SCC Court File No 36602

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

B E T W E E N:

GOOGLE INC.

Appellant

- and -

EQUUSTEK SOLUTIONS INC., ROBERT ANGUS and CLARMA ENTERPRISES INC.

Respondents

- and -

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, CANADIAN CIVIL LIBERTIES ASSOCIATION, OPENMEDIA ENGAGEMENT NETWORK, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AMERICAN SOCIETY OF NEWS EDITORS, ASSOCIATION OF ALTERNATIVE NEWSMEDIA, CENTER FOR INVESTIGATIVE REPORTING, DOW JONES & COMPANY, INC., FIRST AMENDMENT COALITION, FIRST LOOK MEDIA WORKS INC., NEW ENGLAND FIRST AMENDMENT COALITION, NEWSPAPER ASSOCIATION OF AMERICA, AOL INC., CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, ASSOCIATED PRESS, INVESTIGATIVE REPORTING WORKSHOP AT AMERICAN UNIVERSITY, ONLINE NEWS ASSOCIATION, SOCIETY OF PROFESSIONAL JOURNALISTS, HUMAN RIGHTS WATCH, ARTICLE 19, OPEN NET (KOREA), SOFTWARE FREEDOM LAW CENTRE, THE CENTER FOR TECHNOLOGY AND SOCIETY, WIKIMEDIA FOUNDATION, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, ELECTRONIC FRONTIER FOUNDATION, INTERNATIONAL FEDERATION OF THE PHONOGRAPHIC INDUSTRY, MUSIC CANADA, CANADIAN PUBLISHERS' COUNCIL, ASSOCIATION OF CANADIAN PUBLISHERS, INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS, INTERNATIONAL CONFEDERATION OF MUSIC PUBLISHERS, WORLDWIDE INDEPENDENT NETWORK and INTERNATIONAL FEDERATION OF FILM PRODUCERS ASSOCIATIONS

Interveners

FACTUM OF THE INTERVENER,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION
(Pursuant to Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada)*

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PART I - OVERVIEW

1. This appeal concerns whether, and under what circumstances, courts may grant plaintiffs extra-territorial injunctive orders restraining third party search engines or other similar internet intermediaries from listing certain websites featuring content created by defendants ("***Equustek* orders**").

2. *Equustek* orders engage at least two different sets of interests: the protection of freedom of expression on the internet, and the importance of ensuring that individuals who have been wronged are able to seek access to justice and obtain meaningful relief. Both are important. Yet the tension between them only grows stronger as e-commerce, internet connectivity and technology in general plays an increasingly pivotal role in our lives.

3. In considering whether to grant *Equustek* orders, the British Columbia Civil Liberties Association ("**BCCLA**") submits that this Court should adopt a balanced framework for reconciling these competing interests. As noted by the Appellant and various other interveners, *Equustek* orders inherently limit expression – a point of significant concern to the BCCLA. But to focus on this aspect of *Equustek* orders, to the exclusion of all other interests, does a disservice to the analysis. There is also an important public interest in protecting access to justice, and in ensuring those who have suffered wrongs through the operation of the internet can obtain a meaningful remedy (without the need to bring multiple court proceedings in multiple jurisdictions across the globe).

4. The BCCLA's approach seeks to recognize – and, insofar as possible, reconcile – these different interests. It does so by drawing upon the principles informing other types of extraordinary relief to create a framework that sets a stringent threshold for granting *Equustek* orders, while ensuring that they are available in appropriate cases. More specifically, the BCCLA submits that to obtain an *Equustek* order, the moving party must:

(a) if the order sought is interlocutory, satisfy the first two prongs of the *RJR-MacDonald* test (the remaining considerations should apply to both final and interlocutory orders);

(b) establish that the order is necessary, in the sense that:

(i) there are no reasonable alternative means of relief;

(ii) the *Equustek* order will be effective; and

(iii) the requested order is no broader than necessary to achieve the objectives (having regard to the content covered by the order, and its geographic and temporal scope); and

(c) establish that the order is proportionate, in the sense that its salutary benefits outweigh its deleterious effects, having regard to:

(i) the connection between the target of the order and the defendant(s);

(ii) the costs and consequences of complying with the proposed order;

(iii) the impact to the plaintiff if an order were not granted;

(iv) the impact on the right to free expression protected under the Canadian *Charter of Rights and Freedoms* ("***Charter***"); and

(v) the strength of the plaintiff's case (for interlocutory orders).

5. The BCCLA submits that the above framework should govern the granting of *Equustek* orders in all manner of cases – from defamation to intellectual property rights – including the circumstances raised in this appeal.[1] The framework is grounded in principles drawn both from analogous Canadian case law (including equitable remedies) and in the law of other commonwealth jurisdictions. Furthermore, the proposed framework explicitly recognizes and takes account of the access to justice implications of *Equustek* orders.

PART II - QUESTIONS IN ISSUE

6. The BCCLA intervenes to provide this Court with an analytical framework for determining whether, and on what terms, *Equustek* orders should be granted. The BCCLA takes no position on the outcome of this appeal.

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[1] The Appellant argues that extra-territorial injunctive relief is never available. Although the Respondents propose a series of factors that were considered by the Chambers Judge, they do not appear to endorse any particular analytical framework for *Equustek* orders, and argue that there is no need to develop the scope of this type of relief beyond the facts of this specific case: see Respondents' factum at ¶108-110.

PART III - STATEMENT OF ARGUMENT

A. *Equustek* orders should draw on principles applied in granting similar remedies

7. Though they are a unique form of injunctive relief, *Equustek* orders share a number of features in common with other remedies granted by Canadian courts and courts in other commonwealth jurisdictions. In designing a framework to govern when *Equustek* relief will be granted, it is useful to draw on the principles applied by courts in the context of these other remedies.

8. By their very nature, *Equustek* orders limit the constitutional freedom of their target to disseminate expressive material, and of the public at large to receive that material. In this sense, they are similar to orders limiting expressive content – such as orders preventing defendants from posting online material in defamation cases, and orders prohibiting the publication of court proceedings. *Equustek* orders also target and impose obligations on innocent third parties, just as *Norwich Pharmacal* orders do.[2] Finally, *Equustek* orders require the assistance of an intermediary to enforce a remedy involving the internet, similar to "blocking" orders issued against internet service providers (ISPs).[3]

9. Many of the principles governing these other forms of relief are instructive. In particular, these remedies incorporate the concepts of necessity, effectiveness, convenience, complicity, harm and the interests of justice that also animate the BCCLA's proposed approach to *Equustek* orders.

B. Availability of *Equustek* orders

10. Just as courts do not routinely grant orders limiting expressive content (such as publication bans), or orders targeting third parties (such as *Norwich Pharmacal* orders or blocking orders), so too should they exercise restraint when it comes to *Equustek* orders.

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[2] These types of orders require third parties to produce documents or information, in order to assist a plaintiff (or potential plaintiff) to pursue or investigate a cause of action. They are named after the decision of the House of Lords in *Norwich Pharmacal Co & Ors v Customs and Excise Commissioners*, [1974] AC 133, Respondent's Book of Authorities ["**RES BOA**"], Tab 33.

[3] Canadian case law on the test for these types of blocking orders is scarce, since it appears that ISPs normally agree to voluntarily comply with them. The issue has received more judicial attention in the UK, where it was recently discussed by the England and Wales Court of Appeal in *Cartier International AG & Ors v British Sky Broadcasting Ltd & Ors*, [2016] EWCA Civ 658, RES BOA, Tab 11 ["***Cartier***"].

11. To borrow a phrase used to describe *Norwich* relief, *Equustek* orders should be considered "an equitable, discretionary and flexible remedy" but also an "extraordinary remedy that must be exercised with caution".[4] Similar language has been used to describe injunctions targeting speech in defamation cases: "a broad ongoing injunction is an extraordinary remedy which should be used sparingly."[5]

12. In the context of *Equustek* orders, comity is another important consideration militating in favour of restraint. But the role of comity should not be overstated. It does not foreclose the ability of Canadian courts to order an extraterritorial remedy in appropriate circumstances. Nor does it mean that Canadian courts will be required to enforce orders that are fundamentally incompatible with Canadian values, including the right to free expression.[6] Indeed, Canadian courts being asked to enforce foreign-ordered equitable remedies (such as injunctions) retain a discretion to refuse enforcement, including where the defendant can show that the order would be contrary to "public policy".[7]

13. Ultimately, *Equustek* orders are an available remedy that courts should be prepared to use in the right case. Plaintiffs whose legal rights have been infringed by way of wrongs committed online require access to meaningful and enforceable remedies. To the extent possible, these remedies should restore them to the position they would have been in absent the breach of their rights. The remedies should also deter further breaches. In some cases, the global and highly transmissible nature of the internet can present hurdles to achieving this objective. But as the Court of Appeal for Ontario put it in *Lopehandia*: "Any suggestion that there can be no effective remedy for the tort of defamation (or other civil wrongs) committed by the use of the Internet (or that such wrongs must simply be tolerated as the price to be paid for the advantages of the medium) is self-evidently unacceptable."[8]

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[4] *GEA Group AG v Flex-N-Gate Corporation*, 2009 ONCA 619, at ¶85, RES BOA, Tab 22 ["***GEA***"].

[5] *St Lewis v Rancourt*, 2015 ONCA 13, at ¶16, British Columbia Civil Liberties Association's Book of Authorities ["**BCCLA BOA**"], Tab 1 ["***St Lewis***"].

[6] Appellant's factum at ¶107

[7] *Beals v Saldanha*, [2003] 3 SCR 416 at ¶40, BCCLA BOA, Tab 2; *Pro Swing Inc v Elta Golf Inc*, [2006] 2 SCR 612 at ¶28, BCCLA BOA, Tab 3.

[8] *Barrick Gold Corp v Lopehandia et al* (2004), 71 OR (3d) 416 (CA), at ¶75, RES BOA, Tab 6.

14. It must be recognized that in certain cases, denying plaintiffs an *Equustek* order may well leave them with no effective remedy at all. Such a result runs contrary to the "elementary maxim" that there can be no right without a remedy.[9] It also undermines access to justice – something this Court has recently recognized as "fundamental to the rule of law"[10] (even going so far as to stress the need for a "culture shift" in the legal community in order to better serve this principle[11]). Access to justice is served by avoiding multiple proceedings.[12] By contrast, forcing plaintiffs to bring several separate cases in several different jurisdictions to get the same injunctive or final remedial effect as a single *Equustek* order undermines access to justice.[13]

15. To balance the various competing considerations at play when *Equustek* orders are requested, the BCCLA proposes the following analytical framework.

C. The role of the *RJR-MacDonald* test in *Equustek* orders

16. When dealing with an application for an interlocutory *Equustek* order, the first two requirements of the *RJR-MacDonald* test for interlocutory injunctive relief should govern, with the proposed analytical framework below representing a modified – and more rigorous – final stage: one focused on proportionality, rather than simply the "balance of convenience".

17. Put differently, the test for an interlocutory *Equustek* order should be more onerous than the ordinary test for interlocutory injunctive relief.[14] That is only appropriate, given that *Equustek* orders target expressive content and parties who are not defendants.

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[9] *Allen v College of Dental Surgeons of British Columbia*, 2007 BCCA 75, at ¶34-36, BCCLA BOA, Tab 4.

[10] *Trial Lawyers Association of British Columbia v British Columbia*, [2014] 3 SCR 31, at ¶39, BCCLA BOA, Tab 5.

[11] *Hryniak v Mauldin*, [2014] 1 SCR 87, at ¶32, BCCLA BOA, Tab 6.

[12] *Griffin v Dell Canada Inc* (2010), 98 OR (3d) 481, at ¶58 (CA), BCCLA BOA, Tab 7.

[13] Of course, even with an *Equustek* order, plaintiffs may still have to bring enforcement proceedings in other jurisdictions – but these are generally more straightforward and less costly than a full trial or interlocutory injunctive proceedings. In addition, there is the possibility that intermediaries will comply with an *Equustek* order without the need for enforcement proceedings, particularly if they have some assets or presence in a Canadian jurisdiction.

[14] Similarly, this Court has held that a higher standard applies when seeking an interlocutory order against Canadian defendants that seeks to restrain expressive content: see *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626, at ¶49, RES BOA, Tab 9 ["***Canadian Liberty Net***"].

18. *Equustek* orders sought after a final determination on the merits do not need to satisfy the *RJR-MacDonald* test, but should be subject to the same framework set out below.

D. Necessity as a fundamental prerequisite

19. Parties seeking an *Equustek* order (either on an interlocutory or final basis) must establish that it is necessary to provide a meaningful remedy, in light of the nature and extent of the harm suffered.

20. This is consistent with how Canadian courts have approached requests for other extraordinary relief against third parties (in the context of *Norwich* orders)[15] as well as orders limiting the freedom to disseminate expressive material (in the context of orders enjoining defendants from posting online material in defamation cases[16] and orders prohibiting the publication of court proceedings.)[17] It is also consistent with how other commonwealth countries have addressed ISP blocking orders.[18] Courts in these circumstances require moving parties to show that the relief that they seek is absolutely required before granting such orders. Applying the principles from these contexts to proceedings where *Equustek* orders are sought, necessity requires demonstrating that:

(a) ***There are no reasonable alternative remedies available.***[19] *Equustek* orders should not be granted where the plaintiff has failed to exhaust other avenues of traditional relief (or has failed to explain why they are not reasonable or practical alternatives in the circumstances). Chief amongst these alternatives would be relief targeting the defendant directly; and

(b) ***It will provide an effective and meaningful remedy, if enforced.***[20] If an *Equustek* order will not be effective, given the nature and extent of the harm suffered by the plaintiff, then it should not be granted. For example, if access to a website in a particular jurisdiction cannot be proven or reasonably assumed to have caused the plaintiff any injury, then an order extending to that jurisdiction is

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[15] *GEA*, at ¶70, 75-77, RES BOA, Tab 22.

[16] See, for example, *Warman v Fournier*, 2015 ONCA 873, at ¶21, BCCLA BOA, Tab 8.

[17] *Dagenais v Canadian Broadcasting Corporation*, [1994] 3 SCR 835, at 880, Appellant's BOA ["**APP BOA**"], Tab 11 ["***Dagenais***"].

[18] *Cartier*, at ¶103, RES BOA, Tab 11.

[19] *Dagenais*, at 880, APP BOA, Tab 11; *GEA*, at ¶83-84, RES BOA, Tab 22; *Cartier*, at ¶174-178, RES BOA, Tab 11.

[20] *Dagenais* at 884-886, APP BOA, Tab 11; *Cartier* at ¶107, 127, RES BOA, Tab 11.

> not "necessary". In assessing effectiveness, the standard from ISP case law is instructive: the order "must at least have the effect of making access to the target website difficult to achieve and of seriously discouraging internet users from accessing it."[21]

21. As part of the necessity inquiry, courts must be vigilant to ensure that *Equustek* orders are no more expansive than necessary to grant the plaintiff effective relief. In *Dagenais*, in recognition of the importance of only limiting free expression where absolutely necessary, this Court stressed that publication bans must be "as narrowly circumscribed as possible" and that a judge must "limit the ban as much as possible".[22] The same principles of restraint should be applied to *Equustek* orders. Again, this is entirely consistent with the jurisprudence governing *Norwich* orders, injunctions prohibiting online speech (and injunctions in general) and publication bans.

22. To ensure an *Equustek* order is as minimally impairing as possible, courts should inquire as to whether: (a) the order sought covers entire websites or specific URLs; (b) there is a risk that innocent, non-offending content will be covered by the order; (c) the order's geographic scope is wider than necessary; and (d) the order is temporally limited.

23. Depending on the facts of the case, it may be appropriate for the order to contain a "come back" clause that will allow the parties to attend before a court to have the terms be reconsidered and varied as necessary.

E. Balancing the salutary benefits and deleterious effects

24. Even if other elements of the test have been satisfied, a court must still carefully consider whether to exercise its discretion and grant an *Equustek* order. By its nature, this type of equitable discretionary relief requires a careful balancing of the interests involved. The balancing of salutary and deleterious effects should occur regardless of whether the injunctive relief sought is interlocutory or final in nature. Courts engage in this exercise when deciding whether to grant a publication ban[23], and in a similar exercise in deciding whether to grant a

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[21] *Cartier* at ¶116, APP BOA, Tab 11 (emphasis added). See also ¶179-181.

[22] *Dagenais* at 881 and 891, APP BOA, Tab 11.

[23] *Dagenais* at 891, APP BOA, Tab 11.

Norwich order (*i.e.*, whether the interests of justice favour granting an order)[24] or an ISP blocking order (*i.e.*, whether such an order is proportionate)[25].

25. In the context of an *Equustek* order, the balancing exercise may include considering some or all of the following factors, depending on the circumstances of a given case.

i. Connection between the target of the order and the defendant(s)

26. The more remote the connection between the target of an *Equustek* order and the defendant's impugned conduct, the less inclined a court should be to grant such an order.

27. Certain search engines, for example, may have a commercial relationship with the defendant that creates a more direct connection to the impugned material (such as listing the material in an advertisement). Others may play a purely innocent or passive role, with their involvement limited to having the impugned websites indexed as part of an automatic search engine formula. In the *Norwich* case law, one sees a similar distinction drawn between third parties who are "mere witnesses" to wrongful conduct, to entities that are somehow "mixed up" in facilitating that conduct, even if unknowingly.[26]

ii. Costs and consequences of compliance with an Equustek order

28. In determining whether, and on what terms, to grant an *Equustek* order, it is appropriate to consider whether the costs and consequences of compliance with that order would be onerous.

29. All else being equal, the more onerous these requirements, the stronger the case against granting an *Equustek* order (or, where otherwise appropriate, for an order on terms that the costs are borne by the party seeking the order). This is consistent with the case law on *Norwich* orders[27], and ISP blocking orders.[28] The party resisting the *Equustek* order bears the burden of demonstrating whether compliance would be onerous.

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[24] *GEA* at ¶50, 84, RES BOA, Tab 22.

[25] *Cartier*, RES BOA, Tab 11

[26] *1654776 Ontario Limited v Stewart*, 2013 ONCA 184, at ¶60, BCCLA BOA, Tab 9 ["***Stewart***"].

[27] *Stewart* at ¶25, BCCLA BOA, Tab 3.

[28] *Cartier* at ¶120-122, 147, RES BOA, Tab 11.

iii. Impact on the plaintiff if the order were not granted

30. The impact of denying a plaintiff an *Equustek* order is a critical consideration in the analysis. While the nature of the harm in relation to the plaintiff is taken into account under the second criterion of the *RJR-MacDonald* test, the extent of the harm is also relevant and should be considered in balancing the salutary and deleterious effects of making an *Equustek* order. This is distinct from showing that the harm will be irreparable (which refers to the "nature of the harm suffered", but not an assessment of the "magnitude" of harm suffered).[29]

31. Relevant factors may include how broadly the impugned material has been disseminated; how frequently it has been accessed; any evidence of harm to the plaintiff's reputational, commercial or professional interests; the degree of offensiveness of the impugned material; and any circumstances that might mitigate the negative impact of the impugned material.

iv. Impact on Charter values

32. As an exercise of the court's equitable, remedial discretion, the granting of an *Equustek* order must take account of *Charter* values[30], including the values of free expression and of privacy.[31]

33. Any *Equustek* order will restrict speech to some degree – indeed, this is one of the key reasons it ought to be considered a rare and extraordinary remedy – but not all orders offend the value of free expression (or other *Charter* values) to the same extent. The impact of the *Equustek* order on free expression will depend on, *inter alia*: (a) the scope of the order sought; (b) the potential for capturing non-offending content; and (c) most importantly, the degree of connection between the expression at issue and the core values underlying the right to free expression: seeking and attaining the truth, fostering participation in social and political decision-making, and promoting self-fulfillment.[32]

34. The latter consideration is particularly relevant in the interlocutory context, where a final determination on the alleged impropriety of the impugned material has yet to occur.

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[29] See *RJR MacDonald Inc v Canada*, [1994] 1 SCR 311, at page 406, APP BOA, Tab 16.

[30] *Dagenais* at 876, APP BOA, Tab 11.

[31] *Hill v Church of Scientology of Toronto*, [1995] 1 SCR 1130 at ¶121, BCCLA BOA, Tab 8.

[32] *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, at ¶53, RES BOA, Tab 28.

Interlocutory *Equustek* orders concerning allegedly defamatory political speech, for example, should be very rarely granted (just as interlocutory orders enjoining speech *within* Canadian borders are very rarely granted[33]). By contrast, *Equustek* orders targeting material found to be in violation of intellectual property rights are less likely to engage the core principles and values underlying the *Charter* right to free expression.

v. Strength of the plaintiff's case (for interlocutory orders)

35. For interlocutory *Equustek* orders, the strength of the plaintiff's case should be a consideration. Just because a case meets the modest merits threshold to qualify for interlocutory *Equustek* relief does not mean that, in the final analysis, such relief should be granted. Courts have taken a similar approach in the test for *Norwich* relief (where plaintiffs need only show a "*bona fide* claim" as a threshold matter, but the strength of the claim is weighed together with other relevant factors at the final stage of the analysis).[34]

PART IV - SUBMISSIONS ON COSTS

36. The BCCLA does not seek costs and requests that no order as to costs be made against it.

PART V - ORDER SOUGHT

37. The BCCLA requests permission to make oral submissions of no more than 10 minutes, and asks that its submissions be taken into account in the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of October, 2016

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[33] See, for example, *Canadian Liberty Net*. This reflects the careful balance that must be struck in defamation law between protection of reputation and freedom of expression: see *Crookes v Newton*, 2011 SCC 47, at ¶117, RES BOA, Tab 15 (*per* Deschamps J).

[34] *GEA* at ¶56-59, RES BOA, Tab 22.

PART VI - TABLE OF AUTHORITIES

	AUTHORITY	REFERRING PARAGRAPH
1.	*1654776 Ontario Limited v Stewart*, 2013 ONCA 184	27, 29
2.	*Allen v College of Dental Surgeons of British Columbia*, 2007 BCCA 75	14
3.	*Barrick Gold Corp v Lopehandia et al* (2004), 71 OR (3d) 416 (CA)	13
4.	*Beals v Saldanha*, [2003] 3 SCR 416	12
5.	*Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626	14, 34
6.	*Cartier International AG & Ors v British Sky Broadcasting Ltd & Ors*, [2016] EWCA Civ 658	8, 20, 20(b), 24, 29
7.	*Crookes v Newton*, 2011 SCC 47	34
8.	*Dagenais v Canadian Broadcasting Corporation*, [1994] 3 SCR 835	20, 20(a), 20(b), 21, 24, 32
9.	*GEA Group AG v Flex-N-Gate Corporation*, 2009 ONCA 619	11, 20, 24, 35
10.	*Griffin v Dell Canada Inc* (2010), 98 OR (3d) 481 (CA)	14
11.	*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130	32
12.	*Hryniak v Mauldin*, [2014] 1 SCR 87	14
13.	*Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927	33
14.	*Norwich Pharmacal Co & Ors v Customs and Excise Commissioners*, [1974] AC 133	8
15.	*Pro Swing Inc v Elta Golf Inc*, [2006] 2 SCR 612	12
16.	*RJR MacDonald Inc v Canada*, [1994] 1 SCR 311	30
17.	*St Lewis v Rancourt*, 2015 ONCA 513	11
18.	*Trial Lawyers Association of British Columbia v British Columbia*, [2014] 3 SCR 31	14
19.	*Warman v Fournier*, 2015 ONCA 873	20

PART VII - STATUTORY PROVISIONS

N/A

SCC Court File No 36602

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

B E T W E E N:

GOOGLE INC.

Appellant

- and -

EQUUSTEK SOLUTIONS INC., ROBERT ANGUS, CLARMA ENTERPRISES INC.

Respondents

FACTUM OF THE INTERVENER, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada)*

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