



# OVERSEAS DECISIONS BULLETIN

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

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## Administrative Law

*R (on the application of Champion) v North Norfolk District Council and Anor*

Supreme Court of the United Kingdom: [\[2015\] UKSC 52](#).

**Judgment delivered:** 22 July 2015.

**Coram:** Lord Neuberger, Lord Mance, Lord Clarke, Lord Carnwath and Lord Toulson.

**Catchwords:**

Administrative law – Environmental Directives – EU Habitats Directive (Directive 97/62/EC) – *Conservation and Habitats Species Regulations 2010* - Whether respondent complied with regulations and directive when it considered development proposal.

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

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*R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills*

Supreme Court of the United Kingdom: [\[2015\] UKSC 57](#).

**Judgment delivered:** 29 July 2015.

**Coram:** Lady Hale, Lord Kerr, Lord Sumption, Lord Reed and Lord Hughes.

**Catchwords:**

Administrative law – Education – Education loans – Where appellant was a Zambian national who was unknowingly unlawfully present in the country until 2012 – Where appellant was ineligible for student loans as a consequence of unlawful immigration status – Whether ineligibility breached Art 14 of the ECHR and Art 2 of the First Protocol of the ECHR.

**Held (3:2):** Appeal allowed.

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## Admiralty

*The “STX Mumbai” and another matter*  
**Court of Appeal of Singapore:** [\[2015\] SGCA 35](#).

**Judgment delivered:** 24 July 2015.

**Coram:** Sundaresh Menon CJ, Chao Hick Tin JA, Andrew Phang Boon Leong JA, Judith Prakash J and Quentin Loh J.

**Catchwords:**

Admiralty – Contractual interpretation – Where appellant supplied bunkers to respondent vessel on terms that required payment to be made within 30 days – Three days before the final day for payment appellant issued letter of demand to respondent agent – Whether respondent could have made payment by due date.

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

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## Constitutional Law

*Guindon v The Queen*  
**Supreme Court of Canada:** [2015 SCC 41](#).

**Judgment delivered:** 31 July 2015.

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

**Catchwords:**

Constitutional law — Charter of Rights — Income tax — Penalty for misrepresentation — Individual assessed for penalties under s 163.2 of Income Tax Act, which imposes monetary penalties on every person who makes false statement that could be used by another person for purpose

of Act — Whether proceeding under s 163.2 is criminal in nature or leads to imposition of true penal consequences — Whether individual assessed for penalties is person “charged with an offence” within meaning of s 11 of Canadian Charter of Rights and Freedoms — *Income Tax Act*, R.S.C. 1985, c 1 (5th Supp.), s 163.2 .

Constitutional law — Courts — Procedure — Notice of constitutional question given to attorneys general in this Court but not in courts below — Whether this Court should exercise its discretion to address merits of constitutional issue — *Tax Court of Canada Act*, R.S.C. 1985, c T-2 , s 19.2 .

**Held (4:3):** Appeal dismissed.

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*Provincial Minister for Local Government, Environmental Affairs and Development Planning, Western Cape v Municipal Council of the Oudtshoorn Municipality and Ors*

**Constitutional Court of South Africa:** [\[2015\] ZACC 24](#).

**Judgment delivered:** 18 August 2015.

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

**Catchwords:**

Constitutional law – *Local Government: Municipal Structures Act* s 30(4) – Whether provision is invalid as a consequence of s 172(2)(a) of the Constitution.

**Held (11:0):** Judgment affirmed.

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## Contracts

*Bunge SA v Nidera BV*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 43](#).

**Judgment Delivered:** 1 July 2015.

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

**Catchwords:**

Contract law – Grain and Feed Trade Association Standard Contracts – Where default clause provides the in default of fulfilment of the contract by either party, the non-defaulting party shall have the right to sell or purchase the goods and establish the default price – Whether default

clause applied where Russia introduced a legislative embargo on exports of wheat from its territory within the contractual period.

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

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## Costs

*Coventry and others v Lawrence and Anor*  
**Supreme Court of the United Kingdom:** [\[2015\] UKSC 50](#).

**Judgment delivered:** 22 July 2015.

**Coram:** Lord Neuberger, Lady Hale, Lord Mance, Lord Clarke, Lord Dyson, Lord Sumption and Lord Carnwath.

**Catchwords:**

Costs – Recovery of costs of civil litigation – *Access to Justice Act 1999* – Whether system of recovery of costs in civil litigation is compatible with the European Convention on Human Rights.

**Held (5:2):** System is compatible with the ECHR.

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## Criminal Law

*Beckham v The Queen*  
**Supreme Court of New Zealand:** [\[2015\] NZSC 98](#).

**Judgment Delivered:** 7 July 2015.

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

**Catchwords:**

Criminal law – Appeal against sentence – Where, whilst on remand, the appellant's phone calls were monitored – Whether monitoring infringed his right to instruct a lawyer, constituting a breach of process and breach of the *Bill of Rights Act 1990*.

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

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*The Queen v Rodgeron*  
**Supreme Court of Canada:** [2015 SCC 38](#).

**Judgment Delivered:** 17 July 2015.

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

**Catchwords:**

Criminal Law — Murder — Charge to Jury — Evidence — Post-offence conduct — After killing victim, accused concealed body and cleaned up scene of death — Accused fled from and lied to police — Trial judge instructed jury on use of accused's post-offence conduct in assessing issue of intent for murder — Whether trial judge erred in instructions to jury on concealment and clean-up, and if so, whether that error was fatal in conjunction with erroneous instructions on accused's flight from and lies to police — Detrimental impact of long and complex jury charges on criminal justice system.

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

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*Beghal v Director of Public Prosecutions*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 49](#).

**Judgment delivered:** 22 July 2015.

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

**Catchwords:**

Criminal law – Where appellant questioned at an airport pursuant to Sch 7 of *Terrorism Act 2000* – Where appellant refused to answer questions and was convicted of wilfully failing to do so – Whether conviction is compatible with Arts 5, 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

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*R v Simpson*

**Supreme Court of Canada:** [2015 SCC 40](#).

**Judgment Delivered:** 30 July 2015.

**Coram:** Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

**Catchwords:**

Criminal law — Defences — Colour of right — Evidence — Co-accused occupying commercial space unlawfully — Trial judge entered acquittals for various breaking and entering, assault, and drug offences — Trial judge referred to evidence that, in her view, supported existence of colour of right to occupy space — Whether trial judge erred in finding air of

reality to colour of right defence — If so, whether trial judge's error in assessing this issue had material bearing on verdicts.

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

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*The Queen v Kumar*

**Supreme Court of New Zealand:** [\[2015\] NZSC 124](#).

**Judgment delivered:** 6 August 2015.

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

**Catchwords:**

Criminal law – Admissibility of confessional evidence – Where respondent was accused of murder – Where respondent made incriminating statements to undercover police officers in a cell – Where respondent denied responsibility for murder in formal interview – Whether evidence of incriminating statements is admissible.

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

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*Marteley v The Legal Services Commissioner*

**Supreme Court of New Zealand:** [\[2015\] NZSC 127](#).

**Judgment delivered:** 21 August 2015.

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

**Catchwords:**

Criminal law – Appeal of conviction – Grant of legal aid – Where the appellant was refused legal aid to appeal his conviction of murder – Whether the “interests of justice” required a grant of legal aid.

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

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## Equal Opportunity and Discrimination

*Hunt v North Somerset Council*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 51](#).

**Judgment delivered:** 22 July 2015.

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

**Catchwords:**

Equal Opportunity and Discrimination – Disability – Education – Where appellant suffers from ADHD, learning difficulties and behavioural problems – Where respondent is required so far as reasonably practicable to provide secure access for education and recreational leisure-time activities for the improvement of appellant’s well-being - Where respondent approved a reduction in its youth services budget – Where appellant sought judicial review and was successful – Where Court of Appeal refused to make an order quashing the respondent’s decision or costs in the appellant’s favour – Whether Court of Appeal should have allowed the quashing order and the appellant’s costs.

**Held (5:0):** Appeal allowed with respect to costs, appeal dismissed with respect to declaratory relief.

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## Family Law

*Strickland v Canada (Attorney-General)*  
Supreme Court of Canada: [2015 SCC 37](#).

**Judgment Delivered:** 9 July 2015.

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

**Catchwords:**

Courts — Federal Court — Judicial review — Jurisdiction — Family law — Divorce — Child support — Guidelines — Lawfulness of federal child support guidelines challenged by means of judicial review — Federal court declined to undertake judicial review — Whether provincial superior courts have jurisdiction to address validity of federal child support guidelines — Even if they do, whether federal courts erred in refusing to hear judicial review application on its merits — *Federal Courts Act*, R.S.C. 1985, c F-7 , s 18 — *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp .), s 26.1(2) — *Federal Child Support Guidelines*, SOR/97-175.

**Held (9:0):** Appeal dismissed.

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## Human Rights

*In the matter of an application by JR38 for Judicial Review (Northern Ireland)*  
Supreme Court of the United Kingdom: [\[2015\] UKSC 42](#).

**Judgment Delivered:** 1 July 2015.

**Coram:** Lord Kerr, Lord Clarke, Lord Wilson, Lord Toulson and Lord Hodge.

**Catchwords:**

Human Rights – Privacy – Juvenile – Where 14 year old boy was accused of being involved in sectarian riots – Where newspaper published photographs of him – Whether the publication of the photographs constituted a violation of his Art 8 ECHR rights.

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

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*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*  
**Supreme Court of Canada:** [2015 SCC 39](#).

**Judgment Delivered:** 23 July 2015.

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

**Catchwords:**

Human rights — Right to equality — Discrimination based on national or ethnic origin — Evidence — Canadian company denying request for pilot training made by Canadian citizen of Pakistani origin on basis of decision of U.S. authorities to prohibit training of pilot in question in United States — Two-step process for discrimination complaint under s 10 of *Quebec Charter* — Definition of prima facie discrimination, and degree of proof required in order to establish it — Whether prima facie discrimination has been proven in this case — *Charter of human rights and freedoms*, CQLR, c C-12, s 10.

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

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## Insurance

*Southern Response Earthquake Services Limited v Avonside Holdings Limited*

**Supreme Court of New Zealand:** [2015] NZSC 110.

**Judgment Delivered:** 22 July 2015.

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

**Catchwords:**



Insurance – Natural Disasters – Whether insurance contract allowed for a sum for contingencies and an allowance for certain professional fees when calculating the amount payable under the policy.

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

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## Negligence

*Minister of Defence and Military Veterans v Thomas*  
Constitutional Court of South Africa: [\[2015\] ZACC 26](#).

**Judgment delivered:** 25 August 2015.

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

**Catchwords:**

Negligence – *Compensation for Occupation Injuries and Diseases Act 130 of 1993* s 35(1) – “State” as a single employer – Whether the right to bodily integrity and security of person underlies common law claim for workplace damages.

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

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## Prisoners

*R (on the application of Bourgass and another) v Secretary of State for Justice*

Supreme Court of the United Kingdom: [\[2015\] UKSC 54](#).

**Judgment delivered:** 29 July 2015.

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

**Catchwords:**

Prisoners – Solitary confinement – *Prison Act 1952* – *Prison Rules 1999* – PSO 1700 – Whether decisions to keep the appellants in solitary confinement for substantial periods were lawfully made.

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

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## Procurement

*Edenred (UK Group) Limited & Anor v Her Majesty's Treasury and others*

Supreme Court of the United Kingdom: [\[2015\] UKSC 45](#).

**Judgment delivered:** 1 July 2015.

**Coram:** Lord Neuberger, Lord Mance, Lord Sumption, Lord Carnwath and Lord Hodge.

**Catchwords:**

Procurement – Government Policy – European Union procurement law – Where the government changed manner in which to provide child care incentives – Whether change in policy and the procurement method adopted contravened European Union procurement law.

**Held (5:0):** Permission to appeal granted, appeal denied.

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## Property Law

*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Ors*

Constitutional Court of South Africa: [\[2015\] ZACC 25](#).

**Judgment delivered:** 20 August 2015.

**Coram:** Mogoeng CJ, Mosenke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ.

**Catchwords:**

Property law – *Communal Property Associations Act* s 5(4) – Where provisional association loses right to use land on expiry of 12 months from date of registration unless period is extended – Where provisional association does not cease to exist – Whether association should have right to a restitution to property.

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

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## Social Services

*R (on the application of Cornwall Council) v Secretary of State for Health; R (on the application of Cornwall Council) v Somerset County Council*

Supreme Court of the United Kingdom: [\[2015\] UKSC 46](#).

**Judgment Delivered:** 8 July 2015.

**Coram:** Lady Hale, Lord Wilson, Lord Carnwath, Lord Toulson and Lord Hughes.

**Catchwords:**

Statutes – Children Act 1989 ss 24(1) and 24(2) – Where “PH” has physical and learning disabilities and lacks the capacity to decide where he lives – Where PH lived with foster parents in South Gloucestershire – Where PH’s parents live in Cornwall – Which local authority is responsible for providing PH’s support.

**Held (4:1):** The appellant’s ordinary place of residence at the relevant time was Wiltshire.

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*Mathieson, a deceased child (by his father Craig Mathieson) v Secretary of State for Work and Pensions*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 47](#).

**Judgment Delivered:** 8 July 2015.

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

**Catchwords:**

Social services – Where deceased child was born with cystic fibrosis and Duchenne muscular dystrophy – Where his family received the Disability Living Allowance (“DLA”) – Where deceased child was hospitalised for more than a year and the DLA was suspended – Whether the suspension of the DLA breached Article 14 of the European Convention on Human Rights.

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

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## Taxation

*Anson v Commissioners for Her Majesty’s Revenue and Customs*

**Supreme Court of the United Kingdom:** [2015] UKSC 44.

**Judgment Delivered:** 1 July 2015.

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

**Catchwords:**

Taxation – Whether the appellant was entitled to double taxation relief on income he remitted to the United Kingdom from the United States – Application of Article 24(4)(a) of the UK/US Double Taxation Convention 2001 – Whether UK tax is computed by reference to the same profits or income by reference to which the United States tax is computed.

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

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*Commissioners for Her Majesty's Revenue and Customs v The Rank Group Plc*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 48](#).

**Judgment delivered:** 8 July 2015.

**Coram:** Lord Neuberger, Lord Reed, Lord Carnwath, Lord Toulson and Lord Hodge.

**Catchwords:**

Taxation – Where appellant operated computerised slot machines used for gaming – Whether machines fell within the statutory definition of gaming machine - Whether the takings from a particular category of gaming machines operated by the appellants were subject to VAT.

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

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*Woolway v Mazars*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 53](#)

**Judgment delivered:** 29 July 2015.

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

**Catchwords:**

Taxation – Local authority rates – Where local authority rates are payable in respect of the rateable occupation of hereditaments – Whether two floors rented separately by respondent are a single or two separate hereditaments.

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

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*John Mander Pension Trustees Limited v Commissioners for Her Majesty's Revenue and Customs*

**Supreme Court of the United Kingdom:** [\[2015\] UKSC 56](#).

**Judgment delivered:** 29 July 2015.

**Coram:** Lord Neuberger, Lord Sumption, Lord Reed, Lord Carnwath and Lord Hodge.

**Catchwords:**

Taxation – Pension Schemes – Where taxpayers who paid contributions into approved schemes received relief from income tax on their pensions – Where schemes were subject to restrictions – Where a scheme arose to avoid taxation – Where the legislature placed substantial penalties on schemes attempting to avoid taxation – Whether the penalties take effect at the time of the avoidance or at the time of notification.

**Held (3:2):** Appeal allowed.

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