


***The Five Most Significant Decisions  
of the Courts in 2006-2007***

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1

**And the Cases Are . . .**

- ***Re Truscott, August 28, 2007, 5 judges Ont. CA***  
*A murder conviction wrongly made 48 years ago was overturned but no declaration of innocence.*
- ***R. v. Clayton, July 6, 2007, (SCC)***
- ***R. v. L.B., Sept. 5, 2007, (Ont. C.A.)***  
*Are Charter rights as to detention and search reduced in gun crimes?*
- ***Canada v. Hislop, March 1, 2007, SCC***
- *CPP survivorship benefits for same sex spouses but not retroactively*
- ***Charkaoui v. Canada Feb. 23, 2007, SCC***  
*IRPA security detention certificates violate Charter*
- ***Pecore v. Pecore and Madsen Estate v. Saylor, May 3, 2007, SCC***
- *Resulting trust applies where aging parent transfers money to joint account with an adult child for care*
- ***Two Additional Cases***



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2

### *Re Truscott, August 28, 2007, Ont.CA*

- 48 years later, the admin. of justice has the capacity to right a miscarriage of justice.
- Truscott spent 10 years in jail and 38 years under the cloud of being a convicted murderer but lived to see declaration of acquittal.
- Truscott was the youngest person to be sentenced to death in Canada, and his case was a major impetus toward the abolition of the death penalty in Canada.
- Min. of Justice referred case to Ont.CA. under CC. s.696.3 on basis that reasonable basis to conclude that a miscarriage of justice likely occurred, following Kaufman Report



### *Re Truscott, August 28, 2007, Ont.CA*

- Truscott's case was reviewed by SCC in 1966 but dismissed.
- In 2001, Truscott asked Min of Justice for a new review.
- Justice Kaufman appointed top review.
- Kaufman report led to referral to Ont. CA by Irwin Cotler



### *Re Truscott, August 28, 2007, Ont.CA*

- OntCA heard evidence for two weeks
- Unanimously held Truscott's conviction was a miscarriage of justice
- Truscott was acquitted but as DNA evidence no longer existed no declaration of innocence could be made
- Because of the passage of time, Truscott was acquitted without a new trial ordered
- See *Ont. C.A.'s synopsis of the decision as Appendix to the paper*
- Case focuses on the plight of the wrongly convicted and the work of NGOs like the AIDWYC: [www.aidwyc.org](http://www.aidwyc.org) (I have no idea what the "Y" stands for)



### *R. v. Clayton (SCC July 6, 2007) and R. v. L.B. (Ont. C.A. September 5, 2007)*

- "Will rights be ignored in gun crimes?" (Toronto Star)
- "A New Slant on the Charter" (Globe and Mail)
- What's going on between the Charter and gun crimes?
- It does seem that our sense of security in the case of gun crimes has caused shift in judicial emphasis



***R. v. Clayton (SCC July 6, 2007) and  
R. v. L.B. (Ont. C.A. September 5, 2007)***

- R. v. Clayton, SCC ruled police acted constitutionally when they set up a roadblock outside a Toronto strip club and searched two men based on a tip from a 911 caller that some guys were displaying handguns
- The accused were not the people identified in the 911 call but the call gave reasonable and probable grounds to believe there were several handguns in a public place and that justified police to stop and search Clayton
- OntCA had overturned the convictions because Charter rights were violated.



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7

***R. v. Clayton (SCC July 6, 2007) and  
R. v. L.B. (Ont. C.A. September 5, 2007)***

- Abella J.: 911 caller identified the presence of ten "black guys" and Clayton and Farmer were of that ethnicity; possession of handguns is a serious offence that presented a possibility of risk to the public, and that only those leaving the parking lot were restricted in their movement.
- Abella J. found the searches justifiable because the police had reasonable grounds to conclude the two occupants of the car were implicated in the crime being investigated.



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8

***R. v. Clayton (SCC July 6, 2007) and  
R. v. L.B. (Ont. C.A. September 5, 2007)***

- Issue in L.B. was whether accused was “detained” when, in response to a question from police officer, he declined ownership of a knapsack his school work was found, along with a loaded .22 calibre handgun.
- Trial judge excluded gun from evidence under s. 24(2) of the Charter and L.B. was acquitted on all counts because trial judge found that L.B. had been arbitrarily detained by the police officers; they failed to inform L.B. of his right to counsel; and had no lawful authority to search the knapsack contravention.



***R. v. Clayton (SCC July 6, 2007) and  
R. v. L.B. (Ont. C.A. September 5, 2007)***

- Moldaver J.A.: police did not breach L.B.’s Charter rights and quoting Iacobucci J. (R. v. Mann) “the police cannot be said to ‘detain’, every suspect they stop for purposes of identification, or even interview”.
- “[t]he law has not yet reached a point that a compulsion to comply will be inferred whenever a police officer requests information, for that would mean police could never ask questions.”
- The acquittal was set aside and a new trial ordered.



### ***R. v. Clayton (SCC July 6, 2007) and R. v. L.B. (Ont. C.A. September 5, 2007)***

- **Moldaver JA:** *This case involves a loaded handgun in the possession of a student on school property. Conduct of that nature is unacceptable without exception.*
- *It is something that Canadians will not tolerate. It conjures up images of horror and anguish the likes of which few could have imagined 25 years ago when the Charter first came to being.*
- *Recently, such images have become all too common – children left dead and dying; families overcome by grief and sorrow; communities left reeling in shock and disbelief.*
- *Absent egregious conduct by police, Canadians would find it unconscionable for L.B. to be set free without a trial on the merits.*



### ***Canada (AG) v. Hislop (SCC Mar 1, 2007)***

- National class action: plaintiffs argued that government violated Charter by refusing to pay them retroactive survivor benefits under CPP following death of same-sex partners.
- Class led by 5 plaintiffs including George Hislop a well-known Toronto gay rights advocate, who began his fight to win CPP survivor benefits after his partner died in 1986.
- Hislop died before SCC released its decision



### *Canada (AG) v. Hislop (SCC Mar 1, 2007)*

- This case was part of the aftermath of *M. v. H.*, where SCC struck down the opposite-sex definition of spouse in the FLA under s.15(1) of the Charter. However, the declaration of invalidity was suspended for six months to give the government time to review the decision.
- Parliament amended 68 federal acts, to address the same-sex issue.



### *Canada (AG) v. Hislop (SCC Mar 1, 2007)*

- In 2000, CPP legislation amended to give same sex couples same pension rights as heterosexuals but changes limited to those whose partners died post 1/1/98.
- Government argued that granting up to 20 years of retroactive payments could cost CPP up to \$80 million and feared it would open the floodgates to even more costly claims under other social programs.
- Trial judge didn't agree and this produced largest class action judgment in Canadian history.
- OntCA limited retroactivity to 12 months.



### *Canada (AG) v. Hislop (SCC Mar 1, 2007)*

- SCC accepted Class Members' argument that surviving same sex partner should be eligible for CPP survivorship benefits where the other partner died after s.15(1) became effective, i.e. 1985.
- But the SCC held that surviving same-sex partners were not entitled to receive retroactive benefits from the time of death of the same-sex partner.



### *Canada (AG) v. Hislop (SCC Mar 1, 2007)*

- LeBel & Rothstein JJ.: it does not automatically follow that a remedy retroactive to enactment of constitutionally invalid statute is the most appropriate remedy.
- Some factors to be considered as to whether response can be prospective:
  - there has been a significant change in the law through judicial intervention;
  - there has been good faith reliance by governments on a prior law;
  - fairness to the litigants; and
  - constitutional role of the legislature in the allocation of public resources.



### *Canada (AG) v. Hislop (SCC Mar 1, 2007)*

- SCC held in asking for payment of arrears to 1985, Class Members overlooked evolution of law as to same-sex rights and to declare that the law today was the same as in 1985, which was not the case.
- Practical result: Living Class Members entitled to CPP survivor pensions from CPP and arrears back Dec. 2000. Class Members who received interim payments from July 2005 were entitled to keep them and will receive pension for life.
- All Class Members entitled to be paid Survivor's Pension on an ongoing basis and arrears back to December 2000, 11 months prior to the filing of the lawsuit, regardless of whether they applied for their Survivor's pension to date.



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17

### *Charkaoui v. Canada (Citizenship and Immigration) (SCC Feb. 23, 2007)*

- SCC unanimously struck parts of Immigration and Refugee Protection Act as to immigration security certificates as being grossly unfair to terrorism suspects.
- the first time since September 11, 2001 that the Supreme Court has challenged Parliament in its anti-terrorism efforts
- Charkaoui and two others were detainees under European Convention for Human Rights. They had been held for 3 years on allegations they were threats to security of Canada due to involvement in terrorist activities.



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18

### ***Charkaoui v. Canada (Citizenship and Immigration) (SCC Feb. 23, 2007)***

- IRPA allowed Min. of Public Safety & Emergency Preparedness to issue security cert. declaring a foreign national or permanent resident inadmissible to Canada on grounds of security.
- Certificates allowed for detention without disclosure of evidence upon which it was said they were a danger to the public.
- SCC: Basic effect of security certificate regime was that a person was prevented from knowing the case s/he had to meet.



### ***Charkaoui v. Canada (Citizenship and Immigration) (SCC Feb. 23, 2007)***

- There were alternative procedures which would better protected right to liberty of detained person without compromising government's interest in national security. (See paper p.20)
- *Security scheme could stand under s.1 (reasonable limit) but because scheme did not disclose case against accused and availability of other measures, it was struck*
- *Government given one year to introduce new legislation*



***Pecore v. Pecore and Madsen Estate v. Saylor (SCC May 3, 2007)***

- Aging parent and one adult child have a joint bank account in which the parent's funds are deposited.
- Funds are used to meet expenses of aging parent but the financial management is done by child. Some payments are made to child.
- On death of parent, there is a resulting trust unless there is clear evidence to confer a gift on the adult child.
- See paper p. 23-24



Honourable Mention Cases

- ***Blank v. Canada (Minister of Justice) (SCC September 8, 2006)***
  - Difference between litigation privilege and solicitor-client privilege - See Paper p. 29-30
- ***Dickie v. Dickie (SCC Feb. 9, 2007)***
  - Court has jurisdiction to refuse to hear appeal of spouse who is default of non-support financial orders
  - Court may use contempt power to enforce non-support financial orders when they are not strictly for "payment of money"



### Conclusion

- My time is up.
- Thank you for your attention.

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