sentence to 26 months’ imprisonment – Whether courts below erred in determining appropriate sentence.

Held (6:1): Appeal allowed in part.

HKSAR v Chan Ka Chun

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 31](#)

Judgment delivered: 27 June 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Walker NPJ

Catchwords:

Criminal law – Jury directions – Interview transcript – Mistranslation – Where appellant charged with drug trafficking – Where appellant did not give evidence but relied on content of video recorded interview at trial – Where English transcript of interview contained mistranslations – Where trial judge commented in summing up appellant’s answers in interview inconsistent – Where Court of Appeal dismissed appeal on basis

mistranslations did not result in material unfairness – Whether Court of Appeal erred in failing to find appellant did not receive fair trial.

Held (5:0): Appeal allowed.

Currier v Virginia

Supreme Court of the United States: [Docket No 16-1348](#)

Judgment delivered: 22 June 2018

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

Catchwords:

Criminal law – Double jeopardy – Where petitioner indicted for burglary, grand larceny and unlawful possession of firearm by convicted felon – Where burglary and larceny charges severed with consent of petitioner – Where petitioner acquitted of burglary and larceny but convicted of felon-in-possession charge – Where petitioner appealed on basis second trial for felon-in-possession charge amounted to double jeopardy – Where Virginia Court of Appeal and Virginia Supreme Court dismissed appeals – Whether courts below erred in failing to find trial on felon-in-possession charge violated Double Jeopardy Clause.

Held (5:4): Affirmed.

Graham Thomas Rowe v R

New Zealand Supreme Court: [\[2018\] NZSC 55](#)

Judgment delivered: 21 June 2018

Coram: Elias CJ, William Young, Glazebrook, O’Regan and Ellen France JJ

Catchwords:

Criminal law – Indecent act – *Crimes Act* 1961 s 126 – Where appellant took photographs of teenage girls in swimwear at beach using zoomed camera while crouching behind campervan – Where appellant convicted by jury of doing indecent act with intent to insult – Where Court of Appeal upheld conviction – Whether Court of Appeal erred in failing to find taking photographs not indecent act – Whether trial judge misdirected jury as to intention to insult.

Held (5:0): Appeal allowed.

Chavez-Meza v United States

Supreme Court of the United States: [Docket No 17-5639](#)

Judgment delivered: 18 June 2018

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

Catchwords:

Criminal law – Sentencing – Sentencing guidelines – *Sentencing Reform Act* 1984 – Where s 3582(c)(2) provides District Court may reduce sentence of prisoner if sentence “based on a sentencing range that has subsequently been lowered by the Sentencing Commission” – Where petitioner pleaded guilty to possessing methamphetamine with intent to distribute – Where sentencing judge imposed sentence at bottom of sentencing guidelines range – Where Sentencing Commission later lowered relevant range from 135-168 months to 108-135 months – Where petitioner sought reduction of sentence under s 3582(c)(2) – Where judge reduced sentence to 114 months – Where Court of Appeals dismissed appeal – Whether Court of Appeals erred in failing to find sentencing judge did not adequately explain rejection of petitioner’s request for 108 month sentence.

Held (5:3): Affirmed.

Rosales-Mireles v United States

Supreme Court of the United States: [Docket No 16-9493](#)

Judgment delivered: 18 June 2018

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

Catchwords:

Criminal law – Sentencing – Sentencing guidelines – Where petitioner pleaded guilty to illegal re-entry into United States – Where District Court relied on miscalculated sentencing guidelines range in sentencing petitioner – Where Fifth Circuit declined to remand case for resentencing on basis petitioner had not established error would seriously affect fairness, integrity or public reputation of judicial proceedings – Whether Fifth Circuit erred in failing to vacate petitioner’s sentence.

Held (7:2): Reversed and remanded.

Hughes v United States

Supreme Court of the United States: [Docket No 17-155](#)

Judgment delivered: 4 June 2018

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

Catchwords:

Criminal law – Sentencing – Sentencing guidelines – *Sentencing Reform Act* 1984 – Where s 3582(c)(2) provides District Court may reduce sentence of prisoner if sentence “based on a sentencing range that has subsequently been lowered by the Sentencing Commission” – Where petitioner entered into plea agreement which stipulated petitioner would receive sentence of 180 months imprisonment – Where District Court accepted agreement – Where Sentencing Commission subsequently amended sentencing guidelines retrospectively reducing sentencing range from 188-235 months to 151-188 months – Where petitioner sought reduction of sentence under s 3582(c)(2) – Where District Court denied application – Where Eleventh Circuit affirmed – Whether courts below erred in concluding prisoner ineligible for reduced sentence because plea agreement did not expressly rely on sentencing guidelines range.

Held (6:3): Reversed and remanded.

Koons et al v United States

Supreme Court of the United States: [Docket No 17-5716](#)

Judgment delivered: 4 June 2018

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

Catchwords:

Criminal law – Sentencing – Sentencing guidelines – *Sentencing Reform Act* 1984 – Where s 3582(c)(2) provides District Court may reduce sentence of prisoner if sentence “based on a sentencing range that has subsequently been lowered by the Sentencing Commission” – Where petitioners pleaded guilty to drug conspiracy charges carrying mandatory minimum sentences – Where District Court considered mandatory minimums superseded sentencing guidelines ranges – Where Sentencing Commission subsequently amended sentencing guidelines – Where petitioners sought sentence reductions under s 3582(c)(2) – Where courts below held petitioners not eligible because sentences not “based on” guidelines – Whether courts below erred in concluding petitioners did not qualify for sentence reductions.

Held (9:0): Affirmed.

Collins v Virginia

Supreme Court of the United States: [Docket No 16-1027](#)

Judgment delivered: 29 May 2018

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

Catchwords:

Criminal law – Fourth Amendment – Automobile exception – Where police officer discovered photographs of stolen motorcycle on petitioner’s Facebook profile – Where police officer drove to petitioner’s house, walked to top of driveway and removed tarp from motorcycle without search warrant – Where petitioner charged with receiving stolen property – Where petitioner filed motion to suppress evidence on ground police officer violated Fourth Amendment by trespassing to conduct search – Where petitioner convicted at trial – Where Virginia Court of Appeals and State Supreme Court affirmed – Whether automobile exception to Fourth Amendment permits warrantless entry of home or its curtilage in order to search vehicle.

Held (8:1): Reversed and remanded.

R v Wong

Supreme Court of Canada: [\[2018\] SCC 25](#)

Judgment delivered: 25 May 2018

Coram: McLachlin CJ, Abella, Moldaver, Wagner, Gascon, Brown and Rowe JJ

Catchwords:

Criminal law – Guilty plea – Withdrawal of plea – Collateral consequences – Immigration consequences – Where appellant pleaded guilty to trafficking in cocaine – Where appellant not aware conviction and sentence could result in loss of permanent resident status and removal from Canada – Where appellant sought to withdraw plea on basis plea uninformed and gave rise to miscarriage of justice – Where Court of Appeal dismissed appeal against conviction – Whether Court of Appeal erred in concluding plea could not be withdrawn.

Held (4:3): Appeal dismissed.

Dahda v United States

Supreme Court of the United States: [Docket No 17-43](#)

Judgment delivered: 14 May 2018

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

Catchwords:

Criminal – Evidence – Wiretaps – Jurisdiction – Where 18 U.S.C. s 2518(3) permits judge to issue wiretap “within the territorial jurisdiction of the court in which the judge is sitting” – Where judge for District of Kansas authorised nine wiretap orders containing sentence purporting to authorise interception of communication outside Kansas – Where petitioners indicted for participating in illegal drug distribution conspiracy – Where petitioners moved to suppress evidence derived from all wiretaps on basis language authorising interception beyond territorial jurisdiction rendered orders insufficient on face – Where District Court denied motion – Where Tenth Circuit affirmed – Whether courts below erred in concluding orders not insufficient on face.

Held (8:0): Affirmed.

McCoy v Louisiana

Supreme Court of the United States: [Docket No 16-8255](#)

Judgment delivered: 14 May 2018

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

Catchwords:

Criminal law – Sixth Amendment – Right to assistance of counsel – Where petitioner charged with three counts of murder – Where petitioner insisted on innocence – Where trial judge permitted petitioner’s counsel to tell jury petitioner committed murders but argue mental state prevented petitioner forming specific intent necessary for first-degree murder convictions – Where jury found petitioner guilty of three first-degree murder counts – Where Louisiana Supreme Court affirmed trial judge’s ruling counsel had authority to concede guilt despite petitioner’s opposition – Whether courts below erred in concluding counsel had authority to concede guilt.

Held (6:3): Reversed and remanded.

Byrd v United States

Supreme Court of the United States: [Docket No 16-1371](#)

Judgment delivered: 14 May 2018

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

Catchwords:

Criminal law – Evidence – Unlawfully obtained evidence – Fourth Amendment – Reasonable expectation of privacy – Where petitioner stopped by police for traffic infringement while driving rental car – Where petitioner not listed as authorised driver of rental car – Where police searched car – Where petitioner charged with drug and other offences – Where District Court denied motion to suppress evidence as fruit of unlawful search – Where Third Circuit affirmed – Whether courts below erred in concluding petitioner lacked reasonable expectation of privacy in car because not listed on rental agreement.

Held (9:0): Vacated and remanded.

HKSAR v Wan Thomas; HKSAR v Guan Qiaoyong
Hong Kong Court of Final Appeal: [\[2018\] HKCFA 15](#)

Judgment delivered: 14 May 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Collins NPJ

Catchwords:

Criminal law – *Prison Rules* – Interpretation – Where r 48 allows only “relatives and friends” to visit prisoners – Where r 203 permits persons awaiting trial to receive “visitors” – Where appellants convicted of conspiracy to defraud for falsely representing themselves as friends of prisoners awaiting trial in order to obtain permission to visit – Where Court of Appeal dismissed appeals against conviction – Whether courts below erred in concluding “visitors” in r 203 means “relatives and friends” – If no, whether r 203 incompatible with arts 6(2) or 14 of Hong Kong Bill of Rights.

Held (5:0): Appeals allowed.

HKSAR v Choi Wai Lun
Hong Kong Court of Final Appeal: [\[2018\] HKCFA 18](#)

Judgment delivered: 9 May 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Collins NPJ

Catchwords:

Criminal law – Honest and reasonable mistaken belief as to age – Where appellant engaged in consensual sexual acts with girl aged 13 who stated she was 17 – Where appellant charged with indecent assault – Where magistrate acquitted appellant on basis appellant honestly and reasonably believed girl aged 16 or over – Where Court of First Instance allowed

appeal against acquittal on basis honest and reasonable belief as to age no defence – Whether Court of First Instance erred in concluding offence of absolute liability when alleged victim under 16 – Whether defence of honest and reasonable belief as to age available.

Held (5:0): Appeal allowed.

R v McCool; R v Harkin

United Kingdom Supreme Court: [\[2018\] UKSC 23](#)

Judgment delivered: 2 May 2018

Coram: Lord Mance, Lord Kerr, Lord Reed, Lord Hughes, Lady Black

Catchwords:

Criminal law – Proceeds of crime – *Proceeds of Crime Act 2002* s 156 – Where appellants convicted of offences of making dishonest claims for state benefits – Where all offences except one committed after Act came into force – Where Crown Court made confiscation orders under s 156 – Where Court of Appeal upheld orders but reduced sums – Whether Court of Appeal erred in failing to find confiscation orders could not be made under s 156 where offence committed before commencement of Act.

Held (3:2): Appeal dismissed.

Employment Law

Pimlico Plumbers Ltd & Anor v Smith

United Kingdom Supreme Court: [\[2018\] UKSC 29](#)

Judgment delivered: 13 June 2018

Coram: Lady Hale, Lord Wilson, Lord Hughes, Lady Black, Lord Lloyd-Jones

Catchwords:

Employment law – Employment – Meaning of “worker” – Where respondent commenced proceedings against first appellant alleging unfair dismissal, unlawful deduction from wages, failure to pay for statutory annual leave and discrimination on basis of disability – Where tribunal held respondent unable to complain of unfair dismissal because not “employee” but able to proceed with remaining three complaints because “worker” within meaning of *Employment Rights Act 1996* s 230(3) and *Working Time Regulations 1998* r 2(1) and in “employment” for purposes of *Equality Act 2010* s 83(2) – Where Court of Appeal dismissed appeal – Whether Court of Appeal erred in failing to find respondent not “worker”.

Held (5:0): Appeal dismissed.

West Fraser Mills Ltd v British Columbia (Workers' Compensation Appeal Tribunal)

Supreme Court of Canada: [\[2018\] SCC 22](#)

Judgment delivered: 18 May 2018

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

Catchwords:

Employment law – Workers' compensation – Occupational health and safety – *Workers Compensation Act*, R.S.B.C 1992, c 492 s 196(1) – *Occupational Health and Safety Regulation*, B.C. Reg 296/97 s 26.2(1) – Where tree faller fatally struck by rotting tree – Where Workers' Compensation Board concluded appellant failed to ensure forestry operations planned and conducted in manner consistent with s 26.2(1) of Regulation – Where Board imposed administrative penalty under s 196(1) of Act – Where Workers' Compensation Appeal Tribunal dismissed appeal but reduced penalty – Where British Columbia Supreme Court and Court of Appeal dismissed appeals – Whether Regulation ultra vires – Whether Tribunal's interpretation of s 196 as enabling penalty against "owner" patently unreasonable.

Held (6:3): Appeal dismissed

Rustenburg Platinum Mine v SAEWA obo Bester & Ors

Constitutional Court of South Africa: [\[2018\] ZACC 13](#)

Judgment delivered: 17 May 2018

Coram: Zondo ACJ, Cameron, Froneman, Jafta JJ, Kollapen AJ, Madlanga, Mhlantla, Theron JJ and Zondi AJ

Catchwords:

Employment law – Dismissal – Unfair dismissal – Racist and derogatory language – Where employee of appellant dismissed after referring to fellow employee as "swart man" – Where Commission for Conciliation, Mediation and Arbitration found dismissal unfair – Where Labour Court held Commission's decision unreasonable – Where Labour Appeal Court allowed appeal – Whether unreasonable for Commission to have found use of term "swart man" not racist and derogatory – If yes, whether dismissal appropriate sanction.

Held (9:0): Appeal allowed.

Human Rights

R (on the application of Steinfeld and Keidan) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary)

United Kingdom Supreme Court: [\[2018\] UKSC 32](#)

Judgment delivered: 27 June 2018

Coram: Lady Hale, Lord Kerr, Lord Wilson, Lord Reed, Lady Black

Catchwords:

Human rights – European Convention on Human Rights arts 8, 14 – Civil partnerships – Where *Civil Partnership Act* 2004 permits two people of same sex to enter into civil partnership – Where *Civil Partnership Act* not repealed when *Marriage (Same Sex Couples) Act* 2013 enacted permitting marriage of same sex couples – Where appellants wish to enter into civil partnership but not same sex couple – Where High Court dismissed application for judicial review of respondent’s decision not to amend *Civil Partnership Act* to permit different sex couples to enter into civil partnerships – Where Court of Appeal dismissed appeal – Whether justification of inequality of treatment between same sex and different sex couples includes consideration of period during which respondent could investigate how to eliminate inequality.

Held (5:0): Appeal allowed.

Trinity Western University & Anor v Law Society of Upper Canada

Supreme Court of Canada: [\[2018\] SCC 33](#)

Judgment delivered: 15 June 2018

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

Catchwords:

Human rights – Freedom of religion – *Canadian Charter of Rights and Freedoms* s 2 – Where respondent denied accreditation to proposed law school with mandatory covenant prohibiting sexual intimacy except between married heterosexual couples – Where Ontario Divisional Court dismissed application for judicial review – Where Court of Appeal dismissed appeal – Whether law society entitled under enabling statute to consider admissions policy in deciding whether to approve proposed law school – Whether law society’s decision engages Charter by limiting freedom of religion – Whether decision proportionately balanced limitation

on freedom of religion with law society's statutory objectives – Whether law society's decision reasonable.

Held (7:2): Appeal dismissed.

Law Society of British Columbia v Trinity Western University
Supreme Court of Canada: [\[2018\] SCC 32](#)

Judgment delivered: 15 June 2018

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

Catchwords:

Human rights – Freedom of religion – *Canadian Charter of Rights and Freedoms* s 2 – Where appellant denied approval to proposed law school with mandatory covenant prohibiting sexual intimacy except between married heterosexual couples – Where Supreme Court of British Columbia allowed application for judicial review – Where Court of Appeal dismissed appeal – Whether law society entitled under enabling statute to consider admissions policy and hold referendum of members in deciding whether to approve proposed law school – Whether law society's decision engages Charter by limiting freedom of religion – Whether decision proportionately balanced limitation on freedom of religion with law society's statutory objectives – Whether law society's decision reasonable.

Held (7:2): Appeal allowed

In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland); Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)

United Kingdom Supreme Court: [\[2018\] UKSC 27](#)

Judgment delivered: 7 June 2018

Coram: Lady Hale, Lord Mance, Lord Kerr, Lord Wilson, Lord Reed, Lady Black, Lord Lloyd-Jones

Catchwords:

Human rights – *Human Rights Act* 1998 (UK) ss 4 and 6 – European Convention on Human Rights arts 3, 8 – Where *Offences Against the Person Act* 1861 (UK) ss 58, 59 and *Criminal Justice Act* 1945 (NI) s 25 criminalise abortion – Where Northern Ireland Human Rights Commission sought declaration provisions incompatible with Convention insofar as

provisions prohibit abortion in cases of serious malformation of foetus, pregnancy as result of rape and pregnancy as result of incest – Where High Court held Commission had standing to bring proceedings and made limited declaration of incompatibility – Where Northern Ireland Court of Appeal concluded no incompatibility – Whether courts below erred in concluding Commission had standing to bring proceedings – Whether provisions incompatible with arts 3 or 8 of Convention.

Held (5:2): Appeal dismissed.

Interpretation

Ewert v Canada

Supreme Court of Canada: [\[2018\] SCC 30](#)

Judgment delivered: 13 June 2018

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

Catchwords:

Interpretation – *Corrections and Conditional Release Act*, S.C. 1992, c 20 s 24 – Where s 24(1) requires Correctional Service to “take all reasonable steps to ensure that any information about an offender that it uses is as accurate, up to date and complete as possible” – Where Correctional Service used psychological and actuarial assessment tools to assess appellant’s psychopathy and risk of recidivism – Where appellant challenged use of tools on basis not developed and tested on Indigenous populations – Where trial judge held Correctional Service breached obligation under s 24 and infringed s 7 of *Canadian Charter of Rights and Freedoms* – Where Federal Court of Appeal allowed appeal – Whether Federal Court of Appeal erred in failing to find Correctional Service breached obligation under s 24 – Whether Federal Court of Appeal erred in failing to find Correctional Service breached obligation under s 7 of Charter.

Held (7:2): Appeal allowed in part.

Husted, Ohio Secretary of State v A Philip Randolph Institute et al

Supreme Court of the United States: [Docket No 16-980](#)

Judgment delivered: 11 June 2018

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

Catchwords:

Interpretation – *National Voter Registration Act* 52 U.S.C. s 21083 – Removal of ineligible voters – Where Act prescribes requirements States must meet in order to remove names from voting rolls on basis of change of residence – Where s 21083 provides voters may not be removed “solely by reason of a failure to vote” – Where Ohio removes voters who fail to vote for two years, fail to return preaddressed postage prepaid return card asking for verification of residence and then fail to vote for four more years – Whether Ohio’s process violates Act.

Held (5:4): Reversed.

Lagos v United States

Supreme Court of the United States: [Docket No 16-1519](#)

Judgment delivered: 29 May 2018

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

Catchwords:

Interpretation – *Mandatory Victims Restitution Act* 18 U.S.C. s 3663A – Meaning of “investigation” and “proceedings” – Where Act requires certain defendants to “reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings relating to the offense” – Where petitioner used company to defraud lender – Where lender conducted private investigation into petitioner’s fraud and participated as party in company’s bankruptcy proceedings – Where petitioner pleaded guilty to wire fraud charges – Where District Court ordered petitioner to pay restitution to lender – Where Fifth Circuit affirmed – Whether “investigation” and “proceedings” include private investigations and civil or bankruptcy proceedings.

Held (9:0): Reversed and remanded.

Jurisdiction

Florida v Georgia

Supreme Court of the United States: [Docket No 142, Orig](#)

Judgment delivered: 27 June 2018

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

Catchwords:

Jurisdiction – Original jurisdiction – Redressability – Where Florida applied to Supreme Court for decree equitably apportioning river basin’s waters – Where Court appointed Special Master – Where Master submitted report recommending Court dismiss Florida’s complaint on basis Florida failed to establish redressability – Whether Master applied too strict standard in concluding Florida failed to demonstrate Court can fashion effective equitable decree.

Held (5:4): Remanded.

Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall

Supreme Court of Canada: [\[2018\] SCC 26](#)

Judgment delivered: 31 May 2018

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

Catchwords:

Jurisdiction – Judicial review – Private bodies – Where respondent was member of appellant religious association – Where respondent disfellowshipped on basis not sufficiently repentant for sinful behaviour – Where respondent sought judicial review on basis decision procedurally unfair – Where Court of Queen’s Bench concluded jurisdiction to consider application – Where Court of Appeal affirmed – Whether decision by religious organisation regarding membership judicially reviewable – Whether right to procedural fairness arises absent underlying legal right – Whether ecclesiastical issues justiciable.

Held (9:0): Appeal allowed.

Legal Profession

Groia v Law Society of Upper Canada

Supreme Court of Canada: [\[2018\] SCC 27](#)

Judgment delivered: 1 June 2018

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

Catchwords:

Legal profession – Discipline – Incivility – Where Law Society brought disciplinary proceedings against lawyer for uncivil behaviour during trial –

Where lawyer found guilty of professional misconduct by disciplinary tribunal – Where Appeal Panel upheld finding of guilt but reduced suspension and costs award against lawyer – Where Divisional Court upheld Appeal Panel’s decision – Where majority of Court of Appeal dismissed appeal – Whether courts below adopted wrong standard of review – Whether Appeal Panel’s decision unreasonable – Proper approach for assessing whether in-court incivility amounts to professional misconduct.

Held (6:3): Appeal allowed.

Migration

Trump et al v Hawaii et al

Supreme Court of the United States: [Docket No 17-965](#)

Judgment delivered: 26 June 2018

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

Catchwords:

Migration – Entry restrictions – *Immigration and Nationality Act* 8 U.S.C. ss 1152, 1182 – Where President issued Proclamation imposing entry restrictions on nationals of eight countries – Where District Court granted nationwide preliminary injunction barring enforcement of restrictions – Where Ninth Circuit affirmed, concluding Proclamation contravened ss 1152 and 1182 – Whether Ninth Circuit erred in failing to find President lawfully exercised discretion under s 1182(f) to suspend entry of aliens into United States – Whether s 1152(a)(1)(A) limits President’s authority under s 1182(f) – Whether Proclamation violates Establishment Clause.

Held (5:4): Reversed and remanded.

Pereira v Sessions, Attorney General

Supreme Court of the United States: [Docket No 17-459](#)

Judgment delivered: 21 June 2018

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

Catchwords:

Migration – Removal proceedings – Stop-time rule – *Illegal Immigration Reform and Immigrant Responsibility Act* 1996 – Where s 1229(b)(1)(A) provides non-permanent residents eligible for cancellation of removal if

“physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of application” for cancellation – Where s 1229(d)(1)(A) provides period of continuous presence “deemed to end ... when the alien is served a notice to appear” – Where petitioner arrived in United States in 2000 – Where petitioner served with “notice to appear” in 2006 that did not specify time and date of removal proceedings – Where Immigration Court ordered removal of petitioner in absentia – Where removal proceedings reopened in 2013 after petitioner arrested – Where petitioner applied for cancellation of removal under s 1229(b)(1)(A) – Where Immigration Court ordered removal on basis 2006 notice triggered stop-time rule – Where Court of Appeals for First Circuit denied petition for review – Whether Court of Appeals erred in failing to find putative notice to appear that does not designate time or place of removal proceedings does not trigger stop-time rule.

Held (8:1): Reversed and remanded.

Patents

Westerngeco LLC v Ion Geophysical Corp

Supreme Court of the United States: [Docket No 16-1011](#)

Judgment delivered: 22 June 2018

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

Catchwords:

Patents – Extraterritoriality – Where petitioner owns patents for system used to survey ocean floor – Where respondent sold indistinguishable system built from components manufactured in United States and assembled abroad – Where petitioner sued respondent for patent infringement under *Patent Act* 35 U.S.C. s 271(f) – Where jury found respondent liable and awarded damages in royalties and lost profits – Where respondent moved to set aside verdict on basis petitioner could not recover damages for lost profits because s 271(f) does not apply extraterritorially – Where District Court denied motion – Whether award for lost profits permissible domestic application of s 284 of *Patent Act*.

Held (7:2): Reversed and remanded.

Private International Law

Haaretz.com v Goldhar

Supreme Court of Canada: [\[2018\] SCC 28](#)

Judgment delivered: 6 June 2018

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

Catchwords:

Private international law – Choice of forum – Forum non conveniens – Where respondent, Canadian businessman who owns Israeli soccer team, commenced action for libel in Ontario against appellant newspaper – Where appellant brought motion to stay action on grounds Ontario courts lacked jurisdiction or Israel clearly more appropriate forum – Where motion dismissed – Where Ontario Court of Appeal affirmed – Whether situs of tort reliable basis on which to presume real and substantial connection between chosen forum and subject matter of litigation in internet defamation case – If yes, whether presumption of jurisdiction rebuttable – Whether choice of law factor in forum non conveniens analysis for internet defamation cases should be based on place plaintiff suffered most substantial harm to reputation.

Held (6:3): Appeal allowed.

Procedure

China Agritech, Inc v Resh et al

Supreme Court of the United States: [Docket No 17-432](#)

Judgment delivered: 11 June 2018

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

Catchwords:

Procedure – Limitation period – Class actions – Application of *American Pipe & Construction Co v Utah* 414 US 538 (1974) – Where class actions filed against petitioner in 2011 and 2012 – Where District Court denied class certification and claims settled – Where respondent filed class action in 2014 – Where District Court dismissed action on basis limitation period expired because earlier class actions did not toll time to initiate class actions – Where Ninth Circuit reversed, holding tolling rule in *American Pipe* extends to successive class actions – Whether *American Pipe* tolling applies to successive class actions.

Held (9:0): Reversed and remanded.

Real Property

Upper Skagit Indian Tribe v Lundgren et vir

Supreme Court of the United States: [Docket No 17-387](#)

Judgment delivered: 21 May 2018

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

Catchwords:

Real property – Adverse possession – Mutual acquiescence – Tribal sovereign immunity – Where petitioner purchased plot of land – Where boundary survey suggested acre of petitioner’s land lay on other side of boundary fence between petitioner’s land and respondents’ land – Where respondents filed quiet title action invoking doctrines of adverse possession and mutual acquiescence – Where petitioner asserted sovereign immunity from suit – Where Washington Supreme Court rejected immunity claim – Whether Washington Supreme Court erred in concluding tribal sovereign immunity does not apply to in rem suits.

Held (7:2): Vacated and remanded.

Building Authority v ENM Holdings Ltd & Anor

Hong Kong Court of Final Appeal: [\[2018\] HKCFA 20](#)

Judgment delivered: 9 May 2018

Coram: Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Tang PJ, Mr Justice Fok PJ, Lord Collins NPJ

Catchwords:

Real property – Construction of grant – Where government granted land to first respondent on condition first respondent “shall construct a paved way ... and shall uphold, maintain and repair such paved way” – Where appellant issued orders to first respondent for repair of “slopes” supporting access road – Where Appeal Tribunal held condition created obligation to repair access road but not slopes – Where Court of First Instance allowed appeal on basis condition should be construed to include slopes – Where Court of Appeal allowed appeal – Whether Court of Appeal erred in construction of condition.

Held (5:0): Appeal dismissed.

Taxation

Wisconsin Central Ltd et al v United States

Supreme Court of the United States: [Docket No 17-530](#)

Judgment delivered: 21 June 2018

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

Catchwords:

Taxation – Interpretation – *Railroad Retirement Tax Act 1937* – Meaning of “money remuneration” – Where Act taxes “compensation” defined as “any form of money remuneration paid to an individual for services rendered as an employee ...” – Where railroads transferred stock to employees – Where petitioners filed suit seeking refunds of taxes paid on stock – Where District Court held stock options were form of money remuneration and therefore taxable “compensation” under Act – Where Seventh Circuit dismissed appeal – Whether Seventh Circuit erred in failing to conclude stock options not “compensation” subject to taxation under Act.

Held (5:4): Reversed and remanded.

South Dakota v Wayfair, Inc et al

Supreme Court of the United States: [Docket No 17-494](#)

Judgment delivered: 21 June 2018

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

Catchwords:

Taxation – Goods and services taxation – Physical presence rule – Where South Dakota enacted law requiring certain out-of-state sellers to collect and remit sales tax “as if the seller had a physical presence in the State” – Where South Dakota sought declaration legislation valid and injunction requiring respondents to collect and remit sales tax – Where trial court granted respondents’ motion for summary judgment – Where State Supreme Court affirmed – Whether legislation invalid because of physical presence rule in *Quill Corp v North Dakota* 504 US 298 (1992).

Held (5:4): Vacated and remanded.

JP Whitter (Water Well Engineers) Ltd v Commissioners for Her Majesty’s Revenue and Customs

United Kingdom Supreme Court: [\[2018\] UKSC 31](#)

Judgment delivered: 13 June 2018

Coram: Lord Mance, Lord Sumption, Lord Carnwath, Lord Lloyd-Jones, Lord Briggs

Catchwords:

Taxation – *Finance Act 2004* – Construction Industry Scheme – Where respondent cancelled appellant’s certificate of gross payment registration under s 66 of Act – Where respondent took no account of consequences for appellant’s business – Where First-tier Tribunal held respondent erred in failing to take account of likely impact on appellant – Where Upper Tribunal allowed appeal – Where Court of Appeal affirmed Upper Tribunal’s decision – Whether Court of Appeal erred in concluding Act did not require consideration of impact on company.

Held (5:0): Appeal dismissed.

Project Blue Ltd v Commissioners for Her Majesty’s Revenue and Customs

United Kingdom Supreme Court: [\[2018\] UKSC 30](#)

Judgment delivered: 13 June 2018

Coram: Lady Hale, Lord Hughes, Lord Hodge, Lord Lloyd-Jones, Lord Briggs

Catchwords:

Taxation – Stamp Duty Land Tax – *Finance Act 2003* ss 45, 71A – Where respondent purchased land and conveyed freehold to third party who leased land back to respondent – Where respondent lodged tax return claiming no liability to pay Stamp Duty Land Tax because of “sub-sale relief” provision in s 45(3) – Where First-tier Tribunal held respondent liable to pay Stamp Duty Land Tax – Where Upper Tribunal affirmed on basis respondent was “vendor” – Where Court of Appeal allowed appeal on basis respondent not “vendor” due to s 45(3) – Whether Court of Appeal erred in failing to find respondent liable to pay Stamp Duty Land Tax.

Held (4:1): Appeal allowed.

Tort

Montréal (Ville) v Lonardi

Supreme Court of Canada: [\[2018\] SCC 29](#)

Judgment delivered: 8 June 2018

Coram: McLachlin CJ, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ

Catchwords:

Torts – Apportionment of liability – *Civil Code of Quebec* art 1480, 1526 – Where rioters vandalised police cars – Where City instituted proceedings seeking to have defendants held solidarily liable for whole of damage done to cars – Where Court of Quebec ordered each defendant to make reparation for specific damage caused by own acts – Where Court of Appeal dismissed appeal – Whether courts below erred in failing to conclude rioters solidarily liable for whole of damage done to cars because jointly took part in wrongful act within meaning of art 1480 or committed common fault or contributory faults within meaning of art 1526.

Held (6:1): Appeal dismissed.

Rankin (Rankin's Garage & Sales) v JJ

Supreme Court of Canada: [\[2018\] SCC 19](#)

Judgment delivered: 11 May 2018

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

Catchwords:

Torts – Negligence – Duty of care – Foreseeability – Personal injury – Motor vehicles – Where two teenagers stole unlocked vehicle from commercial garage – Where vehicle crashed causing serious brain injury to one teenager – Where trial judge held garage owed duty of care to teenager – Where Ontario Court of Appeal dismissed appeal – Whether risk of personal injury reasonably foreseeable – Whether business had positive duty to guard against risk of theft by minors – Whether illegal conduct severed any proximity between parties or negated prima facie duty of care – Whether lower courts erred in recognising duty of care.

Held (7:2): Appeal allowed.
