

**S.C.C. Court File No. 37896**

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

**BETWEEN:**

**BELL CANADA , et al.**

**APPELLANTS (Appellants)**

**-and-**

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT (Respondents)**

**-and-**

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, et  
al.**

**INTERVENERS**

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

**S.C.C. Court File No. 37748**

**AND BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**APPELLANT (Respondent)**

**-and-**

**ALEXANDER VAVILOV**

**RESPONDENT (Appellant)**

**ATTORNEY GENERAL OF ONTARIO, et al.**

**INTERVENERS**

**-and-**

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

**S.C.C. Court File No. 37897**

**AND BETWEEN:**

**NATIONAL FOOTBALL LEAGUE, et al.**

**APPELLANTS (Appellants)**

**-and-**

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT (Respondents)**

**-and-**

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, et  
al.**

**INTERVENERS**

**-and-**

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

---

**FACTUM OF THE INTERVENER, ADVOCACY CENTRE FOR TENANTS ONTARIO**

*(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)*

---

**ADVOCACY CENTRE FOR TENANTS  
ONTARIO**

1500 - 55 University Avenue  
Toronto, Ontario  
M5J 2H7

**Karen Andrews**

Tel: (416) 597-5855

Fax: (416) 597-5821

E-mail: [andrews@lao.on.ca](mailto:andrews@lao.on.ca)

**Counsel for the Intervener, Advocacy  
Centre for Tenants (Ontario)**

**SUPREME ADVOCACY LLP**

340 Gilmour St.  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel.: (613) 695-8855

Fax: (613) 695-8580

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the Intervener,  
Advocacy Centre for Tenants (Ontario)**

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

**BELL CANADA and BELL MEDIA INC.**

**APPELLANT (Appellants)**

-and-

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT (Respondents)**

-and-

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**

**INTERVENER**

-and-

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT), WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, BLUE ANT MEDIA INC., CANADIAN BROADCASTING CORPORATION, DHX MEDIA LTD., GROUPE V MEDIA INC., INDEPENDENT BROADCAST GROUP, ABORIGINAL PEOPLES TELEVISION NETWORK, ALLARCO ENTERTAINMENT INC., BBC KIDS, CHANNEL ZERO, ETHNIC CHANNELS GROUP LTD., HOLLYWOOD SUITE, OUTTV NETWORK INC., STINGRAY DIGITAL GROUP INC., TV5 QUÉBEC CANADA, ZOOMERMEDIA LTD. AND PELMOREX WEATHER NETWORKS (TELEVISION) INC., TELUS COMMUNICATIONS INC., ASSOCIATION OF CANADIAN ADVERTISERS AND ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS**

**INTERVENERS**

-and-

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

**S.C.C. Court File No. 37748**

**AND BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**APPELLANT (Respondent)**

**-and-**

**ALEXANDER VAVILOV**

**RESPONDENT (Appellant)**

**-and-**

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, CANADIAN COUNCIL FOR REFUGEES, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT) AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, PARKDALE COMMUNITY LEGAL SERVICES, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, COMMUNITY & LEGAL AID SERVICES PROGRAMME, ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE L'IMMIGRATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA**

**INTERVENERS**

**-and-**

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

**S.C.C. Court File No. 37897**

**AND BETWEEN:**

**NATIONAL FOOTBALL LEAGUE, NFL INTERNATIONAL LLC and NFL PRODUCTIONS LLC**

**APPELLANT (Appellants)**

**-and-**

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT** (Respondents)

-and-

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL FOR SASKATCHEWAN, ADVOCACY CENTRE FOR TENANTS ONTARIO, ONTARIO SECURITIES COMMISSION, BRITISH COLUMBIA SECURITIES COMMISSION AND ALBERTA SECURITIES COMMISSION, ECOJUSTICE CANADA SOCIETY, WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (ONTARIO), WORKERS' COMPENSATION APPEALS TRIBUNAL (NORTHWEST TERRITORIES AND NUNAVUT), WORKERS' COMPENSATION APPEALS TRIBUNAL (NOVA SCOTIA), APPEALS COMMISSION FOR ALBERTA WORKERS' COMPENSATION AND WORKERS' COMPENSATION APPEALS TRIBUNAL (NEW BRUNSWICK), BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE FOUNDATION, COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS, CAMBRIDGE COMPARATIVE ADMINISTRATIVE LAW FORUM, NATIONAL ACADEMY OF ARBITRATORS, ONTARIO LABOUR-MANAGEMENT ARBITRATORS' ASSOCIATION AND CONFÉRENCE DES ARBITRES DU QUÉBEC, CANADIAN LABOUR CONGRESS, NATIONAL ASSOCIATION OF PHARMACY REGULATORY AUTHORITIES, QUEEN'S PRISON LAW CLINIC, ADVOCATES FOR THE RULE OF LAW, SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC, CANADIAN BAR ASSOCIATION, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA, TELUS COMMUNICATIONS INC., ASSOCIATION OF CANADIAN ADVERTISERS AND ALLIANCE OF CANADIAN CINEMA, TELEVISION AND RADIO ARTISTS**

**INTERVENERS**

-and-

**DANIEL JUTRAS AND AUDREY BOCTOR**

**AMICUS CURIAE**

---

**ATTORNEY GENERAL OF CANADA**

130 King Street West  
Suite 3400, Box 36  
Toronto, Ontario M5X 1K6

**John Provart**

**Marianne Zoric**

Tel: (416) 973-1346

Fax: (416) 954-8982

E-mail: [john.provart@justice.gc.ca](mailto:john.provart@justice.gc.ca)

**Counsel for the Appellant, Minister of  
Citizenship and Immigration (SCC 37748)**

**MCCARTHY TÉTRAULT LLP**

66 Wellington Street West  
Suite 5300, Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

---

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
50 O'Connor Street, Suite 500, Room 556  
Ottawa, ON K2P 6L2

**Christopher M. Rupar**

Tel.: (613) 941-2351

Fax: (613) 954-1920

Email: [Christopher.rupar@justice.gc.ca](mailto:Christopher.rupar@justice.gc.ca)

**Agent for Counsel for the Appellant,  
Minister of Citizenship and Immigration  
(SCC 37748)**

**GOWLING WLG (CANADA) LLP**

160 Elgin Street, Suite 2600  
Ottawa, Ontario K1P 1C3

**Steven G. Mason**  
**Brandon Kain**  
**Steven Tanner**  
**James S.S Holtom**  
**Richard Lizius**

Tel: (416) 601-8200  
Fax: (416) 868-0673  
E-mail: [smason@mccarthy.ca](mailto:smason@mccarthy.ca)

**Counsel for the Appellant, Bell Canada, and  
Bell Media Inc. (SCC 37896)**

**MCCARTHY TÉTRAULT LLP**  
66 Wellington Street West  
Suite 5300, Toronto Dominion Bank Tower  
Toronto, Ontario M5K 1E6

**Steven G. Mason**  
**Brandon Kain**  
**Richard Lizius**

Tel: (416) 601-8200  
Fax: (416) 868-0673  
E-mail: [smason@mccarthy.ca](mailto:smason@mccarthy.ca)

**Counsel for the Appellant, National Football  
League, NFL International LLC and NFL  
Productions LLC (SCC 37897)**

**ATTORNEY GENERAL OF CANADA**  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, Ontario M5H 1T1

**Michael H. Morris**  
**Roger Flaim**  
**Laura Tausky**

Tel: (647) 256-7539  
FAX: (416) 952-4518  
E-mail: [michael.morris@justice.gc.ca](mailto:michael.morris@justice.gc.ca)

**Counsel for the Respondent, Attorney  
General of Canada (SCC 37896, 37897)**

**JACKMAN NAZAMI & ASSOCIATES**  
596 St. Clair Avenue West, Unit 3  
Toronto, Ontario  
M6C 1A6

**Jeffrey W. Beedell**

Tel: (613) 786-0171  
Fax: (613) 788-3587  
E-mail: [jeff.beedell@gowlingwlg.com](mailto:jeff.beedell@gowlingwlg.com)

**Agent for Counsel for the Appellant, Bell  
Canada, and Bell Media Inc. (SCC 37896)**

**GOWLING WLG (CANADA) LLP**  
160 Elgin Street, Suite 2600  
Ottawa, Ontario K1P 1C3

**Jeffrey W. Beedell**

Tel: (613) 786-0171  
Fax: (613) 788-3587  
E-mail: [jeff.beedell@gowlingwlg.com](mailto:jeff.beedell@gowlingwlg.com)

**Agent for Counsel for the Appellant,  
National Football League , NFL  
International LLC and NFL Productions  
LLC (SCC 37897)**

**ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
50 O'Connor Street, Suite 500, Room 556  
Ottawa, ON K2P 6L2

**Christopher M. Rupar**

Tel.: (613) 941-2351  
Fax: (613) 954-1920  
Email: [Christopher.rupar@justice.gc.ca](mailto:Christopher.rupar@justice.gc.ca)

**Agent for Counsel for the Respondent,  
Attorney General of Canada (SCC 37896,  
37897)**

**CHAMP AND ASSOCIATES**  
43 Florence Street  
Ottawa, Ontario  
K2P 0W6

**Hadayt Nazami**

**Bijon Roy**

Tel: (416) 653-9964

Fax: (416) 653-1036

E-mail: [hadayt@rogers.com](mailto:hadayt@rogers.com)

**Counsel for the Respondent, Alexander Vavilov**

**CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS  
COMMISSION**

Les Terrasse de la Chaudière, Central Building

1 Promenade du Portage

Gatineau, Quebec J8X 4B1

**Crystal Hulley-Craig**

Tel: (819) 956-2095

Fax: (819) 953-0589

E-mail: [crystal.hulley@crtc.gc.ca](mailto:crystal.hulley@crtc.gc.ca)

**Counsel for the Intervener, Canadian  
Radio- Television and Telecommunications  
Commission (SCC 37896, 37897)**

**MCGILL UNIVERSITY**

3644 Peel Room 20

Old Chancellor Day Hall, Faculty of Law

Montreal, Quebec H3A 1W9

**Daniel Jutras**

Tel: (514) 398-1453

Fax: (514) 398-4659

E-mail: [daniel.jutras@mcgill.ca](mailto:daniel.jutras@mcgill.ca)

**Amicus Curiae (SCC 37748, 37896, 37897)**

**IMK LLP**

Alexis Nihon Plaza, Tower 2

3500 De Maisonneuve Blvd. West

Montreal, Quebec H3Z 3C1

**Audrey Boctor**

Tel: (514) 934-7737

Fax: (514) 935-2999

E-mail: [aboctor@imk.ca](mailto:aboctor@imk.ca)

Tel: (613) 237-4740

Fax: (613) 232-2680

E-mail: [pchamp@champlaw.ca](mailto:pchamp@champlaw.ca)

**Agent for, Counsel for the Respondent,  
Alexander Vavilov**

**SUPREME ADVOCACY LLP**

340 Gilmour St.

Ottawa, ON K2P 0R3

**Marie-France Major**

Tel.: (613) 695-8855 ext 102

Fax: (613) 695-8580

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for the Amicus Curiae, Daniel Jutras,  
and Audrey Boctor SCC 37748, 37896,  
37897)**

**Amicus Curiae SCC 37748, 37896, 37897)**

**ATTORNEY GENERAL OF ONTARIO**

8<sup>th</sup> fl. – 720 Bay Street  
Toronto, Ontario M5G 2K1

**Sara Blake**

**Judie Im**

Tel: (416) 326-4155

Fax: (416) 326-4181

E-mail: [sara.blake@jus.gov.on.ca](mailto:sara.blake@jus.gov.on.ca)

**Counsel for the Intervener, Attorney  
General of Ontario.**

**NELLIGAN O'BRIEN PAYNE LLP**

300 - 50 O'Connor Street  
Ottawa, Ontario  
K1P 6L2

**Christopher Rootham**

**Michael Ryan**

Tel: (613) 231-8311

Fax: (613) 788-3667

E-mail: [christopher.rootham@nelligan.ca](mailto:christopher.rootham@nelligan.ca)

**Counsel for the Intervener, Telus  
Communications Inc.**

**THE LAW OFFICE OF JAMIE LIEW**

39 Fern Avenue  
Ottawa, Ontario K1Y 3S2

Tel: (613) 808-5592

Fax: (888) 843-3413

E-mail: [jamie.liew@uottawa.ca](mailto:jamie.liew@uottawa.ca)

**Counsel for the Intervener, Canadian  
Council for Refugees.**

**SUPREME ADVOCACY LLP**

340 Gilmour St.  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel.: (613) 695-8855

Fax: (613) 695-8580

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the Intervener,  
Attorney General of Ontario**



**WORKPLACE SAFETY AND  
INSURANCE APPEALS TRIBUNAL**  
7<sup>th</sup> Fl. – 505 University Avenue  
Toronto, ON M5G 2P2

**Michelle Alton  
David Corbett  
Kayla Seyler  
Ana Rodriguez**

Tel: (416) 314-8800  
Fax: (416) 326-5164  
E-mail: [Michelle.Alton@wst.gov.on.ca](mailto:Michelle.Alton@wst.gov.on.ca)

**Counsel for the Interveners, Workplace  
Safety and Insurance Appeals Tribunal  
(Ontario), Counsel for the Interveners,  
Workers' Compensation Appeals Tribunal  
(Northwest Territories and Nunavut),  
Workers' Compensation Appeals Tribunal  
(Nova Scotia), Appeals Commission for  
Alberta Workers' Compensation and  
Workers' Compensation Appeals Tribunal  
(New Brunswick)**

**ONTARIO SECURITIES COMMISSION**  
2200 - 20 Queen Street West  
Toronto, Ontario M5H 3S8

**Matthew H. Britton  
Jennifer M. Lynch  
Paloma Ellard  
David Hailey  
Don Young**

Tel: (416) 593-8294  
Fax: (416) 593-2319  
E-mail: [mbritton@osc.gov.on.ca](mailto:mbritton@osc.gov.on.ca)

**Counsel for the Interveners, Ontario  
Securities Commission, BC Securities  
Commission and Alberta Securities  
Commission.**

**SUPREME ADVOCACY LLP**  
340 Gilmour St., Suite 100  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel.: (613) 695-8855  
Fax: (613) 695-8580  
Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the Interveners,  
Workplace Safety and Insurance Appeals  
Tribunal (Ontario), Counsel for the  
Interveners, Workers' Compensation  
Appeals Tribunal (Northwest Territories  
and Nunavut), Workers' Compensation  
Appeals Tribunal (Nova Scotia), Appeals  
Commission for Alberta Workers'  
Compensation and Workers' Compensation  
Appeals Tribunal (New Brunswick)**

**CONWAY BAXTER WILSON LLP**  
400-411 Roosevelt Avenue  
Ottawa, Ontario K2A 3X9

**Benjamin Grant**

Tel: (613) 780-2008  
Fax: (613) 688-0271  
E-mail: [bgrant@conway.pro](mailto:bgrant@conway.pro)

**Agent for Counsel for the Interveners,  
Ontario Securities Commission, BC  
Securities Commission and Alberta  
Securities Commission.**

**ECOJUSTICE CANADA SOCIETY**

1910 - 777 Bay Street  
PO BOX 106  
Toronto, Ontario M5G 2C8

**Laura Bowman**

**Bronwyn Roe**

Tel: (416) 368-7533

Fax: (416) 363-2746

E-mail: [lbowman@ecojustice.ca](mailto:lbowman@ecojustice.ca)

**Counsel for the Intervener, Ecojustice  
Canada Society**

**SHORES JARDINE LLP**

10104 - 103 Avenue  
Suite 2250  
Edmonton, Alberta T5J 0H8

**William W. Shores, Q.C.**

**Kirk N. Lambrecht, Q.C.**

Tel: (780) 448-9275

Fax: (780) 423-0163

E-mail: [bill@shoresjardine.com](mailto:bill@shoresjardine.com)

**Counsel for the Intervener, National  
Association of Pharmacy Regulatory  
Authorities**

**ATTORNEY GENERAL FOR**

**SASKATCHEWAN**

900 - 1874 Scarth Street  
Regina, Saskatchewan S4P 4B3

**Laura Mazenc**

Tel: (306) 787-6272

Fax: (306) 787-0581

E-mail: [laura.mazenc@gov.sk.ca](mailto:laura.mazenc@gov.sk.ca)

**Counsel for the Intervener, AG of  
Saskatchewan**

**SUPREME LAW GROUP**

900 - 275 Slater Street  
Ottawa, ON K1P 5H9

**Moira Dillon**

Tel.: (613) 691-1224

Fax: (613) 691-1338

Email: [mdillon@supremelawgroup.ca](mailto:mdillon@supremelawgroup.ca)

**Agent for Counsel for the Intervener,  
Ecojustice Canada Society**

**SUPREME ADVOCACY LLP**

340 Gilmour St., Suite 100  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel.: (613) 695-8855 ext 102

Fax: (613) 695-8580

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the Intervener,  
National Association of Pharmacy  
Regulatory Authorities**

**GOWLING WLG (Canada) LLP**

2600 - 160 Elgin St  
Ottawa, ON K1P 1C3

**D. Lynne Watt**

Tel.: (613) 786-8695

Fax: (613) 563-9869

Email: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

**Agent for Counsel for the AG of  
Saskatchewan**

**FASKEN MARTINEAU DUMOULIN LLP**  
2900 - 550 Burrard Street  
Vancouver, British Columbia V6C 0A3

**Gavin R. Cameron**  
**Tom Posyniak**  
Telephone: (604) 631-4756  
FAX: (604) 631-3232  
E-mail: [gcameron@fasken.com](mailto:gcameron@fasken.com)

**Counsel for the Intervener, BC  
International Commercial Arbitration  
Centre Foundation**  
**LAX O'SULLIVAN LISUS GOTTLIEB  
LLP**  
2750 - 145 King St. West  
Toronto, Ontario M5H 1J8

**Terrence J. O'Sullivan**  
**Paul Mitchell**  
**James Renihan**  
Tel: (416) 644-5359  
Fax: (416) 598-3730  
E-mail: [tosullivan@counsel-toronto.com](mailto:tosullivan@counsel-toronto.com)

**Counsel for the Intervener, Council of  
Canadian Administrative Tribunals.**

**PALIARE ROLAND ROSENBERG  
ROTHSTEIN LLP**  
155 Wellington Street  
35th floor  
Toronto, Ontario M5V 3H1

**Linda R. Rothstein**  
**Michael Fenrick**  
**Angela E. Rae**  
**Anne Marie Heenan**  
Tel: (416) 646-4300  
Fax: (416) 646-4301  
E-mail: [linda.rothstein@paliareroland.com](mailto:linda.rothstein@paliareroland.com)

**Counsel for the Interveners, Ontario  
Labour- Management Arbitrators'  
Association and Conférence des arbitres du  
Québec**

**FASKEN MARTINEAU DuMOULIN LLP**  
55 Metcalfe Street, Suite 1300  
Ottawa ON, K1P 6L5

**Sophie Arseneault**  
Tel.: (613) 696-6904  
Fax: (613) 230-6423  
Email: [sarseneault@fasken.com](mailto:sarseneault@fasken.com)

**Agent for Counsel for the Intervener, BC  
International Commercial Arbitration  
Centre Foundation**

**SUPREME ADVOCACY LLP**  
340 Gilmour St.  
Ottawa, ON K2P 0R3

**Eugene Meehan, Q.C**  
**Marie-France Major**  
Tel.: (613) 695-8855  
Fax: (613) 695-8580  
Email: [emeehan@supremeadvocacy.ca](mailto:emeehan@supremeadvocacy.ca)  
[mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Counsel for the Intervener,  
Council of Canadian Administrative  
Tribunals**

**CAZASAIKALEY LLP**  
220 avenue Laurier Ouest  
Ottawa, Ontario K1P 5Z9

**Alyssa Tomkins**  
Tel: (613) 565-2292  
Fax: (613) 565-2087  
E-mail: [atomkins@plaideurs.ca](mailto:atomkins@plaideurs.ca)

**Agent for Counsel for the Interveners,  
Ontario Labour- Management Arbitrators'  
Association and Conférence des arbitres du  
Québec**

**SUSAN L. STEWART**  
7 L'Estrange Place  
Toronto, Ontario M6S 4S6

Tel: (416) 531-3736  
Fax: (416) 604-2897  
E-mail: [ssewart@idirect.ca](mailto:ssewart@idirect.ca)

**Counsel for the Intervener, National  
Academy of Arbitrators**

**GOLDBLATT PARTNERS LLP**  
20 Dundas Street West, Suite 1100  
Toronto, Ontario  
M5G 2G8

**Steven Barrett**  
Tel: (416) 979-6422  
Fax: (416) 591-7333  
E-mail: [sbarrett@goldblattpartners.com](mailto:sbarrett@goldblattpartners.com)

**Counsel for the Intervener, Canadian  
Labour Congress**

**PROCUREURE GÉNÉRALE DU  
QUÉBEC**  
1200, Route de l'Église  
3e étage  
Québec, Quebec G1V 4M1

**Stéphane Rochette**  
Tel: (418) 643-6552  
Fax: (418) 643-9749  
E-mail: [stephane.rochette@justice.gouv.qc.ca](mailto:stephane.rochette@justice.gouv.qc.ca)

**Counsel for the Intervener, AG Quebec**

**STOCKWOODS LLP**  
77 King Street West, Suite 4130  
P.O. Box 140  
Toronto, Ontario M5K 1H1

**Brendan Van Niejenhuis**  
**Andrea Gonslaves**  
Tel: (416) 593-7200  
Fax: (416) 593-9345

**CAZASAIKALEY LLP**  
220 avenue Laurier Ouest  
Ottawa, Ontario K1P 5Z9

**Alyssa Tomkins**  
Tel: (613) 565-2292  
Fax: (613) 565-2087  
E-mail: [atomkins@plaideurs.ca](mailto:atomkins@plaideurs.ca)

**Agent for Counsel for the Intervener,  
National Academy of Arbitrators**

**GOLDBLATT PARTNERS LLP**  
500-30 Metcalfe St.  
Ottawa, Ontario  
K1P 5L4

**Colleen Bauman**  
Tel: (613) 482-2463  
Fax: (613) 235-3041  
E-mail: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

**Agent for counsel for the Intervener,  
Canadian Labour Congress**

**NOËL & ASSOCIÉS**  
111 rue Champlain  
Gatineau, Quebec J8X 3R1

**Sylvie Labbé**  
Tel: (819) 771-7393  
Fax: (819) 771-5397  
E-mail: [s.labbe@noelassocies.com](mailto:s.labbe@noelassocies.com)

**Agent for Counsel for the Intervener, AG  
Quebec**

**POWER LAW**  
130 Albert Street  
Suite 1103  
Ottawa, Ontario K1P 5G4

**Maxine Vincelette**  
Tel : (613) 702-5561  
Fax : (613) 702-5561  
E-mail : [mvincelette@powerlaw.ca](mailto:mvincelette@powerlaw.ca)

E-mail: [brendanvn@stockwoods.ca](mailto:brendanvn@stockwoods.ca)

**Counsel for the Intervener, Queen's Prison  
Law Clinic**

**ATTORNEY GENERAL OF BRITISH  
COLUMBIA**

PO Box 9280 Stn Prov Govt  
Victoria, British Columbia  
V8W 9J7

**Leah Greathead**

**Micah Rankin**

Tel: (250) 356-8892

Fax: (250) 356-9154

E-mail: [leah.greathead@gov.bc.ca](mailto:leah.greathead@gov.bc.ca)

**Counsel for the Intervener, AG British  
Columbia**

**MCCARTHY TÉTRAULT LLP**

745 Thurlow Street, Suite 2400  
Vancouver, British Columbia  
V6E 0C5

**Adam Goldenberg**

**Robyn Gifford**

**Asher Honickman**

Tel: (604) 643-7100

Fax: (604) 643-7900

E-mail: [agoldenberg@mccarthy.ca](mailto:agoldenberg@mccarthy.ca)

**Counsel for the Intervener, Advocates for  
the Rule of Law**

**PARKDALE COMMUNITY LEGAL  
SERVICES**

1266 Queen Street West  
Toronto, Ontario M6K 1L3

**Toni Schweitzer**

**Ronald Poulton**

Tel: (416) 531-2411

Fax: (416) 531-0885

E-mail: [schweit@lao.on.ca](mailto:schweit@lao.on.ca)

**Counsel for the Intervener, Parkdale**

**Agent for Counsel for the Intervener,  
Queen's Prison Law Clinic**

**MICHAEL J. SOBKIN**

331 Somerset Street West  
Ottawa, Ontario  
K2P 0J8

Tel: (613) 282-1712

Fax: (613) 288-2896

E-mail: [msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

**Agent for Counsel for the Intervener, AG  
British Columbia**

**POWER LAW**

130 Albert Street  
Suite 1103  
Ottawa, Ontario  
K1P 5G4

**Darius Bossé**

Tel: (613) 702-5566

Fax: (613) 702-5566

E-mail: [DBosse@juristespower.ca](mailto:DBosse@juristespower.ca)

**Agent for Counsel for the Intervener,  
Advocates for the Rule of Law**

**COMMUNITY LEGAL SERVICES OF  
OTTAWA-SOUTH OFFICE**

406 - 1355 Bank Street  
Ottawa, Ontario K1H 8K7

**Elaine Simon**

Tel: (613) 733-0140

Fax: (613) 733-0401

E-mail: [simone@lao.on.ca](mailto:simone@lao.on.ca)

**Agent for Counsel for the Intervener,  
Parkdale Community Legal Services**

## Community Legal Services

**CAMBRIDGE COMPARATIVE  
ADMINISTRATIVE LAW FORUM**  
Cambridge University - The Faculty of Law  
The David Williams Building - 10 West Road  
Cambridge, United Kingdom CB3 9DZ

**Bruno Gélinas-Faucher**  
Tel: (737) 838-3023 Ext: 44  
Fax: (514) 565-9877  
E-mail: [bruno.gelinas.faucher@gmail.com](mailto:bruno.gelinas.faucher@gmail.com)

**Counsel for the Intervener, Cambridge  
Comparative Administrative Law Forum**

**LENCZNER SLAGHT ROYCE SMITH  
GRIFFIN LLP**  
Suite 2600 130 Adelaide Street West  
Toronto, Ontario M5H 3P5

**J. Thomas Curry  
Sam Johansen**  
Tel: (416) 865-3096  
Fax: (416) 865-9010  
E-mail: [tcurry@litigate.com](mailto:tcurry@litigate.com)

**Counsel for the Interveners, Association of  
Canadian Advertisers and the Alliance of  
Canadian Cinema, Television and Radio  
Artists**

**CAZASAIKALEY LLP**  
220 avenue Laurier Ouest  
Ottawa, Ontario  
K1P 5Z9

**Alyssa Tomkins  
James Plotkin  
Michel Bastarache**  
Tel: (613) 565-2292  
Fax: (613) 565-2087  
E-mail: [atomkins@plaideurs.ca](mailto:atomkins@plaideurs.ca)

**Counsel for the Interveners, Samuelson-**

**POWER LAW**  
130 Albert Street  
Suite 1103  
Ottawa, Ontario K1P 5G4

**Maxine Vincelette**  
Tel: (613) 702-5561  
Fax: (613) 702-5561  
E-mail: [mvincelette@powerlaw.ca](mailto:mvincelette@powerlaw.ca)

**Agent for Counsel for the Intervener,  
Cambridge Comparative Administrative  
Law Forum**

**POWER LAW**  
130 Albert Street  
Suite 1103  
Ottawa, Ontario  
K1P 5G4

**Maxine Vincelette**  
Tel: (613) 702-5561  
Fax: (613) 702-5561  
E-mail: [mvincelette@powerlaw.ca](mailto:mvincelette@powerlaw.ca)

**Agent for Counsel for the Interveners,  
Association of Canadian Advertisers and the  
Alliance of Canadian Cinema, Television  
and Radio Artists**

**UNIVERSITÉ D'OTTAWA**  
Common Law Section  
57 Louis Pasteur St.  
Ottawa, Ontario  
K1N 6N5

**David Fewer**  
Tel: (613) 562-5800 Ext: 2558  
Fax: (613) 562-5417  
E-mail: [david.fewer@uottawa.ca](mailto:david.fewer@uottawa.ca)

**Agent for Counsel for the Interveners,  
Samuelson-Glushko Canadian Internet**

**Glushko Canadian Internet Policy and  
Public Interest Clinic**

**FASKEN MARTINEAU DUMOULIN LLP**

Bureau 3700, C.P. 242  
800, Place Victoria  
Montréal, Quebec H4Z 1E9

**Christian Leblanc**

**Michael Shortt**

Tel: (514) 397-7545

Fax: (514) 397-7600

E-mail: [cleblanc@fasken.com](mailto:cleblanc@fasken.com)

**Counsel for the Interveners, Blue Ant Media Inc., Canadian Broadcasting Corporation, DHX Media Lts., Groupe V Media Inc., Independent Broadcast Group, Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Chanel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia Ltd. and Pelmorex Weather Networks (Television) Inc.**

**STEWART MCKELVEY**

65 Grafton Street  
P.O. Box 2140, Station Central  
Charlottetown, Prince Edward Island  
C1A 8B9

**Jonathan M. Coady**

**Justin L. Milne**

Tel: (902) 629-4520

Fax: (902) 566-5283

E-mail: [jcoady@stewartmckelvey.com](mailto:jcoady@stewartmckelvey.com)

**Counsel for the Intervener, Canadian Bar Association**

**LEGAL AID ONTARIO**

Refugee Law Office  
20 Dundas Street West  
Toronto, Ontario M5G 2H1

**Anthony Navaneelan**

**Policy and Public Interest Clinic**

**FASKEN MARTINEAU DUMOULIN LLP**

1300 – 55 rue Metcalfe  
Ottawa, Ontario K1P 6L5

**Sophie Arseneault**

Tel: (613) 236-3882

Fax: (613) 230-6423

E-mail: [sarseneault@fasken.com](mailto:sarseneault@fasken.com)

**Agent for Counsel for the Interveners, Blue Ant Media Inc., Canadian Broadcasting Corporation, DHX Media Lts., Groupe V Media Inc., Independent Broadcast Group, Aboriginal Peoples Television Network, Allarco Entertainment Inc., BBC Kids, Chanel Zero, Ethnic Channels Group Ltd., Hollywood Suite, OUTtv Network Inc., Stingray Digital Group Inc., TV5 Québec Canada, Zoomermedia Ltd. and Pelmorex Weather Networks (Television) Inc.**

**GOWLING WLG (CANADA) LLP**

160 Elgin Street  
Suite 2600  
Ottawa, Ontario K1P 1C3

**Guy Régimbald**

Telephone: (613) 786-0197

Fax: (613) 563-9869

E-mail: [guy.regimbald@gowlingwlg.com](mailto:guy.regimbald@gowlingwlg.com)

**Agent for Counsel for the Intervener,  
Canadian Bar Association**

**COMMUNITY LEGAL SERVICES**

**OTTAWA**

1301 Richmond Road  
Ottawa, Ontario K2B 7Y4

**Nicholas Hersh**

**Audrey Macklin**

Tel: (416) 977-8111 Ext: 7181

Fax: (416) 977-5567

E-mail: [navanea@lao.on.ca](mailto:navanea@lao.on.ca)

Tel: (613) 596-1641

Fax: (613) 596-3364

E-mail: [hershni@lao.on.ca](mailto:hershni@lao.on.ca)

**Counsel for the Intervener, Canadian  
Association of Refugee Lawyers**

**Agent for Counsel for the Intervener,  
Canadian Association of Refugee Lawyers**

**COMMUNITY & LEGAL AID SERVICES  
PROGRAMME**

York University, Osgoode Hall Law School

Ignat Kaneff Build

4700 Keele Street

Toronto, Ontario M3J 1P3

**SUPREME ADVOCACY LLP**

340 Gilmour St., Suite 100

Ottawa, ON K2P 0R3

**Subodh Bharati**

Tel: (416) 736-5029

Fax: (416) 736-5564

E-mail: [sbharati@osgoode.yorku.ca](mailto:sbharati@osgoode.yorku.ca)

**Marie-France Major**

Tel.: (613) 695-8855 ext 102

Fax: (613) 695-8580

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Counsel for the Intervener, Community and  
Legal Aid Service Programme**

**Agent for Counsel for the Intervener,  
Community and Legal Aid Service  
Programme**

**HADEKEL SHAMS S.E.N.C.R.L.**

305, rue Bellechasse est, bureau 400A

Montréal, Quebec

H2S 1W9

**Peter Shams**

**Claudia Andrea Molina**

**Guillaume Cliche-Rivard**

**David Berger**

Tel: (514) 439-0800

Fax: (514) 439-0798

E-mail: [peter@hadekelshams.ca](mailto:peter@hadekelshams.ca)

**Counsel for the Intervenors, Association  
Québécoise des avocats et avocates en droit  
de l'immigration**

**CONWAY BAXTER WILSON LLP**

400 - 411 Roosevelt Avenue

Ottawa, Ontario

K2A 3X9

**STIKEMAN ELLIOTT LLP**

1600 - 50 O'Connor Street

Ottawa, Ontario

K1P 6L2

**David P. Taylor**

**Sarah Clarke**

**Nicholas Peter McHaffie**

Tel: (613) 566-0546



Tel: (613) 691-0368

Fax: (613) 688-0271

E-mail: [dtaylor@conway.pro](mailto:dtaylor@conway.pro)

**Counsel for the Intervener, First Nations  
Child and Family Caring Society of Canada**

Fax: (613) 230-8877

E-mail: [nmchaffie@stikeman.com](mailto:nmchaffie@stikeman.com)

**Agent for counsel for the Intervener, First  
Nations Child and Family Caring Society of  
Canada**

## TABLE OF CONTENTS

	PAGE
<b>PART I and II: OVERVIEW AND POSITION.....</b>	<b>1</b>
<b>PART III: STATEMENT OF ARGUMENT.....</b>	<b>1</b>
i) <i>Dunsmuir</i> .....	1
ii) Post <i>Dunsmuir</i> .....	2
iii) Whither Correctness? .....	5
iv) Conclusion .....	8
<b>PART IV: COSTS.....</b>	<b>9</b>
<b>PART V – ORDER SOUGHT.....</b>	<b>9</b>
<b>PART VI – TABLE OF AUTHORITIES .....</b>	<b>10</b>

## PART I and II – OVERVIEW AND POSITION

1. The Advocacy Centre for Tenants Ontario brings the perspective and experience of low-income Canadians to these appeals. In the important matter of housing, the statute of most significance to Ontario's tenant households is the *Residential Tenancies Act, 2006*. Appeals from the Landlord and Tenant Board to the court can proceed only on questions of law. This situates our legal argument in that part of the administrative law regime where an adjudicator must decide what the various provisions of a statute in dispute actually mean.

2. These appeals re-visit the principles set out in *Dunsmuir*.<sup>1</sup> It is common ground that *Dunsmuir*<sup>2</sup> refreshed administrative law by reducing three standards of review to two. The Advocacy Centre for Tenants Ontario's specific focus in this matter is the issue of statutory appeals and the value that a correctness standard brings to the administration of justice and to our legal work.

3. We take no position on the facts of these appeals.

## PART III – ARGUMENT

### i) *Dunsmuir*

4. *Dunsmuir*<sup>3</sup> arose in the context of a labour relations dispute. It involved a judicial review of a labour relations adjudication. This Honourable Court considered and decided the matter, taking the opportunity to reassess and clarify the “ebbs and flows of deference”<sup>4</sup> for practitioners and adjudicators of administrative law across the country. It reduced three standards of review to two. Not to one.

5. The majority judgment set out an overview of the law of judicial review, its function, and its important role in upholding the rule of law. For the Supreme Court of Canada, the case represented the opportunity to develop a principled framework that would be both “coherent”

---

<sup>1</sup> *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190

<sup>2</sup> *Dunsmuir*, *supra*

<sup>3</sup> *Dunsmuir*, *supra*

<sup>4</sup> *Dunsmuir*, *supra*, para. 1

and “workable” in matters of judicial review.<sup>5</sup>

6. The concurring judgments of Binnie J. and Deschamps J. agree with the majority in its refreshed analysis of judicial review and with the disposition of Mr. Dunsmuir’s appeal. But both Binnie J. and Deschamps J. specifically address the issue of statutory appeals as being different and distinct from what the new analysis of judicial review would represent.

7. While Justice Binnie also works his way through “law office metaphysics”<sup>6</sup> that the judicial review debate engenders, he agrees that the “big tent” of reasonableness is the “going-in presumption” for the standard of review of any administrative law decision.<sup>7</sup> However, he is also clear and unequivocal that the statutory appeal is different – it attracts no deference to the decision-maker and that the standard of review is correctness. He says this not once, not twice but three times in his judgment.<sup>8</sup>

8. For Justice Deschamps (writing also for Rothstein J. and Charron J.) any inquiry still begins with whether the question at issue is one of law, fact, or mixed fact and law. For her, “deference is not owed on questions of law where Parliament or a legislature has provided for a statutory right of review on such questions”.<sup>9</sup>

9. In sum, statutes must mean something. The law must be correct. In the case of a statutory appeal, the last word on statutory interpretation belongs to the judiciary. *Dunsmuir*<sup>10</sup> did not jettison the standard of correctness in matters where adjudicators or judges are called upon to determine how a section of a statute should be interpreted.

## ii) **Post *Dunsmuir***

10. In 2011, a decision of the Canadian Human Rights Tribunal was appealed to the Supreme Court of Canada on the issue of whether the Tribunal made a reviewable error in awarding costs

---

<sup>5</sup> *Dunsmuir, supra*, para. 32

<sup>6</sup> *Dunsmuir, supra*, para. 122

<sup>7</sup> *Dunsmuir, supra*, paras. 144 and 146

<sup>8</sup> *Dunsmuir, supra*, paras. 123, 130, and 146

<sup>9</sup> *Dunsmuir, supra*, para. 163

<sup>10</sup> *Dunsmuir, supra*

to the complainant.<sup>11</sup>

11. While the *Dunsmuir* analysis was brought to bear on the facts of the case, the distinction between judicial review and appellate review was reinforced in the judgment of Justices LeBel<sup>12</sup> and Cromwell:

Although both judicial review and appellate review take into account the principle of deference, care should not be taken not to conflate the two. In the context of judicial review, deference can shield the administrative decision makers from the excessive judicial intervention even on certain questions of law as long as these questions are located within the decision makers' core function and expertise.... By contrast, under the principles of appellate review set down in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, an appellate court owes no deference to a decision maker below on questions of law which are automatically reviewable on the standard of correctness.<sup>13</sup>

12. In 2015, the issue of judicial review and appellate review was conflated. In *Saguenay*, the Court decided:

Where a court reviews a decision of a specialized administrative tribunal, the standard of review must be determined on the basis of administrative law principles. This is true regardless of whether the review is conducted in the context of an application for judicial review or of a statutory appeal.<sup>14</sup>

13. The different forms of review that Justices Binnie, Deschamps, LeBel, and Cromwell had tried so clearly to delineate and separate were now merged. The Court also applied different standards of review to different parts of the administrative decision. Justice Abella was left to wonder if a complete and total undermining of *Dunsmuir* had begun.<sup>15</sup>

14. Two cases, decided by the Supreme Court of Canada in 2016, shine a new light on the

---

<sup>11</sup> *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 R.C.S. 471

<sup>12</sup> It will be recalled that Justice LeBel co-wrote the lead judgment in *Dunsmuir*.

<sup>13</sup> *Mowat, supra*, paras. 30 and 31

<sup>14</sup> *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 R.C.S. 3 at para. 38

<sup>15</sup> *Saguenay, supra*, para. 173

*Dunsmuir* issues – *Wilson*<sup>16</sup>, again, in the context of labour relations and *Ledcor*<sup>17</sup> in the context of exclusion clauses and contract interpretation.

15. Mr. Wilson, employed by the Atomic Energy Commission, was dismissed in 2009. Did he have rights pursuant to labour legislation or was his dismissal a just one? A labour arbitrator held that his dismissal was unjust. The application judge found the decision unreasonable and the Federal Court of Appeal agreed, applying the standard of correctness. While Abella J. sets out that the standard of review in this case (reasonableness) “falls easily into our jurisprudence”<sup>18</sup> it is obvious that the judges of the Federal Court of Appeal thought otherwise, as did three of Abella J.’s colleagues on the Supreme Court.

16. While all members of the Court agreed on the disposition of the appeal, Justices Côté, Brown and Moldaver reinvigorate the standard of review debate by setting out that when there is a “narrow and distilled legal issue” to consider, the appropriate standard of review is correctness. At stake is “the rule of law and the promise of orderly governance”:<sup>19</sup>

“...deferring in this way on matters of statutory interpretation opens up the possibility that different decision-makers may each reach opposing interpretations of the same provision, thereby creating “needless uncertainty in the law [in the sense that] individuals’ rights [are] dependent on the identity of the decision-makers, and not the law”.<sup>20</sup>

17. This is precisely the problem that lies at the heart of the Advocacy Centre for Tenants Ontario’s respectful submission in this case.

18. In *Ledcor*, a unanimous Court held the standard of review to be correctness because the appeal involved the interpretation of a standard form contract, the interpretation had precedential value and there was no meaningful factual matrix at play. For the Court, the matter was better characterized “as a question of law subject to the correctness standard”.<sup>21</sup>

---

<sup>16</sup> *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29

<sup>17</sup> *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37

<sup>18</sup> *Wilson*, *supra*, para. 19

<sup>19</sup> *Wilson*, *supra*, para. 84

<sup>20</sup> *Wilson*, *supra*, para. 81

<sup>21</sup> *Ledcor*, *supra*, para. 4

### iii) Whither Correctness?

19. Landlords and tenants require certainty in the meaning and interpretation of the relevant statutes that structure and regulate their relationship. It is a commercial undertaking for landlords who provide rental housing that also carries with it profound consequences for the people who need that housing. As Justice Carnwath observed in *Britannia Glen Cooperative Homes*, “short of losing one’s liberty, losing one’s home is as serious a matter as can be imagined”.<sup>22</sup>

20. After litigating an issue at the Landlord and Tenant Board, appeals from the Board’s decision are permitted only on questions of law.<sup>23</sup> No “meaningful factual matrix” is supposed to be at play. Further, on appeal, the Divisional Court has broad powers to affirm, rescind, amend or replace the Board’s decision or order or to remit the matter back to the Board with the opinion of the Divisional Court.

21. Low-income Ontarians are assisted in their legal matters by community legal clinics across the province. In matters of criminal injuries compensation, social assistance or landlord and tenant adjudication, for example, these citizens appeal to the courts on questions of law to have the meaning of the various statutory provisions affecting their lives clearly interpreted and consistently applied.<sup>24</sup>

22. Section 14 of the *Residential Tenancies Act, 2006* provides that a “no pets” provision in a tenancy agreement is void. Will it always be void even when a landlord could make a reasonable case that it should not be void in a particular instance?

23. The *Residential Tenancies Act, 2006* is replete with clear notice provisions. If a landlord errs in the count because one of the months is February, will the notice be voided? Always? Not always?

---

<sup>22</sup> *Britannia Glen Co-Operative Homes v. Indie Singh and Kuntie Singh* (2 December 1996), Brampton A4279/96 (O.C.G.D) [ Book of Authorities of the Intervener, Tab A]

<sup>23</sup> *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, s. 210

<sup>24</sup> *Compensation for Victims of Crime Act*, R.S.O. 1990, c. C. 24, s. 23, *Ontario Works Act*, 1997, S.O. 1997, c. 25 Sched., A, s. 36(1), *Ontario Disability Support Program Act*, 1997, S.O. 1997, c.25, Sched. B, s. 31(1)

24. In the case of elevator breakdown in a multi-story apartment building, it was agreed that many elderly, sick and disabled tenants were denied access to a working elevator for ninety-six days in one year. Section 20, the repair and maintenance provision of the *Residential Tenancies Act, 2006*, was in dispute.

25. It was decided that the landlord had behaved reasonably during the outage and that the decision of the Board not to award any abatement of rent was a reasonable one. Factors beyond the landlord's control contributed to the repair delays. Because the standard of review applied was one of reasonableness, the result of the case was that the tenants, who paid their rent faithfully for a service that was not provided to them, received no abatement, adjustment or reduction in rent. See *Onyskiw*.<sup>25</sup>

26. When a developer temporarily re-housed a tenant during the re-development of her complex, he inserted a termination clause in the new tenancy agreement setting out that the tenancy would be terminated when the complex was ready to be re-occupied. Pursuant to section 37(4) of the *Residential Tenancies Act, 2006* such termination clauses are supposed to be void.

27. When, after years, the eighty-five year old tenant declined to return to her old, but transformed, apartment building, it was decided that it was the landlord who was being reasonable and not the tenant. The termination clause in the new tenancy agreement was not voided and she was evicted pursuant to a standard of reasonableness. See *Asboth*.<sup>26</sup>

28. Two decisions of the Divisional Court further illustrate the problem. Both cases involve the tenants objecting to the landlord taking photographs of their units pursuant to the landlord's right of entry set out in s. 27 of the *Residential Tenancies Act, 2006*. In one case, the landlord took photographs to obtain evidence in a repairs dispute with the tenant; in the other, the landlord took photographs to prepare the unit for sale.

29. In *Nickoladze*,<sup>27</sup> the Court's first determination involved the standard of review with the Court finding that as the matter arose as a question of law, the standard of review was

---

<sup>25</sup> *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477

<sup>26</sup> *Morguard Residential v. Asboth*, 2017 ONSC 2502

<sup>27</sup> *Nickoladze v. Bloor Street Investments/Advent Property Management*, 2015 ONSC 3893



correctness. It went on to find that the reason for the photographs being taken was relevant and that it could be considered by the board. Given this, nothing arose from the determination that could be considered an error of law. The appeal was dismissed.

30. Nine months later in *Juhasz*<sup>28</sup>, where the landlord wanted to take photographs of the unit in order to list it for sale, the Divisional Court found that the standard of review was reasonableness because the Board was interpreting its home statute. That tenant succeeded in her appeal because the Board had made a fundamental error in law interpreting s. 27 – entry did not include taking photographs.

31. In the next case that considers the taking of pictures by a landlord, what will s. 27 mean? We just do not know.

32. In his plea for clarity and certainty, Justice Binnie observes that litigants will hesitate to go to court to seek redress for perceived administrative injustice if their lawyers cannot predict with confidence even what standard of review will be applied. A litigant “should be able to seek judicial review without betting the store or the house on the outcome”.<sup>29</sup>

33. Ontario tenants always “bet” their homes on the outcomes because a reasonableness standard and a factual matrix is commonly applied to the matters that give rise to their disputes. Clear statutory provisions are being interpreted differently depending on the facts, the adjudicator or the judge, notwithstanding that their statutory appeals only proceed on questions of law.

34. While *Dunsmuir*<sup>30</sup> was meant to bring fairness and coherence to the administrative justice process, low-income people who rely on myriad statutes that provide them with a statutory right of appeal are being denied these things.

---

<sup>28</sup> *Juhasz v. Hymas*, 2016 ONSC 1650

<sup>29</sup> *Dunsmuir, supra*, para. 133

<sup>30</sup> *Dunsmuir, supra*

35. In the Advocacy Centre for Tenants Ontario’s respectful submission, “where it is clear that the legislature could only have intended the statute to bear one meaning, correctness review is appropriate”.<sup>31</sup>

**iv) Conclusion**

36. The significance and the importance of the administrative justice system in the lives of ordinary and regular Canadians cannot be overstated. Many depend on the administrative justice system for the necessities of life. It is the place to which many Canadians must turn for the enforcement or vindication of their rights on a broad range of everyday matters. For many, it means food and shelter.<sup>32</sup>

37. When legal disputes arise and these Canadians make their arguments to a board or tribunal on the legal meanings of the statutory provisions that give rise to their disputes (and their deprivations) they are entitled to more than simply a hearing. They are entitled to a correct interpretation of the various statutory provisions in dispute that will provide them (and the others who come after them) with understanding, transparency, certainty, and predictability. The argument that a correctness standard promotes judicial economy is an obvious one.

38. Further, if these correct and consistent interpretations give rise to injustice or unintended consequences, legislatures can act.

39. Canada’s commitment to “peace, order and good government” is grounded in the rule of law. Good government involves delegation of some decision-making to administrative or juridical officials who must interpret correctly the statutory framework in which they operate. When they do not, the courts must act to restate or re-instate the consistent or correct application of the legislation. This legitimizes government. This legitimizes the judiciary. People cannot live and operate in some free-floating landscape of uncertainty, speculation, and doubt. It erodes trust. It erodes the commitment to being law-abiding. It erodes the rule of law.

---

<sup>31</sup> *Wilson, supra*, para. 89

<sup>32</sup> R. Ellis, *Unjust by Design* (Vancouver: UBC Press, 2013) para. 2 at page 2 [ Book of Authorities of the Intervener, Tab B]

40. Statutory appeals on questions of law should attract the correctness standard of review. Statutes have to mean something to the people whose lives are regulated by them and for their advocates to have to fight for them on a daily basis.

**PART IV: COSTS**

41. The Advocacy Centre for Tenants does not seek costs and asks that no costs be awarded against it.

**PART V – ORDER SOUGHT**

42. The Advocacy Centre for Tenants seeks the permission of this Honourable Court to present brief oral argument.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS, 18<sup>th</sup> day of October 2018**



---

Karen Andrews  
Counsel for The Advocacy Centre for Tenants  
Ontario

**PART VI – TABLE OF AUTHORITIES**

**CASE LAW**

<b>CASES</b>	<b>PARAGRAPH(S)</b>
1. <a href="#"><i>Dunsmuir v. New Brunswick</i>, [2008] 1 SCR 190, 2008 SCC 9</a>	2, 4, 6,7, 9, 11, 13, 14, 32, 34,
2. <i>Britannia Glen Co-Operative Homes v. Indie Singh and Kuntie Singh</i> (2 December 1996), Brampton A4279/96 (O.C.G.D)	19
3. <a href="#"><i>Onyskiw v. CJM Property Management Ltd.</i>, 2016 ONCA 477</a>	25
4. <a href="#"><i>Morguard Residential v. Asboth</i>, 2017 ONSC 2502</a>	27
5. <a href="#"><i>Nickoladze v. Bloor Street Investments/Advent Property Management</i>, 2015 ONSC 3893</a>	29
6. <a href="#"><i>Juhasz v. Hymas</i>, 2016 ONSC 1650</a>	30
7. <a href="#"><i>Canada (Canadian Human Rights Commission) v. Canada (Attorney General)</i>, [2011] 3 SCR 471, 2011 SCC 53</a>	10
8. <a href="#"><i>Mouvement laïque québécois v. Saguenay (City)</i>, [2015] 2 SCR 3, 2015 SCC 16</a>	12
8. <a href="#"><i>Wilson v. Atomic Energy of Canada Ltd.</i>, [2016] 1 SCR 770, 2016 SCC 29</a>	14, 15, 16, 34
9. <a href="#"><i>Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.</i>, [2016] 2 SCR 23, 2016 SCC 37</a>	14

**SECONDARY AUTHORITIES**

<b>ARTICLES / REPORTS</b>	<b>PARAGRAPH(S)</b>
10. R. Ellis, <i>Unjust by Design</i> (Vancouver : UBC Press , 2013)	36

**LEGISLATION**

<b>STATUTORY PROVISIONS</b>	<b>SECTION (S)</b>
11. <a href="#"><i>Residential Tenancies Act, 2006</i>, S.O. 2006, c. 17</a>	<a href="#">14</a> , <a href="#">20</a> , <a href="#">27</a> , <a href="#">37(4)</a> , <a href="#">210(1)</a>
12. <a href="#"><i>Compensation for Victims of Crime Act</i>, R.S.O. 1990, c. C. 24</a>	<a href="#">23</a>
13. <a href="#"><i>Ontario Works Act, 1997</i>, S.O. 1997, c. 25 Sch. A</a>	<a href="#">36(1)</a>
14. <a href="#"><i>Ontario Disability Support Program Act, 1997</i>, S.O. 1997, c.25, Sch. B</a>	<a href="#">31(1)</a>