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## Canada Update - Highlights of Major Legal News and Significant Court Case from January 2006 to July 2006

Lindsey Shine

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# CANADA UPDATE—HIGHLIGHTS OF MAJOR LEGAL NEWS AND SIGNIFICANT COURT CASES FROM JANUARY 2006 TO JULY 2006

*Lindsey Shine\**

## I. SUMMARY OF LEGAL NEWS AND DEVELOPMENTS

### A. CANADA AND THE UNITED STATES REACH AGREEMENT ON SOFTWOOD LUMBER

ON April 27, 2006, Prime Minister Harper announced a long-term agreement between Canada and the United States “that resolves the longstanding softwood lumber dispute between the two countries.”<sup>1</sup> The basic terms agreed on in April were incorporated in an agreement initialed on July 1, 2006.<sup>2</sup> All litigation over softwood lumber will end, and there will be unrestricted trade when the price of lumber is higher than \$335 per thousand board feet. When prices drop below this level, Canadian lumber exports face “a combination of export charges and/or volume limits that increase as the market price drops.”<sup>3</sup> Of the \$5 billion Canada collected in duties for softwood lumber, \$1 billion will be returned to the United States.<sup>4</sup> The U.S. lumber companies that brought suit will get \$500 million, and \$450 million will go to fund assistance programs, disaster relief, and sustainable forestry.<sup>5</sup> In addition, \$50 million will go to create a binational industry council composed of representatives from the U.S. and Canadian lumber industries who will “work to strengthen and integrate the North American lumber industry.”<sup>6</sup> Commerce Secretary Carlos M. Gutierrez said the deal “resolve[d] concerns

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\* Lindsey Shine is a 2007 candidate for Juris Doctor from the SMU School of Law. She was Casenote Editor and a Comment Semi-Finalist for the International Law Review Association. Ms. Shine studied comparative law at Oxford University and worked in the SMU Civil Clinic as a student attorney and Chief Counsel. Her undergraduate degrees were in the Plan II Honors Program and Russian, Eastern European, and Eurasian Studies from the University of Texas.

1. Eugene Meehan, *Canada and U.S. Reach Softwood Deal*, L@WLETTER FROM CANADA, May 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/may\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/may_06.asp).

2. *U.S., Canada Agree on Text of Softwood Lumber Agreement*, 34 No. CD-15 HDR CURRENT DEV. 30, July 17, 2006.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

on both sides of the border and allows us to focus on the larger positive trade relationship binding our two countries.”<sup>7</sup> The agreement was set to be signed in August 2006.<sup>8</sup>

#### B. CANADA’S OLDEST CORPORATION SUCCUMBS TO U.S. HOSTILE TAKEOVER BID

The oldest corporation in Canada, Hudson’s Bay Co., “succumb[ed] to an all-cash C\$1.5B hostile takeover offer from U.S. financier Jerry Zucker.”<sup>9</sup> Hudson’s Bay, which has reported several quarters of losses, operates Zellers discount stores and Bay department stores and has “struggled to compete” with rivals like Sears and Wal-Mart.<sup>10</sup> The “Canadian icon, whose land holdings were once bigger than present-day India,” will be mourned by some, but American investors already had ownership of “a big piece of the company.”<sup>11</sup>

#### C. CANADA LEADS IN INTERNATIONAL ARBITRATION

In keeping with Canada’s reputation as a peacemaker, Canadian lawyers have risen to the top ranks of international arbitrators.<sup>12</sup> Canadians, “seen as ideal neutrals,” have acted in eleven of the forty largest Europe-related arbitrations listed by the American Lawyer since 2001.<sup>13</sup> In 1986, Canada made its place in arbitration when it was the first “to adopt modern arbitration legislation based on the United Nations Commission on International Trade Law model law” while at the same time acceding to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>14</sup> Another factor that makes Canada such an attractive arbitrator is its practice of both common law and civil law and its reputation for “being versed in both main legal traditions.”<sup>15</sup> The dual-language tradition in both English and French also makes Canada an ideal candidate for international arbitration. Canada’s lawyers and courts are attractive to American, British, and Australian companies because they use a similar system.<sup>16</sup> The dual-language and legal traditions make Canada attractive to Europeans.<sup>17</sup> And “[e]verybody likes [Canadians] because [they] have a history of neutrality and [are] North

7. *Id.*

8. *Id.*

9. Eugene Meehan, *Canada’s Oldest Corporation Succumbs to U.S. Hostile Takeover Bid*, L@WLETTER FROM CANADA, Feb. 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/feb\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/feb_06.asp).

10. *Id.*

11. *Id.*

12. Julius Melnitzer, *Canadians Tops in International Arbitration*, LAW TIMES, Feb. 13, 2006, [http://www.lawtimesnews.com/index.php?option=com\\_content&task=view&id=404&Itemid=82](http://www.lawtimesnews.com/index.php?option=com_content&task=view&id=404&Itemid=82).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

Americans who are not identified with the United States.”<sup>18</sup>

## II. RECENT SIGNIFICANT COURT DECISIONS

### A. JURISDICTION—CANADA OR THE UNITED STATES?

In *Coulson Aircrane Ltd. v. Pacific Helicopter Tours Inc.*, the British Columbia Supreme Court heard an application by defendants to stay the proceedings on grounds that the Court should decline jurisdiction.<sup>19</sup> The plaintiff is a company incorporated in and operating from British Columbia while the defendant (PHT and PHS) is an American company incorporated in and operating out of Hawaii.<sup>20</sup> The two parties began business interactions in 2000 when Coulson approached Pacific about bidding on a job in support of firefighting operations in Arroyo Grande, California.<sup>21</sup> Coulson brought suit in British Columbia on January 5, 2006, for claims of recovery of debt and helicopter parts and conversion.<sup>22</sup> On February 24, 2006, PHT and PHS brought suit against Coulson in the United States District Court in Hawaii.<sup>23</sup> PHT and PHS then sought a stay of the proceedings in British Columbia, claiming Hawaii was the more appropriate forum.<sup>24</sup>

The issue of whether the British Columbia Court should decline jurisdiction is governed by section 11 of the Court Jurisdiction and Proceedings Transfer Act.<sup>25</sup> One factor the Court considers is whether there will be an advantage to the plaintiff and a disadvantage to the defendant in the jurisdiction.<sup>26</sup> The major advantage of Canadian jurisdiction in this case is “derivative use immunity,” which does not exist in the Hawaii court.<sup>27</sup> In the United States, if criminal allegations are answered as part of a civil proceeding, such evidence could be used against that party in later criminal proceedings.<sup>28</sup> In contrast, Canada’s legal system provides “a protection of use and derivative use immunity” where a party under criminal investigation may be compelled to civil discovery, but the resulting evidence cannot be used to incriminate at a later proceeding.<sup>29</sup> The court in *Coulson* held that this was an advantage for the plaintiff in the British Columbia jurisdiction but that it must be weighed against the fact that there is only a possibility of criminal proceedings.<sup>30</sup> A second advan-

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18. *Id.*

19. *Coulson Aircrane Ltd. v. Pac. Helicopter Tours Inc.*, [2006] B.C.S.C. 961.

20. Eugene Meehan, *Jurisdiction: Canada or the U.S.*, L@WLETTER FROM CANADA, July 25, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/july06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/july06.asp) [hereinafter *Jurisdiction*].

21. *Id.*

22. *Coulson*, [2006] B.C.S.C. 961, at ¶ 8.

23. *Id.* at ¶ 25.

24. *Id.* at ¶ 27.

25. *Id.* at ¶¶ 47-49.

26. *Jurisdiction*, *supra* note 20 (citing *Coulson*, [2006] B.C.S.C. 961, at ¶ 50).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

tage in British Columbia is entitlement of legal costs for the prevailing party. In Hawaii, there is no entitlement to fees.<sup>31</sup>

As for the disadvantages of British Columbia jurisdiction, the main drawback is an increased difficulty and cost for dealing with issues of foreign law because foreign law must be proved as a fact under British Columbia jurisdiction. Foreign law can be argued in a Hawaiian federal court as a matter of law.<sup>32</sup>

The Court in *Coulson* held that British Columbia was the most appropriate forum for the litigation, reasoning that it was the forum with the closest connection to all matters in dispute.<sup>33</sup> The Court held that the action on these issues filed in Hawaii was “a parallel proceeding in the sense of subject matter” but that the Hawaii action “is not a pending proceeding in the sense of the foreign court having asserted jurisdiction.”<sup>34</sup>

#### B. JURISDICTION—REAL AND SUBSTANTIAL CONNECTIONS IN THE INTERNET AGE

In this case, the Ontario Superior Court of Justice was asked to recognize and enforce a judgment granted by the Southern District of New York on issues of copyright infringement and unfair competition from wrongful commercial activity on the Internet.<sup>35</sup> The Court had to decide “whether the New York court properly exercised jurisdiction for activities that originate in Ontario and take place on the Internet.”<sup>36</sup> The Ontario Superior Court applied the “real and substantial connection test” developed in *Morguard*<sup>37</sup> and *Beals*<sup>38</sup> and also looked at *Socan*, a copyright infringement case that held “copyright infringement occurs in Canada where there is a real and substantial connection between this country and the communication in issue” and that jurisdiction may stem from either the country of transmission or reception.<sup>39</sup>

*Morguard*, *Beals*, and *Socan* “signal a new direction” for Canadian courts, but they “can be problematic to apply . . . to activities that take place through a medium that has no jurisdiction.”<sup>40</sup> In *Disney*, Justice Lax noted that the Internet “is a medium which does not respect geographical boundaries.”<sup>41</sup> Internet forum shopping is a new jurisdictional issue, and liability for Internet issues remains “a vast field where the legal

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31. *Id.*

32. *Id.*

33. *Coulson*, [2006] B.C.S.C. 961, at ¶¶ 83-84. See also *Jurisdiction*, *supra* note 20.

34. *Jurisdiction*, *supra* note 20. See also *Coulson*, [2006] B.C.S.C. 961, at ¶ 85.

35. Eugene Meehan, “Real and Substantial Connections” in the Internet Age, L@WLETTER FROM CANADA, May 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/may\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/may_06.asp).

36. *Id.* (citing *Disney Enters. Inc. v. Click Enters. Inc.*, [2006] D.L.R.4th 291).

37. *Id.* (citing *Morguard Invs. Ltd. v. De Savoye*, [1990] S.C.R. 1077).

38. *Id.* (citing *Beals v. Saldanha*, [2003] S.C.R. 416).

39. *Id.*

40. *Id.*

41. *Disney Enters. Inc. v. Click Enters. Inc.*, [2006] D.L.R.4th 291.

harvest is only beginning to ripen.”<sup>42</sup>

The only decision directly on point is *Braintech, Inc. v. Kostiuk*, where the British Columbia Court of Appeal refused to enforce a Texas judgment because the British Columbia resident’s only connection with Texas came from a “passive posting” on an Internet bulletin board and because there was no evidence that anyone in Texas had even viewed the posting.<sup>43</sup> In *Disney*, jurisdiction was established based on Click Enterprise’s “continuous and ongoing business contacts with residents of New York” and the fact “that a substantial part of the events and omissions giving rise to the claims” took place in New York.<sup>44</sup> After finding that the Southern District of New York was the proper jurisdiction, the Ontario Court of Justice granted the application to recognize and enforce the judgment.<sup>45</sup>

### C. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

#### 1. U.K. Order Enforced in Ontario: *Cavell Insurance Co. (Re)*

In *Cavell*, Canadian insurers appealed a decision that recognized an order from the United Kingdom.<sup>46</sup> *Cavell*, the subsidiary of a British company, conducted a property and casualty reinsurance business in Ontario, however, it ceased its business in Canada in 1993 when Canadian involvement was less than 7.5 percent of its operations.<sup>47</sup> When *Cavell* applied in the United Kingdom for approval of a scheme of arrangement, it received an order permitting it to hold a meeting of affected creditors.<sup>48</sup> *Cavell* then applied in Ontario for an order that would implement the U.K. order, which it was granted with some conditions.<sup>49</sup> On appeal, the Court examined whether that initial U.K. order could be recognized in Ontario.<sup>50</sup> The Ontario Court of Appeal upheld the decision to grant the order, basing its decision on private international law.<sup>51</sup>

Although recognizing and enforcing a foreign judgment in Ontario traditionally requires both a final judgment and a definite sum of money, the U.K. order allowing for a meeting of creditors was upheld.<sup>52</sup> The Court reasoned that, although not a final order, it clearly set out a meeting with specific location and notice, which allowed the Court to know exactly what it was recognizing.<sup>53</sup> Further, the Court can enforce the U.K. order

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42. *Id.*

43. *Braintech, Inc. v. Kostiuk*, [1999] D.L.R.4th 46.

44. *Disney*, [2006] D.L.R.4th 291, at ¶ 30.

45. *Id.*

46. Eugene Meehan, *Recognition of Foreign Judgments*, L@WLETTER FROM CANADA, June 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/june06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/june06.asp).

47. *Id.*

48. *Id.*

49. *Id.*

50. *In re Cavell Ins. Co.*, [2006] O.R.3d 500, at ¶ 2.

51. *Id.* at ¶ 4.

52. *Id.* at ¶ 41.

53. *Id.* at ¶ 44.

because its recognition “presents little if any risk of injustice to the appellant” and “does not require the appellant to pay money, or indeed do anything.”<sup>54</sup> The lack of finality of the U.K. order is also not an issue due to the fact that it “merely commences a procedure that is supervised by that court.”<sup>55</sup> The Ontario Court reasoned that “fairness to those who are to be affected by recognition is enhanced rather than diminished,” and “[t]he doctrine of comity is well served by an Ontario recognition order.”<sup>56</sup> Because the appellant was notified of the proposed scheme of arrangement, was served with the full application for the proceedings, chose not to appear, and has a right to be heard in the U.K. proceeding “when it matters,” the Court concluded that the appellant insurers received a fair process.<sup>57</sup>

## 2. *Canada’s Jurisdiction to Enforce a Singapore Judgment?: State Bank of India v. Navaratna*

Three Singapore banks sued Mr. and Mrs. Kothari in the High Court of Singapore for defaulting on obligations they had as director and shareholders of Great Win, a Singapore company that received financing from the banks.<sup>58</sup> Despite being personally served in Ontario, the Kotharis did not defend the actions, and default judgments were obtained against them.<sup>59</sup> The leading case in Canada on the enforcement of foreign judgments is *Beals v. Saldhana*, which held “that the ‘real and substantial connection test’” applied to inter-provincial judgments should also be applied to recognizing and enforcing foreign judgments.<sup>60</sup> Although they were Canadian residents, the Kotharis “were the majority shareholders and guarantors of a Singapore corporation” who signed guarantees that contained “choice of law and forum selection clauses that expressly provided that Singapore law would govern and that the Singapore courts would have jurisdiction to adjudicate all claims.”<sup>61</sup> The Kotharis “did not dispute that this test had been met.”<sup>62</sup> The Court then determined that the Kotharis did not raise “any of the existing defences to the enforcement of a foreign judgment.”<sup>63</sup> The Kotharis argued that the judgments were unenforceable due to issues of ambiguity regarding interest calculation, but the Court held that “at worst, these arguments would render the interest portions of the judgments unenforceable” and “would not have

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54. *Id.* at ¶ 45.

55. *Id.* at ¶ 46.

56. *Id.* at ¶¶ 50 & 48.

57. *Id.* at ¶ 57.

58. Eugene Meehan, *Canada’s Jurisdiction to Enforce a Singapore Judgment?*, L@WLETTER FROM CANADA, May 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/may\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/may_06.asp) [hereinafter *Singapore*]. See also *State Bank of India v. Navaratna*, [2006] O.J. No. 1125.

59. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

60. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

61. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

62. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

63. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

the effect of rendering the whole judgments unenforceable.”<sup>64</sup>

3. *Canada’s Jurisdiction to Enforce a Singapore Judgment?: Oakwell Engineering Ltd. v. Enernorth Industries Inc.*

In April 2006, the Ontario Court of Appeal heard *Oakwell Engineering Ltd. v. Enernorth Industries Inc.*, a matter where the parties, similar to *Navaratna*, had entered into an agreement that provided for all disputes to be governed by Singapore law.<sup>65</sup> In this case, the parties signed a settlement agreement that provided any future disputes would be governed by Singapore law and where applicant brought suit against respondent, won, and then respondent’s appeal was dismissed.<sup>66</sup> When applicant brought action to enforce the Singapore judgment in Ontario, respondent argued that the judgment should not be recognized because “the Singapore legal system does not conform to the Canadian concept of justice” and because of bias on the part of Singapore judges.<sup>67</sup> In rejection of these arguments, the application was granted, and the Singapore judgment was enforced in Canada.<sup>68</sup>

### III. RECENT SIGNIFICANT SUPREME COURT OF CANADA DECISIONS

#### A. TORTS AND INSURANCE: SOCIAL HOST LIABILITY

On May 5, 2006, the Supreme Court of Canada issued judgment in *Childs v. Desormeaux*, dismissing the appeal of a plaintiff who sought to hold liable the social hosts of a party where a guest became intoxicated and subsequently injured the plaintiff on the highway.<sup>69</sup> The trial judge found that a reasonable person acting as social host would have foreseen an injury but that policy considerations negated any prima facie duty of care.<sup>70</sup> On appeal, the Court found that “the circumstances did not disclose even a *prima facie* duty of care” and that hosts cannot be liable unless they “are actively implicated in creating the risk that gives rise to the accident.”<sup>71</sup>

The Supreme Court of Canada heard arguments on whether social hosts of private events where alcohol is served owe any duty of care to third parties.<sup>72</sup> While it is clear that commercial hosts, such as bars, owe a

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64. *Singapore*, *supra* note 58; *Navaratna*, [2006] O.J. No. 1125.

65. Eugene Meehan, *Enforcement of Foreign Judgments in Canada*, L@WLETTER FROM CANADA, Jan. 9, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/jan\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/jan_06.asp).

66. *Id.*

67. *Id.*

68. *Id.*

69. Eugene Meehan, *Torts and Insurance: Social Host Liability*, L@WLETTER FROM CANADA, June 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/june06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/june06.asp); *see also* *Childs v. Desormeaux*, [2006] D.L.R.4th 257.

70. *Childs*, [2006] D.L.R.4th 257, at ¶ 5 (citing *Childs v. Desormeaux*, [2002] D.L.R.4th 217).

71. *Childs*, D.L.R.4th 257, at ¶ 6.

72. *Id.* at ¶ 8.



duty of care, this case is the first to consider liability of social hosts to third parties.<sup>73</sup> The Court noted that important differences separate commercial and social hosts, with liability applying to commercial hosts due to factors such as the capacity to monitor alcohol consumption, the strict regulation of commercial establishments and the sale and consumption of alcohol by the legislatures, and “the contractual nature of the relationship between a tavern keeper serving alcohol and a patron.”<sup>74</sup>

The Supreme Court of Canada, agreeing with the Court of Appeals, held that a social host of a party where alcohol is present “is not under a duty of care to members of the public who may be injured by a guest’s actions, unless the host’s conduct implicates him or her in the creation or exacerbation of the risk.”<sup>75</sup> No statutory duty exists for a host to monitor levels of guests’ alcohol consumption, and the Court found that, for “merely supplying the venue of a BYOB party,” imposing a duty of care on social hosts “would not be just and fair.”<sup>76</sup>

#### B. CRIMINAL LAW: DNA DATABASE

In *R v. Rodgers*, a repeat sexual offender appealed the constitutionality of the *ex parte* collection of his DNA under section 487.055(1)(c) of the Criminal Code for inclusion in the DNA data bank, which occurred even though he was convicted prior to the 1998 DNA Identification Act, and he was not part of an ongoing investigation of any crime.<sup>77</sup> Dennis Rodgers challenged the Criminal Code provision, arguing it is unconstitutional under sections 7, 8, 11(h), and 11(i) of the Canadian Charter of Rights and Freedoms.<sup>78</sup>

The Court examined issues of privacy and physical integrity, finding that the collection of DNA samples for the data bank from certain classes of offenders is reasonable and that, while it “is no question that the taking of bodily samples for DNA analysis without the person’s consent constitutes a seizure within the meaning of [section] 8 of the *Charter*,” section 8 is only a protection against unreasonable seizures.<sup>79</sup> The Court noted that the impact on an offender’s physical integrity is minimal and that such offenders have a greatly reduced expectation of privacy where collecting DNA for identification purposes only is not overly invasive.<sup>80</sup> Convicted offenders “would reasonably expect the authorities to gather and retain identifying information, such as fingerprints, . . . [t]he bodily sample here is simply another form of identification.”<sup>81</sup> Mr. Rodgers’

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73. *Id.*

74. *Id.* at ¶¶ 17, 18, & 22.

75. *Id.* at ¶ 47.

76. *Id.*

77. Eugene Meehan, *Criminal Law: DNA*, L@WLETTER FROM CANADA, May 1, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/may\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/may_06.asp) [hereinafter *Criminal Law*]. See also *R. v. Rodgers*, [2006] S.C.R. 554.

78. *Rodgers*, [2006] S.C.R. 554, at ¶2.

79. *Id.* at ¶¶ 5 & 25.

80. *Id.* at ¶ 5.

81. *Criminal Law*, *supra* note 77 (quoting *R. v. Murrins*, [2002] N.S.R.2d 288, at ¶ 41).

residual privacy interest in his DNA, when the sample is only used for identification, is not infringed upon.<sup>82</sup>

The Court compared collecting DNA for identification to the taking of fingerprints rather than to investigative search warrants.<sup>83</sup> Describing DNA profiling as “just a more sophisticated, modern, efficient and reliable means of gathering identification evidence than traditional fingerprinting,” the Court found that no prior judicial authorization under section 7 or 8 of the Charter is required “to permit the routine and minimally intrusive taking of bodily samples from *the most dangerous convicted offenders in Canada*, so long as such samples are used solely for identification purposes.”<sup>84</sup> Although “[t]he DNA data bank constitutes a substantial and novel invasion of privacy,” the collection of DNA from certain classes of offenders for use as an identification tool is constitutional.<sup>85</sup>

### C. FREEDOM OF RELIGION

In a decision on March 3, 2006, the Canada Supreme Court held that prohibiting an Orthodox Sikh student from wearing a kirpan, a religious object that resembles a dagger, to public school is unjust and more than a minimal limitation of the student’s rights.<sup>86</sup> The Court had to determine whether prohibiting the student from wearing his kirpan would infringe on his right to equality and, if so, whether that infringement could be justified under section 1 of the Canadian Charter or section 9.1 of the Quebec Charter.<sup>87</sup>

The Court found that the restriction on Gurbaj Singh was an infringement upon his freedom of religion that was “neither trivial nor insignificant” and one that forced him to choose between his religion and the public school system, thus denying his right to attend public school.<sup>88</sup> For an infringement to be justified, it has to be “‘minimal’ . . . so that rights are impaired no more than necessary.”<sup>89</sup> The school system advanced arguments for safety, asserting “that the kirpan is essentially a dagger, a weapon designed to kill” and that their presence in schools creates a risk of violence.<sup>90</sup> But for Orthodox Sikhs, it “is above all a religious symbol,” whose name derives from words meaning mercy, kindness, and honor.<sup>91</sup> The Court rejected the school system’s arguments, commenting

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82. *Rodgers*, [2006] S.C.R. 554, at ¶ 42.

83. *Id.* at ¶ 32.

84. *Id.* (citing appellant’s factum, at ¶ 53 (emphasis in original)).

85. *Id.* at ¶ 95.

86. Eugene Meehan, *Freedom of Religion: Wearing of Kirpan at School*, L@WLETTER FROM CANADA, Apr. 3, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/april\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/april_06.asp). See also *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] S.C.R. 256.

87. *Multani*, [2006] S.C.R. 256, at ¶ 13.

88. *Id.* at ¶ 40.

89. *Id.* at ¶ 50 (quoting *RJR-MacDonald Inc. v. Canada*, [1995] S.C.R. 199, at ¶ 160).

90. *Multani*, [2006] S.C.R. 256, at ¶¶ 37 & 56.

91. *Id.* at ¶ 37.

that such an assertion “is also disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism.”<sup>92</sup>

The Court found little risk of violence due to a lack of any behavioral problems in the student’s history and the great difficulty involved for a student to steal the kirpan to use as a weapon.<sup>93</sup> The Court also commented on the greater ease students would have in bringing another weapon to school than in trying to steal a kirpan from a Sikh student, not to mention potentially dangerous objects already in schools “such as scissors, pencils and baseball bats.”<sup>94</sup> Noting that “[r]eligious tolerance is a very important value of Canadian society,” the Court found that respondents failed to show that prohibiting Gurbaj Singh from wearing his kirpan could be reasonably concluded to minimally impair his rights.<sup>95</sup>

#### D. TRANS-BORDER LIMITATIONS

In *Castillo v. Castillo*, a wife argued that section 12 of the Alberta Limitations Act gave her a two-year statute of limitations period despite the fact that California’s one year limitations period had already expired.<sup>96</sup> The Court of Queen’s Bench held that neither limitation period could have expired for the wife to bring action in Alberta under section 12 and thus dismissed the wife’s action as barred under California’s limitation statute.<sup>97</sup> In a unanimous decision, the Supreme Court of Canada held the appeal dismissed.<sup>98</sup> The Court cited its opinion in *Tolofson*, where it stated that limitations law is substantive in nature and thus, when the California limitations period ran in *Castillo*, the husband “acquired a substantive right under California law not to be further troubled.”<sup>99</sup> The Court clarified that “[s]ection 12 does not purport to revive time-barred actions.”<sup>100</sup> Section 12 only applies where the foreign limitation period is longer than the period in Alberta, but this was not the case in *Castillo* and thus the appellant’s claim was barred.<sup>101</sup>

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92. *Id.* at ¶ 71.

93. *Id.* at ¶¶ 57-58.

94. *Id.*

95. *Id.* at ¶ 76.

96. Eugene Meehan, *Torts: Trans-Border Limitations*, L@WLETTER FROM CANADA, Jan. 9, 2006, [http://www.eugenemeehan.com/lawletters/uslawletters\\_pdfs/jan\\_06.asp](http://www.eugenemeehan.com/lawletters/uslawletters_pdfs/jan_06.asp). See also *Castillo v. Castillo*, [2005] S.C.R. 870.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*