

# 1995 CASES INVOLVING CONSTITUTIONAL CHALLENGES

CASE NAME	SECTION(S) ON WHICH CHALLENGE IS BASED	EXISTENCE OF INFRINGEMENT	WHETHER INFRINGEMENT SAVED BY S. 1 OR REMEDY GRANTED UNDER S. 24	OBJECT OF CHALLENGE
<i>R. v. BERSHAW</i>	8 <sup>1</sup>	No	—	Action
<i>B. (R.) v. CHILDREN'S AID SOCIETY OF METRO- POLITAN TORONTO</i>	7 2(a)	No Yes	— Saved	Legislation (F)
<i>R. v. SIMPSON</i>	9	Yes	Stay of proceedings granted under 24(1)	Action
<i>R. v. S. (R.J.)</i>	7	No	—	Legislation (F)
<i>R. v. CRAWFORD</i>	7	No	—	Action
<i>R. v. STINCOMBE</i>	11(b)	No	—	Action
<i>EGAN v. CANADA</i>	15(1)	No <sup>2</sup>	—	Legislation (F)
<i>THIBAudeau v. CANADA</i>	15	No	—	Legislation (F)
<i>ONTARIO v. CANADA PACIFIC LTD.</i>	7	No	—	Legislation (P)
<i>R. v. COLLINS</i>	11(d)	Yes	Stay of proceedings granted under 24(1)	Action
<i>R. v. PRIMEAU</i>	7	No	—	Action
<i>BRITISH COLUMBIA SECURITIES COMMISSION v. BRANCH</i>	7 8	No No	— —	Legislation (P)
<i>HILL v. CHURCH OF SCIENTOLOGY</i>	General Charter Values 2(b)	No (because claim did not fall within s. 32) No	— —	Common Law Interpretation of Common Law
<i>R. v. PONTES</i>	7	No	—	Legislation (P)
<i>RJR-MACDONALD v. CANADA (ATT. GEN.)</i>	2(b) 91(27)	Yes <i>intra vires</i>	Not saved —	Legislation (F)
<i>R. v. WIJESINHA</i>	8	Yes	Not excluded under 24(2)	Action
<i>R. v. HARRER</i>	7 11(d)	No No	—	Action
<i>R. v. PATRIQUEN</i>	8	No decision	Excluded under 24(2)	Action
<i>R. v. ROGALSKY</i>	7 11(b)	No No	—	Action
<i>R. v. FITZPATRICK</i>	7	No	—	Action
<i>R. v. KHELA</i> (unreasonable delay)	7 11(b)	No	—	Action
<i>RUFFO v. CONSEIL DE LA MAGISTRATURE</i>	7	Yes	Remedy not granted under 24(1) <sup>3</sup>	Action
<i>R. v. O'CONNOR</i>	7	No	—	Action
<i>R. v. JOBIN</i>	7	No	—	Action
<i>R. v. BURLINGHAM</i>	7 10(b)	No Yes	— Excluded under 24(2)	Legislation (F) Action
<i>R. v. SILVEIRA</i>	8	Yes	Not excluded under 24(2)	Action
<i>WALKER v. P.E.I.</i>	2(b) 6 7	No No No	— — —	Legislation (P)
<i>R. v. MONTOUR</i>	9	Yes	Excluded under 24(2)	Action

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<i>MIRON V. TRUDEL</i>	15(1)	Yes	Not saved	Legislation (P)
<i>R. v. CANADIAN PACIFIC LTD.</i>	The issue was whether the Ontario <i>Environmental Protection Act</i> governed a federal undertaking	<i>intra vires</i>	—	Legislation (P)
<i>HUSKY OIL OPERATIONS LTD. v. MINISTER OF NATURAL RESOURCES</i>	91(21)	<i>ultra vires</i>	S. 133 of the provincial <i>Workers Compensation Act</i> was found to be inapplicable (as the operational conflict was in an area of exclusive federal jurisdiction)	Legislation (P)
<i>MACMILLAN BLOEDEL LTD. v. SIMPSON</i>	96	<i>ultra vires</i>	Legislation was found to be inoperative and was read down accordingly	Legislation (F)

<sup>1</sup> The issue in *Bernshaw* was the existence of "reasonable and probable grounds" which is required by statute, yet reference is made that such grounds are also a constitutional requirement under s. 8 as a precondition to a lawful search and seizure.

<sup>2</sup> In *Egan*, the finding that there was no infringement was made by a plurality (4) within the majority group, while Sopinka, the fifth judge in the majority, did find an infringement but believed it to be saved under s. 1, allowing the legislation to be found constitutional.

<sup>3</sup> While s. 24(1) was not invoked to grant a remedy at the time of the trial in *Khela*, the issue was left open in the event that the Crown failed to meet the terms of the judgment of the Court of Appeal. In the alternative, to avoid a stay under s. 24(1), the Crown could attempt to vary the terms of the Appeal Court judgement based on information which had come into its possession since that judgement was made.

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<i>R. v. COLARRUSSO</i>	8	Yes	Not excluded under 24(2)	Action
<i>INTERNATIONAL LONGSHOREMAN'S UNION v. CANADA</i>	2(d) 7	No No	—	Legislation (F)
<i>QUEBEC v. CANADA (N.E.B.)</i>	35(1)	No decision	—	Action
<i>R. v. DURETTE</i>	7 11(d)	Yes Yes	Not saved	Action
<i>R. v. FINTA</i>	7 11(a) 11(b) 11(d) 11(g) 12 15 7 11(b) 11(d)	No No No No No No No No No	— — — — — — — — —	Legislation (F)         Action

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