2009 D.M.C.C.

Diversity Moot Court of Canada

BETWEEN:

VINCENT SINCLAIR

APPLICANT

-and-

THE CITY OF LONDON

RESPONDENT

FACTUM OF THE RESPONDENT

[redacted]
Counsel for the Applicant

Omar Ha-Redeye
[redacted]
Counsel for the Respondent

Facts

1. On June 6th, 2003 Mr. Sinclair was asked to leave the City Clerk's office at London City Hall by Mr. McNabb. Mr. McNabb worked for a company that the City contracts with. Mr. Sinclair went to the City Clerk's office to pick up a FOI response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

2. The witnesses gave "dramatically different accounts" of the events on this day. The Tribunal accepted Mr. McNabb arrived at the office during a discussion between Mr. Sinclair and Ms. Smibert at the request of an unknown person.

3. Mr. Sinclair was being loud and aggressive which caused Ms. Smibert to feel intimidated. Mr. McNabb told Mr. Sinclair to leave and threatened to call the police if he did not follow his orders. Mr. Sinclair went to the elevator and Mr. McNabb followed him out.

4. Mr. Sinclair filed a complaint with the Ontario Human Rights Commission (the Commission) claiming discrimination on the basis of race. Mr. Sinclair identifies as black.

5. Mr. Sinclair also believes the City discriminated against him by inadequately responding to his FOI request. The Commission referred Mr. Sinclair against the City to the tribunal. The Commission did not complain against Mr. McNabb due to insufficient evidence that Mr. McNabb personally discriminated against Mr. Sinclair.

6. The Commission also found the evidence showed Mr. McNabb was acting in the course of his duties. His actions appeared routine and showed no indication of racial profiling.

7. At the hearing, the Tribunal decided the only issue was whether there removal of Mr. Sinclair from the courthouse premises constituted as discriminatory conduct.

8. The Commission's witness Dr. Henry submitted a report on racial profiling. The final paragraph of this report alleged that Sinclair being removal from the premises was influenced by the stereotype that black males are violent. This was found to be an inappropriate opinion and the Commission was not allowed to call oral evidence to the same effect.

9. The Tribunal did not allow evidence regarding Mr. McNabb's conduct towards Steve Garrison, a witness for the Commission, due to limited probative value.

10. New evidence regarding discrimination by the City on various occasions was not accepted on the basis that the evidence could have been obtained earlier.

11. The Tribunal found that race was not a factor in the decision to remove Mr. Sinclair from the City's premises.

Issues

12. The following issues are the subject of the appeal:

    a. Substantive Fairness

        i. What is the established standard of review for Human Rights Tribunals?

        ii. When the level of deference is "reasonableness," does this mean the court is more or less deferential?

    b. Procedural Fairness

        i. What were the reasons for excluding the evidence of Mr. McNabb, Ms. Burpee, and Mr. Garrison?

        ii. Was the Tribunal correct in modifying the report of Dr. Frances Henry?

iii. Has there been a violation of natural justice, and has the *audi alterum partem* principle been upheld?

iv. Is there a reasonable apprehension of bias in this case?

13. Although these are the issues at appeal, the Appellants have structured their pleadings by mingling a substantive and procedural analysis, referring alternatively to law and fact. Accordingly, the Respondents will proceed using the same structure for the ease of the court.

I. The Human Rights Tribunal is subject to Judicial Review Based on Standard of Reasonableness

a. Appropriate Standard of Review

14. The respondents accept the applicant's novel proposition that the appropriate standard of review in this case is reasonableness.

<u>The level of Deference owed to the Tribunal is minimal</u>

15. The Appellants state that the appropriate standard of review is reasonableness. However, they misrepresent the level of deference stemming from this standard of review. The standard of patently unreasonableness, which was previously the most deferential standard, was subsumed by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*.

> *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 149.
> *Da Mota v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 509; 166 A.C.W.S. (3d) 552 at para. 11 (Fed. Ct.).

16. The standard of reasonableness has been described as a situation where *any* reasons can stand up to a somewhat probing examination. The court looks at whether the

decision is clearly wrong. Where a decision is not clearly wrong under the standard of reasonableness, the court will not interfere.

> *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 at paras. 56, 59.
> *Stein v. "Kathy K" (The Ship)*, [1976] 2 S.C.R. 802, at p. 806.

Alternate Standard of Review

17. The respondents acknowledge the novel nature of the Appellants' argument, and concede that the court may wish to assert the established standard of review for Human Rights Tribunals.

18. Despite a strong privative clause and the right to appeal, decisions of Tribunals have a direct influence on society at large in relation to our most basic social values. The Supreme Court of Canada has established that the correct standard of review in human rights cases is correctness due to the importance afforded to human rights in our legal system. Although the level of correctness is less deferential, the respondents propose that the decision of the Tribunal in this instance was correct and should not be quashed.

> *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554; S.C.J. No. 20 at para. 45.

19. Courts do give a higher level of deference to Human Rights Tribunals on findings of fact based, on their function and role as a tribunal of first instance, where they see and hear the witness directly.

> *Large v. Stratford (City)*, [1995] S.C.J. No. 80; 128 D.L.R. (4th) 193 at para. 15.

II. The Human Rights Tribunal Committed Various Errors of Law

a. The Tribunal Erred in Law in its determination that regarding Mr. McNabb's employment

20. Although a Human Rights Tribunal is not bound by strict procedural rules, they are still governed by an interest of procedural fairness to both parties. A more detailed analysis of procedural fairness will follow, but the reason for excluding Mr. McNabb from the proceedings did not have to do with his employment but rather as a matter of procedural fairness.

21. Even if the applicant had followed the appropriate rules and were able to add Mr. McNabb as a party to the proceedings, they would be unable to compel him to testify. S. 11(c) of the *Charter* prohibits compellability of an accused in proceedings against themselves, and this is one of the cornerstones of our legal system.

> *R. v. Henry*, [2005] 3 S.C.R. 609; 260 D.L.R. (4th) 411 at para. 2.
> *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, c. 11 [*Charter*]

<u>The Applicant Failed to Follow Rules of Procedure</u>

22. Although the Commission investigated both the City and Mr. McNabb they decided to only refer the complaint about the City to the Tribunal on Dec. 12, 2006. Accompanying this decision was detailed instructions on how to request the Commission to reconsider the decision, but Mr. Sinclair made no such request.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 10 at para. 5.

23. Mr. Sinclair failed to participate in the Initial Conference Call (ICC) on Nov. 15, 2006. He was provided notice of this call on Oct. 25, 2006, which clearly indicated how to add parties to the proceedings would be discussed, per Rule 33 of the Tribunal's *Rules*

of Practice ("Rules"). Mr. Sinclair was also provided at this time with detailed instructions on how to obtain the Rules.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 10 at paras. 6, 12.

24. An unsuccessful mediation was scheduled through the ICC on March 22, 2006. All parties consented to have pleadings in by May 18, 2006. Mr. Sinclair failed to provide his own pleadings, relying on that of the Commission, which had already indicated their intent to refer the City alone. Rules 37, 39 and 55 clearly identify the procedure for adding parties to the proceedings at this point. Rule 38 indicates that failure to submit pleadings may preclude the complainant from raising new matters.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 10 at paras. 7, 12-13.

25. It was not until the day of the hearing, Nov. 7, 2007, that Mr. Sinclair requested to add Mr. McNabb as a party. His only excuse at that time was "to the effect that he had been busy with other matters." Inadvertence or inattention is not a good reason for a delay as it can outweigh the prejudice to the process. Despite Mr. Sinclair's lack of reasons or citing circumstances out of his control, the Tribunal granted an adjournment, but noted the important consideration of delay.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 10 at paras. 8-9, 15, 18.

26. The Tribunal is governed by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (SPPA), which states in s. 2,

> This Act, and any rule made by a tribunal… shall be liberally construed to secure the just, **most expeditious and cost-effective determination** of every proceeding on its merits.
> [emphasis added]

It was the non-trivial, significant delay, and the complications arising from Mr. Sinclair's request that gave rise to the refusal to add Mr. McNabb as a party, not his status as an employee. The Tribunal was within its statutory powers and compliance with the Rules

in making this decision, and could not therefore be making an error in law as the Appellants submit.

Sinclair v. London (City), [2008] O.H.R.T.D. No. 10 at paras. 15-17.

b. The Tribunal made an error of Law in not admitting the fresh evidence

27. As with the procedures governing the addition of parties, the basis for excluding Ms. Burpee's documents is the unexplainable and unjustified delay by Mr. Sinclair in raising such issues. The appropriate context raised by the Appellants is the Tribunal's rules, which provides the correct procedures for Tribunal proceedings.

Sinclair v. London (City), [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at paras. 67-69.

28. The relevance of this information is that it supposedly demonstrates that the City treated Mr. Sinclair differently. However, the meeting with Ms. Burpee occurred well after the incident in question. It is neither surprising nor discriminatory to expect security to be on alert after Mr. Sinclair had been removed from the premises due to disruptive behaviour.

Sinclair v. London (City), [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at paras. 62, 65, 67.

<u>Issue of Hearsay</u>

29. Although the Appellants claim numerous errors of law were made they cite very little law. The respondents do concede that hearsay is presumptively admissible in Tribunals, even though the Appellants have made no submissions to this respect.

Statutory Powers Procedure Act, R.S.O. 1990, Ch. S.22 s. 15(1).
Olarte v. Commodore Business Machines Ltd., [1984] 49 O.R. (2d) 17; 14 D.L.R. (4th) 118 at para. 5.

30. However, where the opposing party is denied the ability to cross-examine a witness providing hearsay testimony, this can amount to a denial of natural justice resulting in

unfairness. Before hearsay evidence can be admitted an opportunity must be provided before the hearing to rebut the evidence.

> *B. (J.) v. Catholic Children's Aid Society of Metropolitan Toronto*, [1987] 59 O.R. (2d) 417, 38 D.L.R. (4th) 106 at para. 13.

31. Ms. Burpee was not made available to the Tribunal to provide first-hand evidence and cross-examination at the time of the hearing, and the Respondents had no foreknowledge that such information was forthcoming. Instead, Mr. Sinclair suggested this information should be considered after the Tribunal decision had already been drafted.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at paras. 61, 63.

32. The Appellants make no submissions in respect to the business record exception to the hearsay rule. Accordingly the Respondents need not address this point, but will however note that such exceptions do exist.

> *Farias v. Chuang*, [2005] O.H.R.T.D. No. 22; 2005 HRTO 22 at para. 156.

33. Even where hearsay is admitted in administrative proceedings it is for the Tribunal to determine the weight. Vice-Chair Wright indicated that the memo provided would be given no weight due to the contents and circumstances under which it was provided.

> *Wilson v. Esquimalt & Nanaimo Railway*, [1921] 3 W.W.R. 817; 61 D.L.R. 1 at para. 14.
> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at para. 71.

c. The Tribunal made an error of Law by refusing to admit Dr. Henry's full report

34. The Respondents acknowledge that Dr. Frances Brooks is a credible expert in issues of racism and discrimination held in high repute, and acknowledge all of her submissions regarding the subtle forms of racism and an atmosphere of denial. However, we submit that the Tribunal did not err in excluding portions of her report that expressed unsubstantiated opinions.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at paras. 15, 20-22.
> *Peart v Peel* (2006), 217 O.A.C. 269; 43 C.R. (6th) 175 at paras. 95-96, 131 (Ont. C.A.).
> *R. v. Spence*, [2005] 3 S.C.R. 458, 259 D.L.R. (4th) 474 at paras. 56-58.

35. This case is not the first where the evidence of Dr. Brooks has been assessed. Although Tribunals are not bound by strict precedent the case of *Brooks v. Canada* is highly illustrative for the issue at hand. The content of her report in that case was held to have some value, but was not the proper subject of opinion evidence, went beyond the role of an expert, and was highly prejudicial. The fundamental issue of whether discrimination actually occurred is within the domain of the Tribunal, and not the expert.

> *Brooks v. Canada*, [2004] 50 C.H.R.R. D/155; 2004 CHRT 20 at paras. 4-5, 9, 14, Appendix.

d. The Tribunal erred in Law by refusing to include Mr. Garrison's evidence

<u>Similar Character and Similar Fact Evidence</u>

36. McCormick defines character as, "a generalized description of a person's disposition, or of the disposition in respect to a general trait, such as honesty, temperance or peacefulness…"

> J.W. Strong (Ed.), *McCormick on Evidence*, 4th ed. (St. Paul: West Publishing, 1992), at 825.

37. The Appellants try to provide Mr. Garrison's testimony as character evidence. However, character evidence is generally inadmissible in civil and human rights proceedings. Similar fact evidence is more readily admissible, but the distinction should be clearly made.

> *Modi v. Paradise Fine Foods Ltd. et al*, 2005 HRTO 25, at para. 3.

38. Circumstantial evidence may be combined with other evidence to justify that an inference of a fact exists, which would be probative enough to overcome the prejudicial impact of similar fact evidence. These inferences must flow logically and reasonably from established facts, and if this cannot be done they should be condemned as conjecture and speculation. A failure to distinguish the two constitutes an error of law.

> *R. v. Morrissey* (1995), 22 O.R. (3d) 514; 97 C.C.C. (3d) 193 at para. 52.
> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at para. 24.

39. Even where evidence has clear probative value and is relevant in determining the issue at hand, and is not unfair, a trier of fact may still decide to exclude it. However, no discretion is afforded to similar fact evidence where the prejudice outweighs the probative value.

> *Farias v. Chuang*, [2005] O.H.R.T.D. No. 22; 2005 HRTO 22 at para. 163.
> *R. v. Handy*, [2002] 2 S.C.R. 908; 213 D.L.R. (4th) 385 at para. 153.

40. The Supreme Court of Canada has outlined the test for admissibility of similar fact evidence. The court was clear that the starting point is a presumption that such evidence is inadmissible given its low probative value and high degree of prejudice. Evidence introduced solely to demonstrate that the accused is the type to commit the offence, or even has the propensity to do so, is clearly inadmissible. The Appellants have failed to

demonstrate how Mr. Garrison's testimony deviates from this presumption. Weighing the probative value against prejudice is a matter of fact for the initial adjudicator, and not an error in law.

> *R. v. Arp*, [1998] S.C.J. No. 82; 166 D.L.R. (4th) 296 at para. 41.
> *R. v. Pascoe* (1997), 32 O.R. (3d) 37; 113 C.C.C. (3d) 126 at para. 28.

41. Mr. Garrison's evidence does not demonstrate any of the dispositions or traits that would confirm a pattern of racial discrimination. There is no indication of race playing a role at all aside from Mr. Garrison's subjective opinion. The only thing Mr. Garrison's evidence establishes is that Mr. McNabb is in the habit of removing people from premises while acting as a security guard. The probative value of this information is slim, especially since it calls the City into account for previous incidents that did not occur on its premises.

> *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46; 2008 HRTO 48 at para 28.

42. The type of similar fact evidence the Tribunal would be looking for would be the exclamation of some sort of racist statement towards the complainant, and similar types of statements made over a period of time. The Appellants cannot point to such statements either at the time of the incident in question, or in Mr. Garrison's testimony.

> *Pleasant v. Mainline Manufacturing & Installing Inc.*, [2005] O.H.R.T.D. No. 34; 2005 HRTO - 34 at paras. 40-42, 217-220.

e. The Tribunal did not adhere to the law with regards to racial discrimination

43. The Appellants claim a general error in law in regards to racial discrimination jurisprudence, despite all of the preceding arguments, especially the Tribunal Rules that

have been ignored. However, they cite very little law to actually support their proposition.

44. In referring to *Johnson v. Halifax*, the Appellants do themselves a disservice. They point to the undisputed law of an establishment of a "prima facie case of adverse treatment which, it can reasonably be inferred, arose because of race," but then make no such case themselves. The issue of race is not mentioned by any of the witnesses, and never arose in any part of the altercation with Mr. Sinclair. No operative element can be identified, aside from the conjecture addressed with Dr. Henry's report.

Johnson v. Halifax Regional Police Service, [2003] N.S.H.R.B.I.D No.2 at para. 8.

III. Principles of Natural Justice and Procedural Fairness were Not Upheld

a. Failure of Tribunal to adhere to correct procedure

45. Although the Appellants make submissions in respect to natural justice and procedural fairness, they fail to describe or identify what these terms mean. The Respondents acknowledge that based on the factors in the case law that a duty of fairness does exist to parties before the Tribunal: the nature of the decision, the relationship between the body and parties, and the impact of the decision.

Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653; S.C.J. No. 26 at para. 24.

46. The content of this duty of fairness is participatory rights, the right to written reasons, and a decision free from the apprehension of bias. Although an oral hearing is not necessary to meet participatory rights, the presence of a hearing clearly meets this standard. The Tribunal has also provided reasons in a written report well known to the

Appellant. The only claim remaining to the Appellants is the apprehension of bias, which will be addressed below in the context of the credibility of the applicant as they raised it.

> *Baker v. Canada*, [1999] 2 S.C.R. 817; S.C.J. No. 39 at paras. 19, 33, 35, 43-44.

47. The SPPA and the Charter also provide a duty of fairness for human rights decisions. In addition to the SPPA procedural rights mentioned above, s. 7 of the Charter provides procedural protections and s. 11(d) guarantees an impartial trial.

48. The numerous instances of delay that would occur by "simply admitting the evidence" as the Appellants suggest would render the Tribunal unfair to the Respondents. The inability to cross-examine testimony that the Appellants would like to introduce would result in a denial of natural justice to the Respondents.

> *Toronto Newspaper Guild, Local 87, American Newspaper Guild (C.I.O.) and Globe Printing Company*, [1951] O.R. 435; [1951] 3 D.L.R. 162 at para. 53 (Ont. H.C.); aff'd [1952] O.R. 345; [1952] 2 D.L.R. 302 (Ont. C.A.); aff'd [1953] 2 S.C.R. 18; [1953] 3 D.L.R. 561.
> *Re County of Strathcona No. 20 and MacLab Enterprises*, [1971] A.J. No. 121; 20 D.L.R. (3d) 200 at paras. 10-12.

b. The credibility of the applicant was unfairly assessed

49. Part of the *audi alteram partem* principle applying to decision makers, cited by the Appellants in para. 25, is to keep an open mind and to be free of actual or perceived bias.

> *Old St. Boniface Residents Assn. Inc. v. Winnipeg*, [1990] 3 S.C.R. 1170; S.C.J. No. 137 at para. 41.

50. The Appellants allege an "explicit bias" in para. 26. The test for determining whether there is a reasonable apprehension of bias in human rights cases is an analysis of the relevant facts by a reasonable and right-minded person well informed on the issues.

> *Great Atlantic & Pacific Co. of Canada v. Ontario*, [1993] O.J. No. 1278; 109 D.L.R. (4th) 214 at para. 43 (Ont. Div. Ct.).
> *Taylor Ventures Ltd. v. Taylor* (2005), 49 B.C.L.R. (4th) 134 at para. 7 (C.A.).

51. A presumption of impartiality exists, and appellate courts are reluctant to find bias without clear and cogent evidence to the contrary. The reasonable person is assumed to be aware of racist dynamics, including anti-black stereotypes, in the community and society around them. Before a conclusion of a reasonable apprehension of bias can be made, the reasonable person requires clear evidence that indicates the judge or adjudicator did not approach the case with an open mind fair to all parties. A white judge is as likely to be biased when dealing with a white litigant as a black judge would be biased in favour of a black litigant, and this presumption of judicial integrity imports a high threshold for bias.

R. v. S. (R.D.), [1997] S.C.J. No. 84; 151 D.L.R. (4th) 193 at paras. 32, 47, 115.

52. There are no submissions by the Appellants indicating that Vice-Chair David A. Wright had expressed any prior views on related subjects prior to this case that could even potentially violate the well established standards of administrative neutrality. Nor did he move beyond the position of an advocate to descend as a personal complainant in the same area he was appointed to preside over on the same issue, or have any familiarity or familial relations to any of the parties. No reasonable apprehension of bias can be inferred.

Great Atlantic & Pacific Co. of Canada v. Ontario, [1993] O.J. No. 1278; 109 D.L.R. (4th) 214 at paras. 44-45 (Ont. Div. Ct.).
Large v. Stratford, [1992] O.J. No. 1185; 92 D.L.R. (4th) 565 at para. 6 (Div. Ct.); reversed [1995] S.C.J. No. 80; 128 D.L.R. (4th) 193 on other grounds.
R. v. Quinn, [2006] B.C.J. No. 1170; 2006 BCCA 255 at para. 6.
Makowsky v. John Doe, [2007] B.C.J. No. 1809;2007 BCSC 1231 at paras. 19, 25.

53. The Appellants are also unable to suggest that Vice-Chair David A. Wright had a lack of sympathy with the legislative objectives that would also be a basis for disqualification. Members of a Human Rights Commission and Tribunal are specifically

selected for their awareness, and sensitivity, of discrimination issues. Instead, he provided Mr. Sinclair considerable latitude considering his lack of participation and relative disinterest early on in the proceedings. The rules of the tribunal, and evidentiary rules guiding the use of hearsay or similar fact evidence, all suggest that any adjudicator in a similar position would behave in exactly the same manner.

> *Baker v. Canada*, [1999] 2 S.C.R. 817; S.C.J. No. 39 at para. 68.

IV. The Tribunal Committed Various Errors of Fact

a. The material before the Tribunal was not properly considered

54. Although circumstantial evidence can be used in Tribunals, this relates to their admissibility and not their weight, which is to be determined separately during the hearing. Where evidence is considered inappropriate, it can be rightly excluded.

> *Glandon v. British Columbia*, [2008] B.C.J. No. 1042; 168 A.C.W.S. (3d) 853 at para. 13 (B.C. S.C.).

55. The Appellants suggest a broader conspiracy, but have not pointed to any facts that would indicate the City has been anything less than forthcoming. The absence of technology does not in itself give rise to a suspicion of misconduct, and it most certainly does not constitute evidence of it.

Order Sought

56. For the foregoing reasons, the Respondents respectfully request that the decision of the Ontario Human Rights Tribunal in *Sinclair v. London (City)*, [2008] O.H.R.T.D. No. 46 be upheld, in that the City's conduct did not amount to discrimination, or alternatively Mr. Sinclair failed to provide proof of such discrimination.

57. In the alternative that the court seeks to quash the decision of the Tribunal, the Respondents request that Mr. Sinclair be instructed to abide by, comply with, and fully participate in all proceedings according to the Tribunal's *Rules of Practice*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Corporation of the City of London

Omar Ha-Redeye
[redacted]

Counsel for the Respondents

Schedule "A"

Jurisprudence

B. (J.) v. Catholic Children's Aid Society of Metropolitan Toronto, [1987] 59 O.R. (2d) 417, 38 D.L.R. (4th) 106.

Baker v. Canada, [1999] 2 S.C.R. 817; S.C.J. No. 39.

Brooks v. Canada, [2004] 50 C.H.R.R. D/155; 2004 CHRT 20.

Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 S.C.R. 748.

Da Mota v. Canada (Minister of Citizenship and Immigration), [2008] F.C.J. No. 509; 166 A.C.W.S. (3d) 552 (Fed. Ct.).

Dunsmuir v. New Brunswick, 2008 SCC 9.

Farias v. Chuang, [2005] O.H.R.T.D. No. 22; 2005 HRTO 22.

Glandon v. British Columbia, [2008] B.C.J. No. 1042; 168 A.C.W.S. (3d) 853 (B.C. S.C.).

Great Atlantic & Pacific Co. of Canada v. Ontario, [1993] O.J. No. 1278; 109 D.L.R. (4th) 214.

Johnson v. Halifax Regional Police Service, [2003] N.S.H.R.B.I.D No.2.

Large v. Stratford, [1992] O.J. No. 1185; 92 D.L.R. (4th) 565 (Div. Ct.).

Makowsky v. John Doe, [2007] B.C.J. No. 1809;2007 BCSC 1231.
Modi v. Paradise Fine Foods Ltd. et al, 2005 HRTO 25.

Olarte v. Commodore Business Machines Ltd., [1984] 49 O.R. (2d) 17; 14 D.L.R. (4th) 118.

Old St. Boniface Residents Assn. Inc. v. Winnipeg, [1990] 3 S.C.R. 1170; S.C.J. No. 137.

Peart v Peel (2006), 217 O.A.C. 269; 43 C.R. (6th) 175 (Ont. C.A.).

Pleasant v. Mainline Manufacturing & Installing Inc., [2005] O.H.R.T.D. No. 34; 2005 HRTO –34.

Re County of Strathcona No. 20 and MacLab Enterprises, [1971] A.J. No. 121; 20 D.L.R. (3d) 200.

R. v. Arp, [1998] S.C.J. No. 82; 166 D.L.R. (4th) 296.

R. v. Handy, [2002] 2 S.C.R. 908; 213 D.L.R. (4th) 385.

R. v. Henry, [2005] 3 S.C.R. 609; 260 D.L.R. (4th) 411.

R. v. Quinn, [2006] B.C.J. No. 1170; 2006 BCCA 255.

R. v. Morrissey (1995), 22 O.R. (3d) 514; 97 C.C.C. (3d) 193.

R. v. Pascoe (1997), 32 O.R. (3d) 37; 113 C.C.C. (3d) 126.

R. v. Spence, [2005] 3 S.C.R. 458, 259 D.L.R. (4th) 474.

Sinclair v. London (City), [2008] O.H.R.T.D. No. 10.

Sinclair v. London (City), [2008] O.H.R.T.D. No. 46; 2008 HRTO 48.

Stein v. "Kathy K" (The Ship), [1976] 2 S.C.R. 802.

Taylor Ventures Ltd. v. Taylor (2005), 49 B.C.L.R. (4th) 134 (C.A.).

Toronto Newspaper Guild, Local 87, American Newspaper Guild (C.I.O.) and Globe Printing Company, [1951] O.R. 435; [1951] 3 D.L.R. 162 (Ont. H.C.); aff'd [1952] O.R. 345; [1952] 2 D.L.R. 302 (Ont. C.A.); aff'd [1953] 2 S.C.R. 18; [1953] 3 D.L.R. 561.

Wilson v. Esquimalt & Nanaimo Railway, [1921] 3 W.W.R. 817; 61 D.L.R. 1.

Schedule "B"

Legislation

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.

Canadian Charter of Rights and Freedoms, Part I of *The Constitution Act, 1982*, c. 11.

Secondary Sources

Strong J.W.(Ed.), *McCormick on Evidence*, 4th ed. (St. Paul: West Publishing, 1992).

Vincent Sinclair (Appellant)	- and -	**Corporation of the City of London** (Respondent)	**Court File No. 2009 D.M.C.C.**

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