Court File No. CV-19-00626685-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Plaintiff

and

THE ATTORNEY GENERAL OF ONTARIO

Defendant

and

PEN CANADA

Intervenor

FACTUM OF THE INTERVENOR, PEN CANADA

June 24, 2020

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TABLE OF CONTENTS

FACTUM OF THE INTERVENOR, PEN CANADA

PART I - OVERVIEW

1. This compelled expression case raises a new issue in Canadian law: whether freedom of expression includes the freedom to remain silent, *without* expressing meaning by doing so. It also raises the issue of how s. 1 of the *Charter* should be interpreted in light of Canada's international human rights obligations.

2. PEN Canada is a leading freedom of expression advocacy group which frequently intervenes in important freedom of expression cases. Using principles derived from foreign and international law, PEN Canada wishes to make the following submissions to the Court:

(i) Section 2(b)[1] of the *Charter* includes not only a right to remain silent where that silence is meant to convey meaning, but also silence where that silence is not intended to convey meaning;

(ii) The "disavowal" factor currently used in the s. 2(b) test applicable to compelled speech should not apply to silence not intended to convey meaning; and

(ii) When the Court considers whether the Sticker Act's alleged objective is "pressing and substantial", it must consider Canada's human rights obligations under the *International Covenant on Civil and Political Rights* (the "**ICCPR**").

PART II - FACTS

3. PEN Canada takes no position on the facts at issue in this action.

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[1] *Canadian Charter of Rights and Freedoms*, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("***Charter***").

PART III - LAW AND ANALYSIS

A. Pen Canada's Interest in this Litigation and the Values Underlying Freedom of Expression

4. This case is about compelled expression, an issue with profound implications for PEN Canada's membership of poets, journalists, novelists and other writers. PEN Canada's members have direct every day experience with all three of the justifications for freedom of expression set out by McLachlin J in *R v Keegstra*:

(i) Free expression is instrumental in promoting the free flow of ideas essential to political democracy and the functioning of democratic institutions;

(ii) Free expression is an essential precondition of the search for truth: expression is a means of promoting the 'marketplace of ideas' in which competing ideas vie for supremacy to the end of attaining 'truth'; and

(iii) Finally, freedom of expression may be viewed as an end unto itself: a value essential to the sort of society we wish to preserve. "This view holds that freedom of expression derives from the widely accepted premise of Western thought that the proper end of man is the realization of his character and potentialities of a human being."[2]

5. These justifications are echoed by the three values which underly the guarantee of free expression outlined in *Irwin Toys v Quebec (Attorney General)*: the value of seeking and attaining truth, the value of participation in social and political decision-making, and the value in

[2] *R v Keegstra*, [1990] 3 SCR 697 at 806.

encouraging different forms of individual self-fulfillment and human flourishing.[3] In the unusual context of this case, these values raise unique concerns which this Court ought to consider.

B. The Issue

6. Although Canadian courts have occasionally considered compelled expression, they have generally done in the context of a person alleging that the words they had been compelled to speak prevented them from conveying their *own* meaning. For example, in *McAteer v Canada (Attorney General)* ("***McAteer***"), the appellants claimed that the compelled expression at issue (an oath to the Queen) impeded their expressive activities by making them feel "morally bound" not to disavow the oath.[4]

7. This case is different. As the CCLA recognizes, this case involves the right to say *nothing* about a particular topic.[5] However, this case appears to PEN Canada to engage an unusual component of the right to say nothing. Although it is well-recognized (both in Canada[6] and internationally[7]) that silence can convey meaning and that in such circumstances the silence is protected expression, here, the question is whether an individual's silence, where there is no intention of expressing a meaning by that silence, is protected by s. 2(b). This issue does not appear to have been decided in Canada.

8. This issue arises in this case for two reasons. First, no gas retailers have joined this litigation. Among the reasons the CCLA heard for this unwillingness were (i) "general uneasiness with starting a legal fight with the province," and (ii) "concern that customers who support the

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[3] *Ibid* at 807; *Irwin Toys v Quebec (Attorney General)*, [1989] 1 SCR 927 ("***Irwin Toy***") at 976.
[4] *McAteer v Canada (Attorney General)*, 2014 ONCA 578 ("***McAteer***") at para 79.
[5] Summary Judgment Factum of the CCLA at paras 43 and 65
[6] *Lavigne v OPSEU*, [1991] 2 SCR 211 ("***Lavigne***") at 270. See also *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038 ("***Slaight***") at 1080.
[7] See e.g. *Semir Güzel v. Turkey*, [2016] ECHR 742 (13 September 2016).

provincial government would take issue with the retailer's involvement."[8] It is reasonable to infer from this evidence that some retailers simply wish to say nothing and not be implicated in the debate about the federal fuel surcharge.

9. Second, Ontario argues in its factum that "[t]he Act does not prohibit gasoline retailers or anyone else from saying anything. Nor is there any evidence that the impugned provisions restrict or interfere with any attempt by gasoline retailers to convey any meaning to anyone."[9] This begs the question of whether s. 2(b) embraces a right to say nothing *without* wishing to convey meaning, and what the consequence of this are in the context of compelled expression. If a gas retailer wants to say nothing about the fuel surcharge despite having the opportunity to do so, is Ontario constitutionally entitled to post politicized messages on its pumps? As the CCLA notes in its factum:

> This is why the right to say nothing is particularly important when the subject matter is highly political and divisive, and where the forum for expression is public. Here, a gas retailer who does not wish to publicly express his or her views about this hotly-contested political issue has no meaningful opportunity to exercise his or her section 2(b) rights through disavowal. Gas retailers should not be forced to enter this debate publicly.[10]

10. Below, PEN Canada will outline some existing jurisprudence in the United Kingdom which develops the concept that freedom of expression captures the right to say nothing without any intention of expressing meaning. It will then describe (i) some difficulties in applying the "disavowal" factor employed in Canadian compelled expression jurisprudence to such a silence, and (ii) the role of international law in s. 1.

C. Compelled Expression and Section 2(b)

[8] Affidavit of Cara Faith Zwibel affirmed September 3, 2019 at para 30.
[9] Summary Judgment Factum of Ontario at para 38.
[10] Summary Judgment Factum of the CCLA at para 65.

11. By way of background, it is useful first to set out the applicable test used in compelled expression cases. The test was first set out by Wilson J in *Lavigne v OPSEU*:

> In my view, the approach to s. 2(b) developed in Irwin Toy is sound. **It begins by asking whether it is "expression" in which a plaintiff wishes to engage, and, if the answer to that question is yes, it then turns to the issue of how government has impeded that desire.** Thus, the first branch of the test focuses on the plaintiff and questions whether the activity in which he or she wishes to participate is expression. The second branch logically concerns the impact of the impugned law. If the "purpose" of the law is aimed at controlling expression, a violation of s. 2(b) is automatic. On the other hand, if the aim of the legislature was not directed at controlling expression, then the plaintiff must cross a further hurdle in order to establish an infringement of his or her Charter right. In such cases, it is not sufficient that the law has some "effect" on expression. **The plaintiff must demonstrate that the meaning which he or she wishes to convey relates to the purposes underlying the guarantee of free expression.**[11]

12. As the bolded words indicate, this test is premised on the plaintiff wishing to engage in expression and being prevented from doing so. In fact, Wilson J expressly declined to address "whether freedom of expression…encompasses a right not to express oneself at all on an issue…"[12]

13. This premise was de-emphasized, but nevertheless survived, in the Ontario Court of Appeal's restatement of the test in *McAteer*:

> The first question is whether the activity in which the plaintiff is being forced to engage is expression. The second question is whether the purpose of the law is aimed at controlling expression. If it is, a finding of a violation of s. 2(b) is automatic. If the purpose of the law is not to control expression, then in order to establish an infringement of a person's Charter right, the claimant must show that the law has an adverse effect on expression. In addition, **the claimant must demonstrate that the meaning he or she wishes to convey** relates to the purposes underlying the guarantee of free expression, such that the law warrants constitutional disapprobation.[13]

14. This test may be functional where a plaintiff wishes to convey meaning by remaining silent. However, it is less suited for circumstances in which the plaintiff wishes to remain silent without

[11] *Lavigne* at 266.
[12] *Lavigne* at 270.
[13] *McAteer* at para 69.

conveying meaning. For example, perhaps a company wishes not to display a politicized message because they fear suffering commercial consequences (as in this case), or an individual wishes to remain silent while considering a political opinion. As the philosopher Gilles Deleuze once remarked: "What a relief to have nothing to say, the right to say nothing**,** because only then is there a chance of framing the rare, or ever rarer, the thing that might be worth saying."[14]

15. In PEN Canada's submission, silence without the intention of conveying meaning ought to be captured by the s. 2(b) guarantee. The United Kingdom Supreme Court ("**UKSC**") has already decided a similar issue.

(i) Case Law in the United Kingdom

16. In *RT (Zimbabwe) and Others v Secretary of State for the Home Department*, [2012] UKSC 38, the UKSC considered a claim for refugee status by an individual who held no political views but feared persecution if they did not express support for the ruling regime. The question for the UKSC was whether it was an "answer to a refugee claim by [such] an individual who has no political views and who therefore does not support the persecutory regime in his home country to say that he would lie and feign loyalty to that regime in order to avoid the persecutory ill-treatment to which he would otherwise be subjected".[15] In essence, the UKSC was forced to reckon with whether indifference was at the "core" of a protected human right.

17. The government argued that the protections afforded by the *Refugee Convention* would protect a "committed political neutral and not one to whom his neutrality is a matter of indifference. This is because there is no entitlement to protection under the [*Refugee Convention*]

[14] Gilles Deleuze, *Negotiations* (NY: Columbia University Press, 1995), Book of Unreported Authorities of the Intervenor, Tab 1, p 129.
[15] *RT (Zimbabwe) and Others v Secretary of State for the Home Department*, [2012] UKSC 38 ("***RT***") at para 1.

where the interference involves matters which are only at the margins of an individual's right to hold or not hold political opinions, and not at the core of that right."[16]

18. Lord Dyson, writing for the majority, reviewed international and European case law and concluded that under both, "the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom *not* to hold and *not* to have to express opinions."[17] Lord Dyson also quoted General Comment No 34 (which provides guidance on the freedom of expression guarantee contained in Article 19 of the ICCPR): "Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one's opinion necessarily includes freedom not to express one's opinion."[18] In PEN Canada's submission, it follows from this statement that if an individual intends to convey no meaning (i.e. "not to express one's opinion") through silence, then this must be protected expression.

19. Lord Dyson also quoted Professor Barendt's *Freedom of Speech*, OUP, 2005 (2nd ed):

> The right not to speak, or negative freedom of speech, is closely linked with freedom of belief and conscience and with underlying rights to human dignity, which would be seriously compromised by a legal requirement to enunciate opinions which are not in truth held by the individual.[19]

20. The Court concluded by rejecting the government's submission that only "committed political neutral[ity]" was protected: "Nobody should be forced to have or express a political opinion in which he does not believe."[20] It would not matter whether an individual disagreed with the meaning he is compelled to express or simply had no position on it:

> As regards the point of principle, it is the badge of a truly democratic society that individuals should be free not to hold opinions. They should not be required to hold any particular religious or political beliefs. This is

[16] *RT* at para 41.
[17] *RT* at para 32 [emphasis in original].
[18] *RT* at para 33, quoting UN Human Rights Committee, "General Comment No. 34" (2011), UN Doc CCPR/C/GC/34 at para 10.
[19] *RT* at para 36.
[20] *RT* at para 42.

> as important as the freedom to hold and (within certain defined limits) to express such beliefs as they do hold.
>
> […]
>
> The idea "if you are not with us, you are against us" pervades the thinking of dictators. [21]
>
> […]
>
> There is no support in any of the human rights jurisprudence for a distinction between the conscientious non-believer and the indifferent nonbeliever…

20. If, as the UKSC concluded, political indifference is a protected human right, then it follows that one's silence on politics must also be protected. As Professor Barendt noted, expression and conscience are intimately connected. An individual – whether a poet or a retailer – should be free to remain silent and have that silence protected regardless of whether it is intended to convey meaning.

21. Six years later, the UKSC decided *Lee v Ashers Baking Company Ltd.* Citing *RT*, the UKSC considered whether a bakery ought to be compelled by an anti-discrimination law to ice the words "Support Gay Marriage" onto one of its cakes. The Court considered Article 10 of the *European Convention on Human Rights* (the "***European Convention***") which provides in part:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

22. Although it was clear that Ashers disagreed with the message which the claimant wished to have iced onto the cake, there is no reference in the UKSC's reasons to whether their refusal to provide the cake was intended to convey meaning. Rather, the UKSC noted that the "right to

[21] *RT* at paras 43-44.

freedom of expression does not in terms include the right *not* to express an opinion but it has long been held that it does."[22] It then observed:

> The District Judge did not accept that the defendants were being required to promote and support a campaign for a change in the law to enable same sex marriage. The Court of Appeal, while not deciding the point, appears to have agreed with this: "the fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate any support for either". These are, in fact, two separate matters: being required to promote a campaign and being associated with it. As to the first, the bakery was required, on pain of liability in damages, to supply a product which actively promoted the cause, a cause in which many believe, but a cause in which the owners most definitely and sincerely did not. As to the second, there is no requirement that the person who is compelled to speak can only complain if he is thought by others to support the message. Mrs McArthur [the owner of Ashers] may have been worried that others would see the Ashers logo on the cake box and think that they supported the campaign. But that is by the way: **what matters is that by being required to produce the cake they were being required to express a message with which they deeply disagreed.**[23]

21. The anti-discrimination law was read down to comply with Article 10.[24]

(iii) The Values Underlying Section 2(b)

22. The three values underlying s. 2(b) also support the view that silence where there is no intention of conveying meaning ought to be captured by s. 2(b).

23. With respect to "seeking and attaining truth" and "participation in social and political decision-making", silence allows space to consider one's opinion before speaking. This prevents political and social discourse from becoming polluted with poorly considered ideas. If "truth" cannot be sought without reasoned discussion, then it must also be true that truth cannot be sought without quiet contemplation.

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[22] *Ashers* at para 52 [emphasis in original].
[23] *Ashers* at para 54 [citations omitted, emphasis added].
[24] *Ashers* at para 56.

24. Similarly, with respect to encouraging "individual self-fulfillment and human flourishing", silence grants others who do wish to express their view on a topic the space to do so. As explained in *Irwin Toy*, this value is concerned with creating a "tolerant, indeed welcoming, environment" for those who wish to convey meaning, as well as for those to whom it is conveyed.[25]

(i) Conclusion on the Right to Silence

25. In PEN Canada's submission, if s. 2(b) protects the conveyancing of meaning, it must also protect the non-conveyancing of meaning. Silence – even where there is no attempt to convey meaning – ought to receive *Charter* protection.

D. An Opportunity to Disavow is not Relevant in Cases of Silence Where No Meaning is Intended

26. The Courts have concluded that an opportunity to disavow a compelled statement and the extent to which one can be identified with the compelled statement are relevant at the "effects" stage of the s. 2(b) analysis. However, in PEN Canada's submission, the disavowal factor should not be relevant where compelled expression has occurred and the right-holder wished to remain silent without conveying meaning.

27. If disavowal is relevant, then an individual who is indifferent about an issue but is nevertheless compelled by the government to make a statement about it (for example, about a fuel surcharge) has two options. First, he may continue to remain silent after making the compelled statement. However, (i) this implicitly identifies the individual with the message, and (ii) allows the government's message to gain the authority of numbers by going unchallenged. This is antithetical to the first and second values underlying free expression: "seeking and attaining truth"

[25] *Irwin Toy* at 976.

and "participation in social and political decision-making". Framed differently, if [mis]information is repeated over and over without challenge, people come to believe it.

28. Second, alternatively, the individual may choose to disavow the compelled statement. However, (i) this risks being seen by others as implicitly staking a position on the compelled statement even where the individual has none, and (ii) this would also violate the individual's initial desire to remain silent about the issue. Arguably, this is antithetical to the individual's dignity and undermines the value of individual self-fulfillment.

29. To the extent that this case raises the issue of gas retailers' right to remain silent without intending to express meaning, this concern about the disavowal factor should be considered.

E. Section 1: The Role of Article 19 of the ICCPR

30. If this Court determines that a law breaches s. 2(b) of the *Charter*, the next step is to determine whether the impugned provisions can be saved under s. 1:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.[26]

31. To establish that a limit is "reasonable" and "demonstrably justified in a free and democratic society", the "objective, which the measures responsible for a limit of a *Charter* right or freedom are designed to serve, must be of sufficient importance to warrant overriding a constitutionally protected right or freedom…It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society".[27]

32. PEN Canada submits that on this part of the *Oakes* test, international law ought to inform the Court's analysis. As Dickson CJ stated in *Slaight Communications Inc. v Davidson* ("***Slaight***"):

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[26] *Charter*, s 1.
[27] *R v Oakes* [1986] 1 SCR 103 ("***Oakes***") at para 69; *Frank v Canada (Attorney General)*, 2019 SCC 1 at para 38.

"Canada's international human rights obligations should inform not only the interpretation of the content of the rights guaranteed by the *Charter* but also the interpretation of what can constitute pressing and substantial s. 1 objectives which may justify restrictions upon those rights."[28]

33. Although Dickson CJ used the words "should" (indicating that the use of international human rights obligations was permissive rather than mandatory), subsequent decisions (described below) indicate that the Court is now required to consider those obligations.

(i) International Law as an Aid to the Interpretation of the *Charter*

34. The starting point for understanding the relevance of international legal obligations in the interpretation of the *Charter* is Dickson CJ's dissenting opinion in *Re Public Service Employee Relations Act*, in which he stated: "I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."[29]

35. Subsequent cases have confirmed this view. In *R v Hape* ("***Hape***"), the Court held that "[i]n interpreting the scope of application of the *Charter*, the courts should seek to ensure compliance with Canada's binding obligations under international law where the express words are capable of supporting such a construction."[30]

36. More recently, in *Divito v Canada (Public Safety and Emergency Preparedness)* ("***Divito***"), Abella J held for the majority that "Canada's international obligations and relevant principles of international law are also instructive in defining the [*Charter*] right."[31] She went on to employ the ICCPR to define the scope of s. 6 of the *Charter*, commenting that "[a]s a treaty to

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[28] *Slaight* at 1056-1057; *Hape* 2007 SCC 26 at para 55.
[29] *Re Public Service Employee Relations Act*, [1987] 1 SCR 313 at para 59.
[30] *R v Hape*, 2007 SCC 26 ("***Hape***") at para 56.
[31] *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 ("***Divito***") at para 22.

which Canada is a signatory, the ICCPR is binding. As a result, the rights protected by the ICCPR provide a **minimum level of protection** in interpreting the mobility rights under the *Charter*."[32]

37. As noted above, Canada's international legal obligations also inform the interpretation of pressing and substantial objectives under s. 1 of the *Charter*.

(ii) **The ICCPR**

38. As noted by Abella J, Canada is a signatory to the ICCPR. Born in the aftermath of the Second World War, the ICCPR commits state signatories to respecting a variety of individual rights including, among many others, non-discrimination,[33] expression,[34] religion,[35] and life.[36] The UN Human Rights Committee serves as a monitoring body under the ICCPR and has developed its own case law in respect of the various guarantees contained therein. Its findings are occasionally collected and summarized in guidance called "General Comments".

39. Article 19 of the ICCPR sets out the expression guarantee and permissible restrictions:

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.[37]

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[32] *Divito* at para 25.
[33] *International Covenant on Civil and Political Rights, 1966*, CTS 1976/47; 999 UNTS 171 ("**ICCPR**"), Article 2.
[34] ICCPR, Article 19.
[35] ICCPR, Article 18.
[36] ICCPR, Article 6.
[37] ICCPR, Article 19.

23. General Comment No. 34 clarifies that the "rights…of others" includes only the "human rights as recognized in the [ICCPR] and more generally in international human rights law."[38]

40. In light of the Supreme Court's comments above, including the mandatory language in *Divito*, it is submitted that when this Court determines whether an objective is truly "pressing and substantial", it must give the restrictions set out in Article 19(3) significant persuasive value.

41. Although decided prior to *Hape* and *Divito*, the Supreme Court's decision in *R v Lucas* is a good illustration of this. In that decision, the Supreme Court was concerned with the defamatory libel provisions of the *Criminal Code*, which were admitted to breach s. 2(b). In its analysis of whether the protection of reputation was a "pressing and substantial" objective, the Court noted that the ICCPR specifically provides that everyone has the right to the protection of the law against attacks on his or her honour and reputation, and cited carveouts similar to Article 19(3) in the *European Convention* and *American Convention on Human Rights*.[39] Given the weight afforded to these international instruments by the Court in deciding that the objective was pressing and substantial, the reverse must also be true. If an objective does not fall within any of the categories of permissible restriction, this would militate against finding that it is pressing and substantial.

(iii) Conclusion on "Pressing and Substantial" Objective

42. In PEN Canada's submission, the "pressing and substantial" objective of the impugned legislation does not appear to accord with the permissible restrictions set out in Article 19(3).

PART V – ORDER REQUESTED

[38] UN Human Rights Committee, "General Comment No. 34" (2011), UN Doc CCPR/C/GC/34 at para 28.
[39] *R v Lucas*, [1998] 1 SCR 439 at para 50, citing Article 10 of the *European Convention* and Article 13 of the *American Convention on Human Rights*.

43. PEN Canada takes no position on the outcome of this motion and requests that no costs be awarded for or against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of June, 2020.

Peter Wardle / Evan Rankin

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *R v Keegstra*, [1990] 3 SCR 697
2. *Irwin Toys v Quebec (Attorney General)*, [1989] 1 SCR 927
3. *McAteer v Canada (Attorney General)*, 2014 ONCA 578
4. *Lavigne v OPSEU*, [1991] 2 SCR 211
5. *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038
6. *Semir Güzel v. Turkey*, [2016] ECHR 742 (13 September 2016)
7. *RT (Zimbabwe) and Others v Secretary of State for the Home Department*, [2012] UKSC 38
8. *Lee v Ashers Baking Company Ltd. and ors*, [2018] UKSC 49
9. *R v Oakes* [1986] 1 SCR 103
10. *Frank v Canada (Attorney General)*, 2019 SCC 1
11. *Re Public Service Employee Relations Act*, [1987] 1 SCR 313
12. *R v Hape*, 2007 SCC 26
13. *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47
14. *R v Lucas*, [1998] 1 SCR 439

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Canadian Charter of Rights and Freedoms, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("***Charter***")

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

International Covenant on Civil and Political Rights, 1966, CTS 1976/47; 999 UNTS 171, Article 19.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221, Article 10

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public

authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

American Convention on Human Rights, OASTS No. 36, at 1, Article 13

Article 13

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION -and- **THE ATTORNEY GENERAL OF ONTARIO**
Plaintiff Defendant

Court File No. CV-19-00626685-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **TORONTO**

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