

Publisher’s Note

An Update has Arrived in Your Library for:

| |
|--|
| Please circulate this notice to anyone in your office who may be interested in this publication. |
| Distribution List |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

CANADIAN CHARTER OF RIGHTS
ANNOTATED
Dunn • Bernstein
Greenspan • Laskin
Release No. 4, August 2025

This release features updates to the Case Law and Appendix WP (Words and Phrases).

Caselaw Highlights

- *Pickering v Workers’ Compensation Board*, 2025 BCSC 376, in which the British Columbia Supreme Court held that a blanket exclusion on workers claiming workers’ compensation for chronic work-related mental disorders caused by management decisions relating to their employment was an unjustifiable violation of employee’s section 15(1) *Charter* rights.
- *Donald-Potskin v Sawridge First Nation*, 2025 FC 648, in which the Federal Court held that section 25 of the *Charter* shielded the Sawridge First Nation from the applicant’s claim that the Sawridge First Nation’s residency requirement for candidates running for the office of Chief infringed her section 15(1) *Charter* rights.
- *McCarron v Bartlett*, 2025 NLSC 73, in which the Newfoundland Supreme Court held that it was an infringement of the section 15(1) *Charter* rights of the common law partners of deceased persons to exclude them from being Dependants capable of seeking maintenance and support from the estate of the deceased person under the Newfoundland *Family Relief Act*.
- *Clearview AI Inc v Alberta (Information and Privacy Commissioner)*, 2025 ABKB 287, in which the Alberta Court of King’s

Bench held that it was an infringement of a company's section 2(b) Charter rights to exclude photos and information posted to social media platforms from the definition of "publicly available information" capable of being collected by the company without requiring the poster's consent for use in products and services.

- *MacKinnon v Canada (Attorney General)*, 2025 FC 422, in which the Federal Court dismissed an application for judicial review of the Prime Minister's decision to advise the Governor General to prorogue parliament, holding that section 3 of the *Charter* does not impose a constraint on the Crown's prerogative to prorogue parliament, and that section 5 of the *Charter* may leave space for the application of unwritten constitutional principles to govern the exercise of the prerogative power to prorogue parliament.
- *Kraft v Ontario (Securities Commission)*, 2025 ONSC 2266, in which the Ontario Superior Court of Justice held that an objective test for assessing when it is in the "necessary courts of business" for an insider to share material non-public information under the Ontario *Securities Act* constitutes a justifiable infringement of section 2(b) of the *Charter*, which is saved by section 1 of the *Charter*.
- *Brown v Alberta*, 2025 ABKB 179, in which the Alberta Court of King's Bench held that the Alberta government's decision to stop funding an Overdose Prevention Site did not constitute a violation of the section 7 *Charter* rights of its users as section 7 does not impose a positive obligation on government to fund specific healthcare services.

Words and Phrases

- **WORDS AND PHRASES — "AIR OF REALITY" — Supreme Court of Canada** — "Where an offence is properly an included offence in accordance with [the applicable] principles, there arises the distinct question of whether that offence should be left with the jury. An included offence must be left with the jury if, and only if, it has an air of reality, meaning that there is a realistic possibility of an acquittal on the principal offence and a conviction on the included offence [citations omitted]" (*R. v. Pan* 2025 CarswellOnt 4988v(S.C.C.) at para. 50 Wagner C.J.C. (Côté, Rowe, Kasirer, Jamal, O'Bonsawin, Moreau JJ. concurring)).
- **WORDS AND PHRASES — "DIRECT EVIDENCE" — Supreme Court of Canada** — "When a party requests that the trial judge instruct the jury on specific lesser included offences, on the basis of a specific theory of the case, the trial judge's analysis consists of two elements. The trial judge must assess all the evidence and determine whether the range of

reasonable factual inferences necessary for the theory is available on the record. And they must determine if the theory is plausible, meaning that a reasonable, correctly instructed jury could adopt it and return a guilty verdict for a lesser included offence. ... Determining the range of reasonable available inferences requires a different assessment for direct and circumstantial evidence. Direct evidence is evidence which, if believed, is enough to establish a fact in issue. The trial judge must accept as true all facts for which there is some direct evidence, except for bare assertions that are inconsistent with an overwhelming body of evidence or a fact not in dispute [citations omitted]. (*R. v. Pan* 2025 CarswellOnt 4989 (S.C.C.) at para. 174, 175, 176 Karakatsanis J. (dissenting in part) (Martin J. concurring)).

THOMSON REUTERS**Customer Support**

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.