

CASES THAT HAVE CHANGED SOCIETY

Many cases are started by individuals or groups, to respond to a particular event or to change a situation. The outcomes of these cases will often lead to changes in certain areas of the law which impact on all Canadians. The short summaries below are some of the decisions that have changed Canadian society in the last 25 years. The full text of each decision and more cases are available at www.ojen.ca.

Right to a Fair Trial

R. v. Stinchcombe, [1991] 3 S.C.R. 326

Death Penalty

United States v. Burns, [2001] S.C.R. 287

Same Sex Rights

Vriend v. Alberta, [1998] 1 S.C.R. 493

Aboriginal Treaty Rights

R. v. Marshall [1999] 3 S.C.R. 456

Private vs. Public Health Care

Chaoulli v. Quebec (Attorney General) [2005] 1 S.C.R. 791

Accommodating Religious Beliefs

Multani v Commission scolaire Marguerite-Bourgeoys [2006] 1 S.C.R. 256

A Duty to Act to Protect Rights

Dunmore v. Ontario (Attorney General) [2001] 3 S.C.R. 1016

Security Certificates

Charkaoui v. Canada (Citizenship and Immigration) 2007 SCC 9

R. v. Stinchcombe, [1991] 3 S.C.R. 326

William Stinchcombe, a lawyer, was charged with breach of trust, theft and fraud. At trial, the Crown decided not to call a witness who had made police statements that supported the accused. The Crown refused to give Mr. Stinchcombe a copy of the police statements. Mr. Stinchcombe’s counsel asked for disclosure of the statement, but the trial judge refused, saying that there was no obligation on the Crown to disclose the statements.

The Supreme Court of Canada decided that the Crown must disclose all relevant information to the accused prior to the trial. This obligation fulfills the s.7 right of an accused person to be able to make full defence to criminal charges. This case has dramatically changed the criminal trial process, improved trial fairness, and helped to protect against wrongful convictions.

Read the case summary and as a group, answer the following questions:

Who is the litigant?

What is the social justice issue? Who does this issue unfairly target?

Who objected against this issue going to court? Why?

What was the outcome?

Have you been affected by this issue? Have you seen this type of issue elsewhere in society?

List three other ways this dispute could have been resolved

Other ideas or comments:



United States v. Burns, [2001] S.C.R. 287

Glen Burns and Atif Rafay, Canadian citizens, were wanted for murder in Washington State. They were arrested in B.C. and U.S. authorities asked the Canadian government to extradite them to Washington for prosecution. Extradition is when one country asks another country to deliver the accused person to face trial. If convicted, both Burns and Rafay could have received either the death penalty or life imprisonment without parole. Canada’s Minister of Justice ordered their extradition to the U.S. without getting assurances that the death penalty would not be imposed or carried out.

The Supreme Court of Canada reviewed the Minister’s decision and decided that it was a breach of s. 7 of the Charter to send them to the U.S. without this promise. To do so would violate their right to life, liberty and security of the person (s. 7). Some say that this decision guarantees that the death penalty will never be brought back in the Canadian justice system because it violates s.7.

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Vriend v. Alberta, [1998] 1 S.C.R. 493

Mr. Vriend, a college instructor, was fired when the college found out that he was gay. Alberta’s human rights legislation did not protect against discrimination on the ground of sexual orientation. After learning that he could not make a human rights complaint because sexual orientation was not a protected ground, Mr. Vriend challenged the human rights legislation as discriminatory.

The Supreme Court of Canada held that by not protecting sexual orientation the Alberta legislation discriminated against homosexuals and therefore violated s. 15 of the Charter. To fix this injustice, the court interpreted the legislation as if it included “sexual orientation”. Following this decision, the Premier was pressured to invoke the Charter’s notwithstanding clause (s.33) to overrule the court’s decision but he eventually decided not to invoke it. This was an important case to recognize gay/lesbian claims for legal equality.

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R. v. Marshall, [1999] 3 S.C.R. 456

Donald Marshall Jr., a Mi’kmaq Indian, was charged with selling eels without a license, fishing without a license, and fishing during the close season with illegal nets. He argued that he had a Mi’kmaq treaty right to catch and sell fish based on the treaties that had been signed between the British and the Mi’kmaq in 1760-61. Treaty rights are aboriginal rights, protected by s.35 of the Constitution, and set out in agreements between a group or nation of Aboriginal people and the government.

Mr. Marshall argued that the court should not only look at what was written in the signed treaty but also evidence of what was said in negotiations at the time of the signing of the treaty. The Supreme Court of Canada decided that, as with other contracts between individuals it should consider all of the evidence of what both parties wanted to determine the full extent of the treaty rights. In doing so, the court found that the Mi’kmaq treaties signed in 1760-1 include the right to harvest and sell eel. Mr. Marshall was acquitted. This case is important because it showed a willingness to consider the different types of evidence available for proving treaty rights.

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Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791

A physician who wanted to practise outside the public health care system and a patient who had suffered delays receiving health treatment challenged the Quebec laws that prevented a resident from paying for faster access to health care.

The Supreme Court of Canada found that the Quebec laws preventing residents from using private health care breached s. 1 of Quebec’s Charter of Rights, which protects the right to life and personal inviolability. The potential national significance of this case lies in the decision by three of the judges who found that the Quebec laws would also violate s. 7 of the Canadian Charter. The trio of judges concluded that the Quebec laws allow only the “very rich” to obtain private health care in order to avoid delays in the public system. The decision opens the door for private health care in Quebec. The comments of the three judges suggest that a similar change might be possible in the rest of Canada in a future case. This case has been very controversial, especially because Canadians are proud of our public health care system. Some people consider our public health care system to be a defining characteristic of our nation.

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***Multani v Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256**

The Supreme Court of Canada struck down a Quebec School Board order that prohibited Gurbaj Multani, an Orthodox Sikh, from wearing a kirpan at school, a requirement of his religion. The court held that the board’s decision infringed Mr. Multani’s freedom of religion under s. 2(a) of the Charter.

The Supreme Court of Canada considered when to recognize a particular practice as a religious requirement. This decision then dealt with the appropriate method for accommodating religious practice in a multicultural society. The school board argued that it had to protect the safety of the rest of the students even if this meant infringing the rights of this one student. The court rejected this argument, finding that it is necessary to find reasonable ways to accommodate different religions, even in schools, and to balance different rights.

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Dunmore v. Ontario (Attorney General), [2001] 3 S.C.R. 1016

Ontario’s Labour Relations Act did not allow farm workers to unionize or receive labour protections. Four farm workers and a Union challenged this exclusion as an infringement of their s. 2(d) right of association, as well as their rights under s. 15.

The majority of the Supreme Court of Canada made the unique finding that the freedom to organize may require the government to extend legislative protection to vulnerable groups. Usually the Charter protects rights when the government has acted in a way which violates an individual’s rights. When a government has not taken any action (program, legislation etc), it usually cannot be said to have violated any Charter rights. In this case, the court decided that because the farm workers were unable to exercise their collective freedom to assemble without the protection of labour rights, their freedom of association was violated. The government was required to act to protect these rights. This case acknowledges that the Charter may, in some cases, impose a government duty to act in order to protect Charter rights.

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***Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9**

Certificates of inadmissibility to Canada, known as ‘Security Certificates,’ were issued against three people. All three were living in Canada when they were arrested. It was alleged that each posed a threat to national security for involvement in terrorist activities.

Canada’s immigration legislation allows the government to issue a certificate stating that a foreign national or permanent resident (a non-Canadian citizen) cannot be admitted to Canada because they pose a security risk. The person is detained (held in jail). A judge can review the certificate and the detention. However, during the review, the government can refuse to show the detained person any of the information on which the security certificate is based. If the judge finds the certificate reasonable, it becomes a removal order (the person is deported to their home country). A removal order cannot be appealed and may be immediately enforced. In this case, all three men challenged the provisions in Canadian immigration law that allow for their detention and the provisions which prevented them from having access to information in the review process.

The Supreme Court of Canada unanimously held that the procedures for reviewing the detention and the security certificate violate an individual’s right under s. 7 of the Charter. Since a person might be deported to country where his or her life of freedom is in danger, the court found that to make this kind of order without a fair hearing where the person has the chance to see the evidence is a violation of s. 7. This decision is important because it demonstrates that Charter rights are to be protected and respected even when a government makes claims of increased national vulnerability and heightened security.

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