

*The Canadian Human Rights Act*

**CANADIAN HUMAN RIGHTS TRIBUNAL**

BETWEEN:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA  
AND ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

THE ATTORNEY GENERAL OF CANADA  
(representing the Minister of Indian and Northern Affairs)

Respondent

- and -

CHIEFS OF ONTARIO and  
AMNESTY INTERNATIONAL CANADA

Interested Parties

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**REPLY OF THE ATTORNEY GENERAL OF CANADA**  
**(Respondent's Motion for an Order to Dismiss the Complaint)**

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(Respondent's Motion for an Order to Dismiss the Complaint)**

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The Attorney General of Canada, representing the Minister of the Department of Indian Affairs and Northern Development (“Canada”) and pursuant to the Direction of the Canadian Human Rights Tribunal (“Tribunal”) made April 14, 2010, makes the following reply submissions:

**A. BACK TO FIRST PRINCIPLES: WHAT IS DISCRIMINATION AND WHY COMPARISONS ARE ESSENTIAL**

1. The Supreme Court of Canada has defined discrimination as a distinction, whether intentional or not, but based on grounds relating to the personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society.

***Andrews v. the Law Society of British Columbia*, 1989 CanLII 2 at p. 34, Attorney General’s Supplemental Book of Authorities (“Supp. Book of Authorities”), Tab 4.**

2. The Supreme Court’s definition drew on the “general concept of discrimination” that was “fairly well settled” under human rights legislation. The Court also stated that the related concept of equality is comparative, the condition of which can only be attained or discerned by comparison with others in the social and political setting in which the question arises.

***Andrews, supra*, at p. 25, Supp. Book of Authorities, Tab 4.**

3. Given the above statements, it is clear that a comparator analysis is essential in order to establish discrimination whether under the *Canadian Charter of Rights and Freedoms* or the *Canadian Human Rights Act*. In addition, it is a matter of common sense that cross-jurisdictional comparators are not permitted.

***Wignall v. (Department of National Revenue)*, 2001 CanLII 8498 (CHRT), at para. 30, Canada’s Book of Authorities, Tab 47.**

4. For example, a female claimant could hardly claim wage discrimination in the federal jurisdiction because an employer in the provincial jurisdiction pays their female employees more for the same kind of work. A finding of discrimination based on the imposition of a burden or the withholding of a benefit must be rooted in the comparison of the treatment received by a person with the treatment received by others in the social and political setting in which the questions arises. That setting includes the fact that Canada is a federal state.

***R. v. S. (S.)*, [1990] 2 S.C.R. 254 at para. 44,  
Canada's Book of Authorities, Tab 42.**

5. The Supreme Court applied this analysis when it considered the question of whether it could compare mental and physical disabilities in relation to income replacement benefits in an employment insurance plan. In deciding that it could, the Court said that comparison is essential in discrimination cases.

***Battlefords and District Co-operative Ltd. v. Gibbs*,  
[1996] 3 S.C.R. 566 at paras. 20-21 and 29, Supp.  
Book of Authorities, Tab 7.**

6. In the present complaint, any distinction is based on constitutional jurisdiction. Assuming *The Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the "Act") applied to the provinces (which is not admitted), there would be two respondents compared: the federal and provincial governments, each of which is entitled to act within its constitutional authority and explains why there is human rights legislation federally and in every province and territory. Constitutional jurisdiction, however, is not the proper basis for a comparison.

***R. v. S. (S.)*, *supra*, at paras. 46-47, Canada's  
Book of Authorities, Tab 42.**

7. No authority has been provided in which such a comparison (or no comparison at all) has been made. That is because the unworkable result would be that one jurisdiction could dictate what the other must do and would "completely undermine the value of diversity which is at the foundation of the division of powers" ( see: *R. v. S. (S.)*, *supra*, at para. 47).

8. The choice of a correct comparator is crucial, and (with respect to s. 15 (1) of the *Charter*) misidentification of the proper comparator group at the outset can doom the outcome of the whole s. 15(1) analysis.

*Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, at para. 18, Supp. Book of Authorities, Tab 19.

*Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, [2004] 3 S.C.R. 657 at para. 51, Supp. Book of Authorities, Tab 5.

*Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703 at para. 45, Supp. Book of Authorities, Tab 18.

*Laronde v. Warren Gibson Ltd.*, [2004] F.C.J. No. 1475 at paras. 20-24, Supp. Book of Authorities, Tab 21.

9. The British Columbia Supreme Court recently adopted this approach in an application for Judicial Review of a decision of the British Columbia Human Rights Tribunal, where it was held that:

The Tribunal's failure to identify and then to compare the appropriate comparator group crucially tainted the whole of the discrimination analysis.

*British Columbia (Ministry of Education) v. Moore*, 2008 BCSC 264 at para. 147, see also 127 and 133, Canadian Human Rights Commission's Book of Authorities, Tab 7.

10. Like the authorities in paragraphs 7 and 8 above, misidentification of the comparator group has occurred here, the result being that the Complaint does not fit under the *Act* and is therefore doomed to fail.

## **B. THE SOCIAL AND POLITICAL SETTING: LEGISLATIVE JURISDICTION OVER CHILD WELFARE IS PROVINCIAL**

11. It is well established that provinces have legislative jurisdiction over the care and maintenance of children under s. 92(13) (property and civil rights in a province), and s. 92(16) (local and private matters) of the *Constitution Act*, 1867. Provincial laws of general application (including child welfare legislation) apply, of their own force, to Indians in the province whether on or off reserve. The Supreme

Court applied these principles to determine that British Columbia's *Adoption Act* applied to Indian residents of the province in the 1975 *Natural Parents* case.

**P. W. Hogg, *Constitutional Law of Canada*, 5<sup>th</sup> ed. (Toronto: Carswell, 2007) Vol. 1 at 27-7, 27-8, Supp. Book of Authorities, Tab 31.**

***Natural Parents v. Superintendent of Child Welfare*, [1975] S.C.J. No. 101, per Ritchie J. at pp. 16-18; see also Martland J. at pp. 13-14, Supp. Book of Authorities, Tab 22.**

**See also: *Four B Manufacturing v. United Garment Workers*, [1980] 1 S.C.R. 1031, at pp 1048-50, Supp. Book of Authorities, Tab 16.**

***Dick v. The Queen*, [1985] 2 S.C.R. 309 at paras. 39-42, Supp. Book of Authorities, Tab 15.**

12. Canada has legislative authority under s. 91(24) of the *Constitution Act, 1867* with respect to the subject of "Indians, and Lands Reserved for the Indians". Parliament has not used its authority under s. 91(24) to enact child welfare legislation and is under no positive duty to do so. No complaint can be brought against the federal Crown or Parliament for failing to cause legislation to be enacted.

**P. W. Hogg, *Constitutional Law of Canada*, supra, pp. 5-27 to 5-30, Supp. Book of Authorities, Tab 31.**

***Reference Re Canada Assistance Plan*, [1991] 2 S.C.R. 525 at p. 41, Canada's Book of Authorities, Tab 39.**

***A.O. Farms v. Canada* (20000, 28 Admin. L.R. 315 (F.C.T.D.) at para. 8, Supp. Book of Authorities, Tab 3.**

***Peel (Regional Municipality of) v. Canada et al.*, [1992] 3 S.C.R. 762 at para. 37, Supp. Book of Authorities, Tab 24.**

13. As noted previously, Canada, as a matter of social policy, has implemented the First Nations Child and Family Services Program ("FNCFS Program"), through which Indian and Northern Affairs Canada ("INAC") funds entities that provide child welfare services to registered or eligible to be registered Indians ordinarily resident on reserve. INAC also provides reimbursement funding to the Province of Ontario for the provision of child welfare services on reserve to eligible



individuals pursuant to the Memorandum of Agreement respecting Welfare Programs for Indians (“1965 Agreement”).

14. Neither the FNCFS Program nor the 1965 Agreement that are the subjects of this Complaint engage the exercise of federal legislative authority in respect of “Indians” under Section 91(24) of the *Constitution Act, 1867*.

15. The Ontario Court of Appeal has recognized the federal government’s use of its spending authority “to influence social and economic policies over a broad range of areas” within provincial jurisdiction such as education, health and other social programs “with little, if any, challenges.”

*Canada Mortgage and Housing Corporation v. Inness* (2004), 70 O.R. (3d) 148 (C.A.) at paras. 27, 33, Supp. Book of Authorities, Tab 12.

#### C. PRINCIPLES OF STATUTORY INTERPRETATION AND INTERNATIONAL LAW

16. The interpretation of human rights legislation does not take place in a vacuum and it is well established that the wording of the statute is an important part of the interpretive process.

*Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, para. 5, Canada’s Book of Authorities, Tab 30.

17. The Supreme Court has recognized that in the construction of such legislation, the words in the statute must be given their plain meaning. This approach does not give a tribunal license to ignore the words of the *Act* in order to prevent discrimination wherever it is found. While this may be a laudable goal, Parliament has stated that, through the limiting words in s. 5, some relationships will not be subject to scrutiny under human rights legislation. It is the duty of boards and courts to give s. 5 a liberal and purposive construction, without reading the limiting words out of the *Act* or otherwise circumventing the intention of the Parliament. The words of the *Act* must be interpreted generously, but this does not permit rewriting the *Act*.

***CN v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114 at 1134, Supp. Book of Authorities, Tab 13.**

***Gould, supra*, para. 50, Canada's Book of Authorities, Tab 30.**

***University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, Canada's Book of Authorities, Tab 46.**

18. There is a presumption of harmony, coherence, and consistency between statutes dealing with the same subject matter. It is only when genuine ambiguity arises between two or more plausible readings, such that courts need to resort to external interpretive aids (including other principles of interpretation) and it is not appropriate to take as a starting point the premise that differing interpretations reveal an ambiguity. It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach and determine if “the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning”.

***Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 at paras. 27-30, 44, Supp. Book of Authorities, Tab 8.**

19. There are differences in the interpretation of legislation as opposed to the common law. For example, it has long been accepted that, where it will not upset the appropriate balance between judicial and legislative action, courts should apply and develop the rules of the common law in accordance with the values and principles enshrined in the *Charter*. Courts do not, however, occupy the same role *vis-à-vis* statute law. Statutory enactments embody legislative will. They supplement, modify or supersede the common law. As a result, blanket presumptions of *Charter* consistency could sometimes frustrate true legislative intent, contrary to what is mandated by the preferred approach to statutory construction. This difference in approach touches, fundamentally, upon the proper function of the courts within the Canadian democracy and the relationship among the legislative, executive, and judicial branches of governance has been described as being one of dialogue and mutual respect.

***Bell ExpressVu Limited Partnership, supra*, at paras. 61-65, Supp. Book of Authorities, Tab 8.**

20. Here there is no ambiguity. The alleged service is “funding” pursuant to the FNCFS Program and the 1965 Agreement. The facts do not allow for it to be characterized as a “service” and, unlike social assistance, funding is not provided directly to eligible Indian children and their families. Instead, it goes directly to governments and other artificial entities which are not “individuals” and cannot bring claims of discrimination. Because there is no ambiguity, there is also no need to look to external interpretive aids, such as international instruments discussed below.

**Canada (Attorney General) v. Hislop, 2007 SCC 10 at paras. 71-72, Supp. Book of Authorities, Tab 10.**

-FN agency isn't claiming discrim.

21. Canada is party to numerous international human rights conventions and takes its obligations under these and other international instruments seriously. The treaties binding on Canada as a State Party include: the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic Social and Cultural Rights*; the *International Covenant on the Elimination of Racial Discrimination*; and the *Convention on the Rights of the Child*. However, these treaties are not directly enforceable in Canadian law.

**Reference re: Weekly Rest in Industrial Undertakings Act, Minimum Wages Act and Limitation of Hours of Work Act, [1937] C.C.S. No. 168 (The Labour Conventions Case), Supp. Book of Authorities, Tab 25.**

**Francis v. The Queen, [1956] 2 S.C.R. 618 at 621 and 626, Supp. Book of Authorities, Tab 17.**

**Vincent and Min. Employment and Immigration (1983), 148 D.L.R. (3rd) 385 (F.C.A.) at 4, 8-9, Supp. Book of Authorities, Tab 29.**

**Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, at para. 69, Supp. Book of Authorities, Tab 6.**

22. International human rights treaties and customary international law binding on Canada may also form the basis of an interpretive presumption of conformity between the treaty and ordinary legislation where applicable.

**R. v. Hape, 2007 SCC 26 at paras. 53-54, Supp. Book of Authorities, Tab 26.**

***Bouzari v. Islamic Republic of Iran*, 2004 CanLii 871 (ON C.A.) at para. 64 (with respect to treaty law); at para. 65 (with respect to customary international law); leave to appeal to S.C.C. dismissed: [2004] S.C.C.A. No. 410, Supp. Book of Authorities, Tab 9.**

23. Amnesty International refers to various non-binding instruments, recommendations and commentaries to support their contention that the proposed Complaint falls within the ambit of the *Act*. Canada says its proposed interpretation of the legislation is consistent with its binding international human rights obligations, and that such non-binding sources lack sufficient weight to determine the contrary.

24. In the alternative, Canada says that where domestic law is incompatible with international law (which is denied in the case here), domestic law prevails over international law for the purposes of Canadian law.

***R. v. Hape, supra*, at para. 53, Supp. Book of Authorities, Tab 26.**

***Bouzari v. Islamic Republic of Iran, supra*, at para. 66, Supp. Book of Authorities, Tab 9.**

25. As a United Nations General Assembly (UNGA) resolution that was adopted in an aspirational sense, the United Nations Declaration on the Rights of Indigenous Peoples is not a legally-binding instrument. It does not reflect customary international law, and has no legal effect in Canada. At the time of vote at the UNGA, Canada voted against adoption of the text. In its Explanation of Vote at the UNGA, Canada stated that it had significant concerns with the wording of the text, and underlined the fact that it is non-binding, has no legal effect in Canada and that its provisions do not represent customary international law. Canada's position on the Declaration has not changed. Consequently, the Declaration should be given no weight as an interpretive source in domestic law.

**Statement by Ambassador McNee to the General Assembly on the Declaration on the Rights of Indigenous Peoples, September 13, 2007, Supp. Book of Authorities, Tab 32.**

#### D. APPLICABLE STANDARD AND BURDEN OF PROOF

26. This motion was brought after the Commission referred the Complaint to an inquiry before the Tribunal. Contrary to the submissions of the other parties, Canada is not asking the Tribunal to review the decision of the Commission to refer this Complaint to it and the Tribunal does not have that authority.

***International Longshore & Warehouse Union v. Oster*, 2001 FCT 1115, at paras. 28, 30, Supp. Book of Authorities, Tab 20.**

27. The issues before the Tribunal on this motion go directly to the merits of the Complaint against Canada.

28. The present motion is not analogous to a motion to strike brought in a civil action and the test for granting a motion to strike is not the proper test to be applied here. Nor should it be considered akin to a motion for summary judgment. Those types of motions are brought in civil actions where the parties exchange pleadings and then conduct oral and documentary discovery before proceeding to trial. Different considerations apply.

29. The test on a motion to strike a statement of claim because the pleadings do not disclose a reasonable cause of action is “plain and obvious.” A party bringing a motion to strike is prohibited from filing evidence and the material facts (as opposed to the legal argument) in the pleadings are presumed to be true.

30. Moreover, courts do not apply the “plain and obvious” test where it is alleged the pleadings do not disclose a cause of action because the court lacks the jurisdiction to hear the claim.

***Trainor Surveys (1974) Ltd. v. New Brunswick* [1990] F.C.J. No. 201 (TD) at 4, Supp. Book of Authorities, Tab 28.**

31. In a motion for summary judgment, a court must first determine if there is no dispute regarding the material facts in a given case. If that is established, then the

court will decide whether there is a genuine issue for trial and, assuming there is no genuine issue it will apply the law to the facts and render judgment in favour of one of the parties.

32. Neither procedure is set out in the legislation or the rules of the Tribunal. The other parties did not request directions relating to the procedure or scope of the motion.

33. Canada's motion concerns matters going directly to the "merits" of the Complaint – specifically, whether the Complainants can establish a *prima facie* case of discrimination. The standard of proof is the civil standard, i.e. the balance of probabilities and the burden is on the Complainants to demonstrate they have shown a *prima facie* case of discrimination.

***Ontario Human Rights Commission v. Simpson-Sears* [1985] 2 S.C.R. 536, at para. 28, Supp. Book of Authorities, Tab 23.**

34. As part of that *prima facie* case, the Complaint must meet the criteria for discrimination under s. 5 of the *Act*. If not, then the Complaint should be dismissed. The burden of proof remains with the Complainants throughout the inquiry and the timing of having this issue determined is of no consequence to and does not displace the ultimate burden of proof. Having chosen how to respond to the issues raised in Canada's motion (including the evidence they chose to present), they must accept the consequences of their decision.

35. Canada has taken the position that the Complaint does not meet the requirements of s. 5 because the Complainants have not proven that funding is a service. Furthermore, the Assembly of First Nations admits Canada only provides funding to one set of entities (the Recipients) and does not provide funding to child welfare recipients off-reserve. Section 5 of the *Act* requires that a single entity provides a service to an individual while either denying that service or providing a lesser service to another. The facts giving rise to this Complaint do not involve such a relationship.

36. The fact that the Complainants claim violations of human rights does not automatically steer this case into the jurisdiction of the Tribunal because “one must look not to the legal characterization of the wrong, but to the facts giving rise to the dispute.”

***Canada (House of Commons) v. Vaid, 2005 SCC 30 at para. 93, Supp. Book of Authorities, Tab 11.***

37. The Complainants appear to profoundly disagree with the object and purpose of the FNCFS Program and the 1965 Agreement. However, the purpose of the law regarding discrimination and equality rights does not respond to feelings of injury to dignity arising from a profound disagreement with the object and purpose of a law or other enactment. The loss of dignity must be the result of the loss of an advantage or the imposition of a burden.

***The Moresby Explorers Ltd. v. Canada (Attorney General) 2006 FCA 144 (CanLII) at para. 40, Supp. Book of Authorities, Tab 27.***

38. The relevant facts pertaining to the FNCFS Program and the 1965 Agreement are abundantly clear. The only dispute involves the parties’ legal characterization of them. The Tribunal has the authority to determine the legal issues surrounding the dispute and should do so now.

39. Canada’s motion record comprises over 600 pages. There are four affidavits with lengthy and detailed exhibits attached to them. There was also extensive cross-examination lasting approximately four days. The other parties’ submission to the effect that the record is inadequate is hollow. Moreover, they offer no evidence or legal authority to show why the motion cannot be determined at this stage.

40. The Commission is asking the Tribunal to interpret s. 53 in a way that would restrict its authority to determine the motion brought by Canada solely to the question of whether there is an “abuse of process”. That interpretation is not supported by the wording of either the section or other sections of the *Act* - e.g.

sections 48.9, 50 (2) and (3) - when considered contextually. The proposed interpretation would also waste scarce Tribunal resources and would not facilitate access by those with potentially valid claims who would have to queue in the meantime.

41. Furthermore, the proposed interpretation, (which Canada does not admit), does not assist the Commission here. Canada's argument is that the Complaint has no merit because it is beyond the jurisdiction of the Tribunal.
42. The Federal Court, being a statutory as opposed to a court of inherent jurisdiction, has considered questions surrounding its own jurisdiction and has held that bringing an action that is outside the jurisdiction of the Court is an abuse of process. By analogy, bringing a complaint that is outside the jurisdiction of the Tribunal is also an abuse of process.

***Weider v. Beco Industries* [1976] F.C.J. No. 79  
(TD), at para. 4, Supp. Book of Authorities, Tab  
30.**

43. Pursuant to subsection 50(2) of the *Act*, in the course of hearing and determining any matter under inquiry, the Tribunal may decide all questions of law or fact necessary to determining the matter. The matters raised in this motion deal with questions of law, which the Tribunal may hear and determine. It clearly falls to the Tribunal to determine the limits of its own jurisdiction at any time during the course of the inquiry.

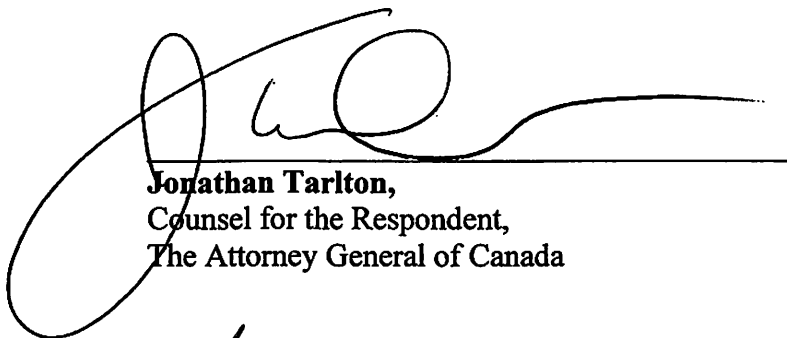
***Coulter v. Purolator*, 2004 CHRT 1 at para. 11,  
Supp. Book of Authorities, Tab 14.**



44. For the above reasons, Canada requests that its motion be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Dated at the City of Ottawa, in the Province of Ontario, this 21 day of May 2010.



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**APPENDIX: LIST OF AUTHORITIES**

AUTHORITIES	PARAGRAPH(S)/ PAGES SITED
<b>LEGISLATION</b>	
<i>Interpretation Act</i> , R.S.C. 1985, c. I-21	s. 17
<i>Canadian Human Rights Act</i> , R.S.C. 1985, c. H-6	ss. 48.9, 50
<b>CASELAW</b>	
<i>A.O. Farms v. Canada</i> (2000), 28 Admin. L.R. 315 (F.C.T.D.)	para 8
<i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	p. 25, 32-34
<i>Auton (Guardian ad litem of) v. British Columbia (Attorney General)</i> 2004 SCC 78	para. 51
<i>Baker v. Canada</i> (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817	para. 69
<i>Battlefords and District Co-operative Ltd. v. Gibbs</i> , [1996] 3 S.C.R. 566	paras. 20-21, 29
<i>Bell ExpressVu Limited Partnership v. Richard Rex</i> , 2002 SCC 42	paras. 27-30, 44, 61-65
<i>Bouzari v. Islamic Republic of Iran</i> (2004), 71 O.R. (3d) 675 (C.A.), 2004 CanLII 871 (ON C.A.); leave to appeal to S.C.C. dismissed: [2004] S.C.C.A. No. 410	paras. 64-66
<i>British Columbia (Ministry of Education) v. Moore</i> , 2008 BCSC 264	paras. 127, 133, 147
<i>Canada (Attorney General) v. Hislop</i> , [2007] 1 S.C.R. 429, 2007 SCC 10	paras. 71-72
<i>Canada (House of Commons) v. Vaid</i> , 2005 SCC 30	para. 93
<i>Canada Mortgage and Housing Corporation v. Inness</i> , [2004] O.J. No. 771	paras. 27, 33
<i>CN v. Canada</i> (Canadian Human Rights Commission), [1987] 1 S.C.R. 1114	p. 1134
<i>Coulter v. Purolator</i> 2004 CHRT 1	para. 11
<i>Dick v. The Queen</i> , [1985] 2 S.C.R. 309	Paras. 39-42
<i>Four B Manufacturing v. United Garment Workers</i> , [1980] 1 S.C.R. 1031	pp. 1048-50

<i>Francis v. The Queen</i> , [1956] S.C.R. 618	p. 621, 626
<i>Gould v. Yukon Order of Pioneers</i> , [1996] 1 S.C.R. 571	Paras. 5, 50
<i>Granovsky v. Canada (Minister of Employment and Immigration)</i> 2000 SCC 28	para. 45
<i>Hodge v. Canada (Minister of Human Resources Development)</i> 2004 SCC 65	para. 18
<i>International Longshore &amp; Warehouse Union v. Oster</i> , 2001 FCT 1115	paras. 28, 30
<i>Laronde v. Warren Gibson Ltd.</i> , [2004] F.C.J. No. 1475	paras. 20-24
<i>Natural Parents v. Superintendent of Child Welfare</i> , [1975] S.C.J. No. 101	pp. 13-14, 16-18
<i>Ontario Human Rights Commission v. Simpson-Sears</i> , [1985] 2 S.C.R. 536	para. 28
<i>Peel (Regional Municipality of) v. Canada et al.</i> , [1992] 3 S.C.R. 762	p. 37
<i>Reference Re Canada Assistance Plan</i> , [1991] 2 S.C.R. 525, 1991 CanLII 74 (S.C.C.)	p. 41
<i>Reference re: Weekly Rest in Industrial Undertakings Act, Minimum Wages Act and Limitation of Hours of Work Act</i> , [1937] C.C.S. No. 168 (The Labour Conventions Case)	
<i>R. v. Hape</i> , [2007] 2 S.C.R. 292, 2007 SCC 26	paras. 53-54
<i>R. v. S. (S.)</i> , [1990] 2 S.C.R. 254	paras. 44-47
<i>The Moresby Explorers Ltd et al. v. The Attorney General of Canada et al.</i> , 2006 FCA 144 (CanLII)	para. 40
<i>Trainor Surveys (1974) Ltd. v. New Brunswick</i> , [1990] F.C.J. No. 201	p. 4
<i>University of British Columbia v. Berg</i> , [1993] 2 S.C.R. 353	
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