

Court File No. A-145-12

**FEDERAL COURT OF APPEAL**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

APPELLANT

- and -

AMNESTY INTERNATIONAL, CHIEFS OF ONTARIO,  
FIRST NATIONS CHILD & FAMILY CARING SOCIETY,  
ASSEMBLY OF FIRST NATIONS and  
CANADIAN HUMAN RIGHTS COMMISSION

RESPONDENTS

**AFFIDAVIT OF NATHALIE DES ROSIERS**  
*(Sworn November 30, 2012)*

I, **NATHALIE DES ROSIERS**, of the City of Ottawa, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the general counsel of the Canadian Civil Liberties Association (the "CCLA"), and as such have knowledge of the matters contained in this affidavit.
2. The CCLA is a national organization, formed in 1964, that promotes respect for and observance of fundamental human rights and civil liberties in Canada. The CCLA's work, which includes research, public education and advocacy, aims to defend and ensure the protection and full exercise of those rights and liberties. The CCLA has thousands of paid supporters, a number of affiliated chapters across the country, and associated group members. A wide variety of

persons, occupations, and interests are represented in the national membership. In its advocacy, the CCLA directs its attention to the reconciliation of civil liberties and other public interests.

**The CCLA's Knowledge and Expertise Regarding Civil Liberties Generally**

3. The CCLA has built up expertise and experience that can be of assistance to this Court. The CCLA is well placed to offer a broad, national, civil liberties perspective that differs from the perspectives of the parties and other potential interveners.

4. Courts have recognized the CCLA's contribution to the development of the law in relation to civil liberties. For instance, in *Tadros v. Peel Regional Police Service*, 2008 ONCA 775 at para. 3, Associate Chief Justice O'Connor commented that the CCLA:

...has substantial experience in promoting and defending the civil liberties of Canadians and in examining the boundaries of acceptable police conduct.

5. Similarly, in *Prud'homme c. Rawdon (Municipalité de)*, 2009 QCCA 2046 at paras. 17-18, which involved the guarantee of freedom of expression under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), the court stated of its decision to allow the CCLA's intervention:

À la simple lecture de la requête de COLA, et en particulier au paragr. 5, a), b) c) d), je suis convaincu que son intervention sera vraisemblablement utile, à propos et donc opportune.

6. The CCLA possesses a distinct awareness and understanding of many aspects of civil liberties, having argued for and defended the rights of individuals on many occasions. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter*. It has frequently been granted intervener status before Courts and

tribunals across Canada, including this Court, to present oral and written argument in cases that involve the reconciliation of different rights, interests and values.

7. A list of many of the cases in which the CCLA has been granted intervener or party status is attached as **Exhibit "A"** to this affidavit.

#### **Nature of this Appeal**

8. This appeal raises the question of the necessity of a comparator group in the context of the interpretation of section 5 of the *CHRA*, and more generally, the evidentiary burden on claimants to establish a *prima facie* case of discrimination.

#### **The CCLA's Expertise Regarding Issues Raised on this Appeal**

9. Within the context of its broader expertise in civil liberties, the CCLA has specific expertise on the issues raised on this appeal, namely equality rights and their role in promoting civil liberties.

10. The CCLA has a long history of supporting and advocating for the rights of people who are disadvantaged politically, socially, and economically, as well as those who are unfairly treated by the law and by the government. Such unfair treatment may be explicit, direct, implicit, or systemic, and may be manifested through violations of other rights and freedoms, such as the right to privacy, or rights in the criminal justice system. In furtherance of its principles, the CCLA has developed an Equality Program that is concerned with all forms of discrimination, and seeks to promote fairness and equality in Canada generally, including with respect to First Nations. The CCLA has demonstrated expertise on a diverse range of equality

issues and a unique perspective on the reconciliation of equality and other fundamental rights and freedoms.

11. The CCLA's recent activities as part of its equality program include:
- (a) Intervening in the Supreme Court of Canada in a case concerning Aboriginal sentencing (*R. v. Ladue*);
  - (b) Writing to the Minister of Northern Development, Mines and Forestry (MNDMF) regarding a potential threat to traditional aboriginal burial sites and sacred lands that had resulted from a proposed mining and development project;
  - (c) Submitting an NGO report to the Universal Periodic Review (formerly the UN Human Rights Commission) on Canada's compliance with its international legal commitments to various disadvantaged groups, including on the basis of discrimination. The CCLA's report included submissions with respect to Aboriginal women as the disproportionate victims of violence, and the disproportionate incarceration of Aboriginal people;
  - (d) Intervening in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* regarding the proper scrutiny of government action;
  - (e) Addressing the Toronto Police Services Board numerous times over the documented practice of racial profiling by the police; and

- (f) In light of some very serious charges laid against individuals, and the stigma associated with HIV/AIDS, writing to the Attorney General for Ontario calling on him to develop guidelines concerning the criminal investigation and prosecution of allegations of non-disclosure of HIV and other sexually transmitted infections.
12. The CCLA has been granted intervener or party status in many cases involving civil liberties in the context of equality law, and/or sections 7 and 15 of the *Charter*, including:
- (a) *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare, and specifically relating to the interplay between sections 7 and 15 of the *Charter* (the CCLA intervened in the Federal Court of Appeal).
- (b) *Reference re Marriage Commissioners Appointed Under the Marriage Act*, 1995 S.S. 1995, c. M-4.1, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners' religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan).
- (c) *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), which concerned the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" (a) constituted discrimination under section 15(1) of the *Charter*; and (b) set the stage for unwarranted government intrusion into the personal and private circumstances of affected benefit recipients (the CCLA

intervened in the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal).

- (d) *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal).
- (e) *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada).
- (f) *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, concerning whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada).
- (g) *Tiberiu Gavrilă v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the *Immigration and Refugee Protection Act* and the *Extradition Act* and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada).

13. The CCLA has a distinct awareness and understanding of many aspects of civil liberties, having argued for and defended the rights of individuals on many occasions. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter*.

14. A recurring theme in the CCLA's submissions to the Courts and to government bodies is the need to develop principled approaches to the reconciliation of interests that almost inevitably occurs in cases involving civil liberties. In all of its work the CCLA seeks to strike an appropriate balance on a principled basis, and assist Courts and lawmakers in doing so. A key aspect of achieving such balance is the reconciliation of different interests and the need to ensure proportionality between laws and their objectives, in light of their actual effects.

#### **Anticipated Arguments of the CCLA**

15. If leave to intervene is granted, the CCLA intends to make submissions relating to the proper construction of section 5 of the *CHRA*, and the evidentiary burden to be borne by the claimants to establish discrimination.

In particular, if granted leave to intervene, the CCLA will argue that the case should be referred back to the Tribunal to be heard fully and that it was improper for the Tribunal to dismiss the case on the basis of the failure to identify other similarly situated providers. In the CCLA's view, the Tribunal's approach does not reflect Canadian equality law. The CCLA will argue that comparisons are not necessary to establish a *prima facie* case of discrimination, and that to the extent that comparisons are helpful to establish discrimination, the comparison is usually made between *groups of people accessing or wishing to access goods or services*, and not between providers of goods and services. In particular, CCLA will argue that the following structure is the proper analysis under s. 5 of the *CHRA*:

#### **Step 1:**

The individual must prove that he or she has been adversely impacted by a distinction, made on one or more of the prohibited grounds of discrimination, in

18. I make this affidavit in support of the CCLA's motion to intervene in this matter, and for no other purpose.

AFFIRMED BEFORE ME at the City of )  
Ottawa, this 30<sup>th</sup> day of November, 2012. )



A Commissioner for taking oaths



NATHALIE DES ROSIERS



Court File No. A-145-12

**FEDERAL COURT OF APPEAL**

B E T W E E N :

THE ATTORNEY GENERAL OF CANADA

APPELLANT

- and -

AMNESTY INTERNATIONAL, CHIEFS OF  
ONTARIO, FIRST NATIONS CHILD & FAMILY  
CARING SOCIETY, ASSEMBLY OF FIRST NATIONS  
and CANADIAN HUMAN RIGHTS COMMISSION

RESPONDENTS

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**AFFIDAVIT OF NATHALIE DES ROSIERS  
(Motion for Leave to Intervene)**

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This is **Exhibit "A"** referred to in the affidavit of **NATHALIE DES ROSIERS** sworn before me this 30<sup>th</sup> day of November, 2012

A handwritten signature in black ink, appearing to be 'St. E.', written over a horizontal line.

A Notary

## CCLA Interventions

Cases in which the CCLA has been granted intervener status include those listed chronologically below:

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);
8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);
9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under section 508 of the *Criminal Code* after a private information has been received but before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson*);

- in the Ontario Court of Appeal and the Supreme Court of Canada. In *R v. Buchbinder*, the CCLA intervened in the Supreme Court of Canada);
10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in section 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Court of Appeal);
  11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
  12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter's* guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
  13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
  14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 O. R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);
  15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
  16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken by a film censorship board violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
  17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated sections 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);
  18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman Catholic separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);

19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O. R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter's* guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion (the CCLA intervened in the Supreme Court of Canada);
21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by non-members pursuant to an agency shop or Rand formula violated the *Charter's* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);
24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter's* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);
25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in section 163 of the *Criminal Code* violate the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court - General Division);
27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether section 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the *Ontario Human Rights Code* and if the Board of Inquiry's dealing with the obscenity

issue intruded on the Charter's guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);

29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);
31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);
32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding of Jewish and certain Christian day schools violated the *Charter's* guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);
33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to section 7 of the *Charter* or the *Charter's* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);
34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether section 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court - General Division);
35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);
36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of subsection 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);

37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);
38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether section 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether section 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionality protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);
42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);
43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P.*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-struck workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);
44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in section 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates section 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);

46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);
47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);
48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under section 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate subsection 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);
50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated section 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);
52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);
53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);
54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);



55. *Chamberlain v. The Board of Trustees of School District # 36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);
56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under subsection 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);
57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the extent to which the common law regarding secondary picketing should be modified in light of *Charter values* (the CCLA intervened in the Supreme Court of Canada);
58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);
59. *R. v. Malmo-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates section 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);
61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);
62. *R v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);
63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);

64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);
65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);
66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infra red technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);
68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);
69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);
70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the *Charter's* guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);
71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);
72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);

74. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);
75. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);
76. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);
77. *R. v. Hill*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);
78. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);
79. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);
81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. M.(A.)*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);
82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);
83. *Elmasry and Habib v. Roger's Publishing and MacQueen* (No. 4), 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);

84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);
85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);
86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);
87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);
88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);
89. *R. v. Suberu*, 2009 SCC 33, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);
90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);
92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);
93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);
94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);

95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);
96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec *Labour Code* and the impact of the freedom of association guarantees contained in the *Canadian Charter* and the Quebec *Charter* (the CCLA intervened in the Supreme Court of Canada);
97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which will examine the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen's Bench of Alberta);
98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);
99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61 concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);
100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);
101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);
102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
103. *Her Majesty the Queen in Right of the Province of Alberta v. Lyle Marcellus Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);
104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);

105. *Leblanc et al. c. Rawdon (Municipalite de)* (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of “anti-SLAPP” legislation (the CCLA intervened at the Quebec Court of Appeal);
106. *Warman v. Fournier et al.*, 2010 ONSC 2126, concerning the appropriate legal test when a litigant in a defamation action is attempting to identify previously-anonymous internet commentators (the CCLA intervened at the Ontario Superior Court of Justice);
107. *R. v. National Post*, 2010 SCC 16, concerning the relationship between journalist-source privilege, freedom of the press under s. 2b, and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada);
108. *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada);
109. *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);
110. *R. v. Cornell*, 2010 SCC 31, concerning whether the manner in which police conduct a search, in particular a unannounced ‘hard entry’, constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada);
111. *City of Vancouver, et al v. Alan Cameron Ward, et al.*, 2010 SCC 27, concerning whether an award of damages for the breach of a *Charter* right can be made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada);
112. *R. v. Sinclair*, 2010 SCC 35, *R. v. McCrimmon*, 2010 SCC 36, and *R. v. Willier*, 2010 SCC 37, concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada);
113. *R. v. N.S. et al.*, 2010 ONCA 670, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened at the Ontario Court of Appeal);
114. *The Toronto Coalition to Stop the War et al. v. The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration Canada*, 2010 FC 957, concerning the freedom of association and freedom of expression implications of a preliminary assessment by the government that a British Member of Parliament who was invited to speak in Canada was inadmissible because the government claimed he had engaged in terrorism and was a member of a terrorist organization (the CCLA intervened in the Federal Court);

115. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al*, 2010 SCC 41, concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada);
116. *R. v. Gomboc*, 2010 SCC 55, concerning the constitutionality of police conducting warrantless searches of private dwelling houses using real-time electricity meters (the CCLA intervened in the Supreme Court of Canada);
117. *Tiberiu Gavrilă v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the Immigration and Refugee Protection Act and the Extradition Act and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada);
118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M-4.1*, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners' religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan);
119. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.*, 2011 SCC 2, and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour*, 2011 SCC 3 concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of the press and the broadcasting of court proceedings (the CCLA intervened in the Supreme Court of Canada);
120. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 39, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their sentence in Canada and the application of s. 6 of the *Charter* (the CCLA intervened in the Federal Court of Appeal);
121. *R. v. Caron*, 2011 SCC 5, concerning the availability of advance cost orders in criminal and quasi-criminal litigation that raises broad reaching public interest issues (the CCLA intervened in the Supreme Court of Canada);
122. *R. v. Ahmad*, 2011 SCC 6, concerning the constitutionality of ss. 38 to 38.16 of the Canada Evidence Act, R.S.C. 1985 (the CCLA intervened in the Supreme Court of Canada);
123. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, 2011 SCC 9, concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada);
124. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, concerning the exclusion of agricultural workers from Ontario's *Labour Relations Act* and whether the labour scheme

- put in place for these workers violated freedom of association under the *Canadian Charter* (the CCLA intervened in the Supreme Court of Canada);
125. *R. v. K.M.* 2011 ONCA 252, concerning the constitutionality of taking DNA samples from young offenders on a mandatory or reverse onus basis (the CCLA intervened in the Ontario Court of Appeal);
  126. *Issassi v. Rosenzweig*, 2011 ONCA 302, concerning a 13 year old girl from Mexico who had been granted refugee status in Canada because of allegations that her mother had sexually abused her, and the subsequent return of that youth to her mother in Mexico, by a judge who did not conduct a risk assessment (the CCLA intervened at the Ontario Court of Appeal);
  127. *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, considering whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada);
  128. *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, cases concerning whether Minister's offices, including the Prime Minister's Office, are considered "government institutions" for the purposes of the federal *Access to Information Act* firearm (the CCLA intervened in the Supreme Court of Canada);
  129. *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);
  130. *Phyllis Morris v. Richard Johnson, et al.*, 2011 ONSC 3996, concerning a motion for production and disclosure brought by a public official and plaintiff in a defamation action in order to get identifying information about anonymous bloggers (the CCLA intervened on the motion at the Ontario Superior Court of Justice);
  131. *R. v. Nur*, 2011 ONSC 4874, concerning the constitutionality of s. 95(2) of the *Criminal Code*, which imposes a three-year mandatory minimum sentence for possession of a restricted or prohibited firearm (the CCLA intervened in the Ontario Superior Court of Justice);
  132. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);
  133. *Crookes v. Newton*, 2011 SCC 47, concerning whether a hyperlink constitutes "publication" for the purposes of the law of defamation (the CCLA intervened in the Supreme Court of Canada);
  134. *R. v. Katigbak*, 2011 SCC 48, considering the scope of the statutory defences to possession of child pornography (the CCLA intervened in the Supreme Court of Canada);



135. *R. v. Barros*, 2011 SCC 51, considering the scope of the informer privilege and whether it extends to prohibit independent investigation by the defence which may unearth the identity of a police informer (the CCLA intervened in the Supreme Court of Canada);
136. *Schaeffer v. Wood*, 2011 ONCA 716, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario's Special Investigations Unit (the CCLA intervened at the Ontario Court of Appeal); and
137. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning the constitutionality of municipal bylaws prohibiting the erection of structures and overnight presence in public parks as applied to a protest (the CCLA intervened at the Ontario Superior Court of Justice);
138. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, concerning parents seeking to have their children exempt from participating in Quebec's Ethics and Religious Culture curriculum on the basis of their freedom of religion concerns (the CCLA intervened before the Supreme Court of Canada);
139. *Doré v. Barreau du Québec*, 2012 SCC 12, concerning the jurisdiction of a provincial law society to discipline members for comments critical of the judiciary (the CCLA intervened before the Supreme Court of Canada);
140. *R. v. Ipeelee*, 2012 SCC 13, concerning the application of s. 718.2(e) of the *Criminal Code* and *Gladue* principles when sentencing an Aboriginal offender of a breach of long-term supervision orders (the CCLA intervened before the Supreme Court of Canada);
141. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);
142. *R. v. Tse, et al*, 2012 SCC 16, concerning the constitutionality of the Criminal Code's "warrantless wiretap" provisions (the CCLA intervened before the Supreme Court of Canada);
143. *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, concerning the appropriate test for jurisdiction and *forum non conveniens* in a multi-jurisdictional defamation lawsuit and the implications of these jurisdictional issues on freedom of expression (the CCLA intervened before the Supreme Court of Canada);
144. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, concerning the jurisdiction of Ontario's Special Investigations Unit to investigate potentially criminal conduct committed by a police officer who has retired since the time of the incident (the CCLA intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal);
145. *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);

146. *J.N. v. Durham Regional Police Service*, 2012 ONCA 428, concerning the retention of non-conviction disposition records by police services (the CCLA intervened in the Ontario Court of Appeal; CCLA also intervened before the Ontario Superior Court of Justice, *J.N. v. Durham Regional Police Service*, 2011 ONSC 2892);
147. *Kazemi v. Iran et al; Iran et al. v Hashemi*, 2012 QCCA 1449, concerning the application of the Charter to the State Immunity Act and whether it denies state immunity for acts committed by foreign governments when such acts result in violations of international law prohibitions against torture (the CCLA intervened before the Quebec Court of Appeal);
148. *Opitz v. Wrzesnewskij*, 2012 SCC 55, concerning the proper interpretation of the *Canada Elections Act* in the context of elections contested based on “irregularities,” and in light of section 3 of the Charter (CCLA intervened before the Supreme Court of Canada);
149. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162, concerning the constitutionality of the hate speech prohibitions in the *Canadian Human Rights Act* (the CCLA intervened in the Federal Court of Canada);
150. *R. v. Cuttell*, 2012 ONCA 661 and *R. v. Ward*, 2012 ONCA 660, concerning the permissibility of warrantless searches of internet users’ identifying customer information (the CCLA intervened at the Ontario Court of Appeal);
151. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);
152. *R. v. Cole*, 2012 SCC 53, examining an employee’s reasonable expectation of privacy in employer-issued computers and the application of s. 8 to police investigations at an individual’s workplace (CCLA intervened before the Supreme Court of Canada);
153. *R. v. Prokofiew*, 2012 SCC 49, concerning the inferences that could be made from accused person’s decision not to testify (CCLA intervened before the Supreme Court of Canada);
154. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the proper balance between the transparency of court proceedings and the privacy of complainants (CCLA intervened before the Supreme Court of Canada);
155. *Lund v. Boisson*, 2012 ABCA 300, which considers the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Court of Appeal);

#### **CCLA Interventions – Hearing or Decision Pending**

156. *Faysal v. General Dynamics Land Systems Canada*, (Ontario Human Rights Tribunal File No. 2009-03006-I) concerning the application by a Canadian employer of the US *International Traffic in Arms Regulations*, and whether such application constitutes discrimination, contrary to the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and Canadian legal obligations pursuant to international human rights law (the CCLA has been granted leave to intervene at the Ontario Human Rights Tribunal);
157. *Saskatchewan Human Rights Commission v. William Whatcott* (SCC File No.: 33676), concerning the constitutionality and interpretation of the hate speech provisions of the Saskatchewan Human Rights Code and the extent to which that law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened at the Supreme Court of Canada – decision pending);
158. *R. v. N.S. et al.* (SCC File No: 33989) concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA was granted leave to intervene before the Supreme Court of Canada – decision pending);
159. *James Peter Emms v. Her Majesty the Queen* (SCC File No.: 34087), concerning the Crown's vetting of prospective jurors prior to jury selection and the failure to provide disclose information to defence counsel (CCLA intervened before the Supreme Court of Canada – decision pending);
160. *Mitchell v. Jackman* (Nfld. & Labrador Supreme Court File No.: 2011 01G 7277), concerning the constitutionality of provisions of the Newfoundland *Elections Act* which allow for special ballot voting prior to an election writ being dropped (CCLA has been granted leave to intervene before the Supreme Court of Newfoundland and Labrador – Trial Division – hearing pending);
161. *R. v. Mernagh* (Ontario Court of Appeal File No.: C53583), regarding the constitutionality of medical marijuana regulations (CCLA intervened before the Ontario Court of Appeal – decision pending);
162. *Penner v. NRPSB* (SCC File No.: 33959), concerning the use of issue estoppel in the context of civil claims against the police (CCLA intervened before the Supreme Court of Canada – decision pending);
163. *Sriskandarajah, Nadarajah, Khawaja v. US, AG Canada and the Queen* (SCC File No.: 34009, 34013, 34103), which together consider whether the definition of "terrorist activity" introduced by the Anti-Terrorism Act 2001, amending the Criminal Code, infringes the Charter (CCLA intervened before the Supreme Court of Canada – decision pending);
164. *R. v. Fearon* (Ontario Court of Appeal File No. C54387), concerning the scope of the police power to search incident to arrest and whether it extends to a warrantless search of

- personal electronic devices (CCLA has been granted leave to intervene before the Ontario Court of Appeal – decision pending);
165. *Telus v. Her Majesty the Queen* (SCC File No.: 34252), concerning the interpretation of the interception provisions of the *Criminal Code* and whether the authorizations in a General Warrant and Assistance Order are sufficient to require a cell phone company to forward copies of all incoming and outgoing text messages to the police (CCLA has been granted leave to intervene before the Supreme Court of Canada – decision pending);
  166. *R.C. v. District School Board of Niagara* (Human Rights Tribunal of Ontario File No: 2010-04640-I; and File No. 2012-12245-I), concerning the policy and practice of distribution of non-instructional religious material within the school board system and whether it is discriminatory on the basis of creed (CCLA has been granted leave to intervene at the Human Rights Tribunal of Ontario—hearing pending);
  167. *Communications, Energy and Paperworkers Union of Canada, Local 30, v. Irving Pulp & Paper, Limited*, (SCC File No.: 34473), concerning employee privacy and the reasonableness of randomized alcohol testing in the workplace (CCLA has been granted leave to intervene before the Supreme Court of Canada – hearing pending);
  168. *R. v. Welsh* (Ontario Court of Appeal File C49268), *R. v. Pinnock* (Ontario Court of Appeal File C49887) and *R. v. Robinson* (Ontario Court of Appeal File N4943), concerning the constitutionality of an undercover police officer posing as a religious or spiritual figure in order to elicit information from a suspect (CCLA has been granted leave to intervene before the Ontario Court of Appeal – hearing pending);
  169. *R. v. Nur* and *R. v. Smickle* (Ontario Court of Appeal Files C54701 and C55082), concerning the constitutionality of s. 95(2) of the *Criminal Code*, which imposes a three-year mandatory minimum sentence for possession of a restricted or prohibited firearm (CCLA has been granted leave to intervene before the Ontario Court of Appeal – hearing pending; the CCLA also intervened in the Ontario Superior Court of Justice);
  170. *Ezokola v Minister of Immigration and Citizenship* (SCC File No: 34470), concerning application of the exclusion clause 1(F)(a) of the 1951 UN Refugee Convention, as incorporated in the IRPA, and the proper test for complicity in war crimes and crimes against humanity. The case considers an individual who has been denied refugee status because he was employed by the government of the Democratic Republic of Congo at a time that international crimes were committed by the State. (CCLA has been granted leave to intervene before the Supreme Court of Canada – hearing pending); and
  171. *R. v. Chehil* (SCC File 34524) and *R. v. Mackenzie* (SCC File No. 34397), concerning the “reasonable suspicion” standard and the right to be free from unreasonable search and seizure (CCLA has been granted leave to intervene before the Supreme Court – hearing pending).
  172. *R. v. Manning* (SCC File No. 34358) concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders,

their dependents, and affected others (CCLA has been granted leave to intervene before the Supreme Court of Canada – hearing pending).

173. *Espinoza et al v. Tigchelaar et al.* (Ontario Superior Court of Justice File No. CV-11-439746) concerning temporary migrant workers who, following their termination, were immediately removed from Canada by their employers pursuant to a government-mandated employment contract. (CCLA has been granted leave to intervene before the Ontario Superior Court with respect to the motion to strike most of the pleadings).
174. *Reva Landau v. Ontario (Attorney General)* (Ontario Superior Court of Justice File No. CV-11-442790) – concerning the constitutionality of the current funding of Ontario’s Catholic schools. (CCLA has been granted leave to intervene before the Ontario Superior Court).

**The CCLA was also granted standing to litigate significant civil liberties issues as a party in the following cases and inquests:**

175. *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), 71 O.R. (2d) 341 (C.A.), reversing (1988), 64 O.R. (2d) 577 (Div. Ct.), concerning whether a program of mandatory religious education in public schools violated the *Charter*’s guarantee of freedom of religion;
176. *Canada (Canadian Human Rights Commission) v. Toronto-Dominion Bank (re Canadian Civil Liberties Assn.)*, [1996] 112 F.T.R. 127; affirmed, [1998] 4 F.C. 205 (C.A.), concerning whether an employer’s policy requiring employees to submit to a urine drug test was discriminatory under the *Canadian Human Rights Act*;
177. *Canadian Civil Liberties Assn. v. Ontario (Civilian Commission on Police Services)* (2002), 61 O.R. (3d) 649 (C.A.), concerning the proper evidentiary standard to be applied under the *Ontario Police Services Act* when the Civilian Commission on Police Services considers the issue of hearings into civilian complaints of police misconduct;
178. *Corp. of the Canadian Civil Liberties Assn. v. Toronto (City) Police Service*, [2010] O.J. No. 2716 (S.C.J.), 2010 ONSC 3698, concerning whether the use of Long Range Acoustic Devices (LRADs) by the Toronto Police Service and the Ontario Provincial Police during the 2010 G20 Summit violated Regulation 926 of the *Police Services Act* and ss. 2 and 7 of the *Charter*; and
179. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died at her own hands while in jail and under the watch of correctional officers.