S.C.C. File No. 41210

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

B E T W E E N:

ATTORNEY GENERAL OF QUÉBEC

APPELLANT
(appellant/incidental respondent)

-AND-

BIJOU CIBUABUA KANYINDA

RESPONDENT
(respondent/incidental appellant)

-AND-

COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

RESPONDENT
(mise en cause/incidental appellant)

[Style of cause continued on next page]

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Pursuant to Rule 42 of the Rules of the Supreme Court of Canada, SOR/2002-156

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PART I - OVERVIEW AND FACTS

1. On May 31st, 2019, the Respondent, Bijou Cibuabua Kanyinda, applied for judicial review of section 3 of Quebec's *Reduced Contribution Regulations* (*RCR*) under the *Educational Childcare Act* (*ECA*) which defines the categories of parents who have access to government subsidized childcare services in Quebec. These categories include (1) Canadian citizens and (2) permanent residents, (3) parents who hold a work permit and are residing in Quebec primarily for work purposes, (4) foreign students who are recipients of a scholarship from the Government of Quebec, (5) recognized refugees and protected persons who hold a *Certificat du Sélection Québécois* (CSQ), (6) parents who have been granted protection under the *Immigration and Refugee Protection Act* (*IRPA*) and who hold a CSQ, (7) holders of temporary resident permits issued under section 24 of the *IRPA* who are eligible to apply for permanent residency and hold a CSQ, (8) parents otherwise eligible to apply for permanent residency under the *IRPA* and who hold a CSQ.[1]

2. Ms. Kanyinda, who is a Congolese (DRC) national, arrived in Canada in 2018 and claimed asylum along with her three minor children. Although she was granted a work permit after making her refugee claim, Ms. Kanyinda experienced significant barriers to entering the workforce as she was denied access to affordable childcare on the basis of her status as a refugee claimant.[2]

3. The central issue in this appeal is the constitutionality of s.3 *RCR*, which denies refugee claimants access to government subsidized childcare services until they have been both granted refugee or protected person status and received a *Certificat du Sélection Québécois* (CSQ), as per paragraph 5 of the regulation. The regulation is being challenged on the basis of s.15(1) of the *Canadian Charter of Rights and Freedoms* as being discriminatory on the enumerated ground of sex, and the analogous grounds of citizenship and immigration status.[3]

4. The Court of Appeal found that s.3 *RCR* violates s.15(1) of the *Charter* because it is discriminatory

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[1] *Educational Childcare Act*, s-4.1.1, 2005 c.47 [*ECA*]; s.3 *Reduced Contribution Regulation*, s-4.1.1, r.1 under the *ECA*, s.106 [*RCR*].
[2] Factum of the Respondent at para 5-15.
[3] *Canadian Charter of Rights and Freedoms*, s 15(1), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), c 11 [*Charter*].

on the basis of sex.[4] Because the Court found that the regulation already violated s.15(1) on this ground, it did not analyze the additional grounds of citizenship and immigration status.[5] In the appellant's Factum for the present appeal, the Attorney General of Quebec addresses these additional grounds. The main thrust of the appellant's argument is that s.3 *RCR* creates a distinction primarily on the basis of immigration status, rather than sex or citizenship.[6] And, because immigration status has not yet been recognized as an analogous ground (and the appellant argues that it does not have sufficiently personal or immutable characteristics to be considered analogous), s. 3 *RCR* does not violate s.15(1) of the *Charter*.[7] The Respondent, on the other hand, argues that s.3 *RCR* is discriminatory on all three distinct grounds and that immigration status should be recognized as an analogous ground.[8]

5. Given that s.3 *RCR* is being challenged on multiple grounds of discrimination, The Refugee Centre argues that the present appeal offers an opportunity for this Honourable Court to revisit the relevance and applicability of intersectionality to the analysis of s.15(1) of the *Charter*. We suggest that intersectionality is a valuable analytical framework that can and should be applied to both prongs of the s.15(1) test, in order to gain a more accurate understanding of the disproportionate impact of s.3 *RCR* on women refugee claimants and the ways in which sex, citizenship, immigration status, and other identities intersect to perpetuate the historical and systemic disadvantages that this group faces. In short, we submit that, rather than addressing these various grounds of discrimination separately, they should be analyzed together by applying an intersectional lens to s.15(1) of the *Charter*.

PART II - POSITION ON QUESTIONS IN ISSUE

6. The Refugee Centre takes no position on the outcome of the appeal. Our intervention will be limited to the following issue arising in this appeal:

    1. Is intersectionality a useful and relevant analytical framework to understand discrimination

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[4] *Procureur général du Québec c. Kanyinda* 2024 QCCA 144. [*Kanyinda*]
[5] *Ibid* at para 121.
[6] Appellant's Factum at para 47.
[7] *Ibid*.
[8] Respondent's Factum *supra* note 2.

under s.15(1) of the *Charter*? If so, how can it be applied?

PART III - ARGUMENT

A) Intersectionality and s.15(1) of the *Charter*

7. Section 15(1) of the *Charter* prohibits both direct and indirect discrimination on the grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[9] The jurisprudence of this Honourable Court has also evolved to recognize a number of analogous prohibited grounds of discrimination in addition to those enumerated in s.15(1), such as sexual orientation and citizenship.[10]

8. The current test for proving both direct and indirect discrimination was articulated by this Honourable Court in ***Fraser v. Canada (Attorney General)* 2020 SCC 28** and more recently refined in ***R v. Sharma* 2022 SCC 39**.[11] It can be summarized as follows: 1) Does the impugned law or state action, on its face or in its impact, create a distinction based on an enumerated or protected ground?; 2) Does the law or state action impose a burden or deny a benefit in such a way that it reinforces, perpetuates, or exacerbates a disadvantage?[12]

9. The first prong of the test involves identifying a 'comparison group' that helps illustrate the differential treatment experienced by the claimant group, as well as a causal link between the impugned law and the differential treatment.[13] The second step involves a broader analysis of the impact of the law on the protected group within the context of historical or systemic disadvantage, and invites a consideration of "economic exclusion or disadvantage, social exclusion, psychological harms, physical harms or political exclusion."[14] As this Court observed in *Sharma*, the evidentiary burden for both steps of the s.15(1) analysis has been historically unclear in the jurisprudence of

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[9] S. 15(1) *Charter supra* note 3.
[10] See *Vriend v. Alberta*, [1998] 1 S.C.R. 493; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.
[11] *R v Sharma*, 2022 SCC 39 at para 28 [*Sharma*]; *R v. C.P.* 2021 SCC 19 paras 56 and 14*1; Fraser v. Canada (Attorney General)* 2020 SCC 28 at para 28 [*Fraser*]; *Kahkewistahaw First Nation v. Taypotat* 2015 SCC 30 at paras 19-20 [*Taypotat*].
[12] *Ibid*, paraphrased.
[13] *Sharma supra* note 11 at paras 41-49.
[14] *Ibid* at para 52 citing *Fraser supra* note 11 at para 76.

anti-discrimination law in Canada.[15] Among other factors, this Court offered guidance in both *Fraser* and *Sharma* that evidence of the "full context of the claimant group's situation" and evidence about the practical outcomes of the impugned law can be helpful for the first step, while the second step requires evidence of a "negative impact or worsened situation."[16]

10. Intersectionality recognizes that individual experiences of inequality differ depending on multiple intersecting identity markers such as sex, race or ethnicity, disability, economic status, age, citizenship, immigration status, and so on. For example, a white, Canadian woman's experience of workforce discrimination in Canada would differ significantly from that of a black Congolese woman due to the intersecting identities of sex, nationality, race, and immigration status. Intersectionality recognizes that some individuals are "multiply-burdened" by possessing multiple identities that have been historically discriminated against.[17] Proponents of the theory argue that it is essential to our understanding of equality and discrimination, because it recognizes that inequality does not exist solely on a 'single-axis' such as the distinct grounds enumerated in s.15(1) of the *Charter*. Rather, these identities intersect to deepen an individual's experience of inequality and make those who are 'multiply-burdened' more vulnerable to discrimination.[18]

11. Canadian anti-discrimination jurisprudence first recognized intersectionality in ***Law v. Canada (Minister of Employment and Immigration)* 1999 SCR 497**, where this Court held:

> "[t]here is no reason in principle…why a discrimination claim positing an intersection of grounds cannot be understood as analogous to, or as a synthesis of, the grounds listed in s.15(1)."[19]

Furthermore, in ***Withler v. Canada (Attorney General)* 2011 SCC 12,** this Court recognized that the second prong of the s.15 analysis "provides the flexibility required to accommodate claims based on intersecting grounds of discrimination."[20] In *Fraser*, intersectionality was explicitly

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[15] *Ibid* at para 39.
[16] *Ibid* at para 49, 52. See also *Fraser supra* note 11 at para 57, *Withler v. Canada (Attorney General)* 2011 SCC 12 at para 37, 43.
[17] Kimberlé Crenshaw, "Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics" (1989) U. Chi. Legal F. 139 at pg 140. <https://philpapers.org/archive/CREDTI.pdf?ncid=txtlnkusaolp00000603>
[18] *Ibid*.
[19] *Law v. Canada (Minister of Employment and Immigration)*, 1999 SCR 497 at para 94.
[20] *Withler supra* note 16 at para 63.

referenced by Justice Abella:

> "[a] robust intersectional analysis of gender and parenting - as this case shows - can be carried out under the enumerated ground of sex, by acknowledging that the uneven division of childcare responsibilities is one of the 'persistent systemic disadvantages [that] have operated to limit the opportunities available' to women in Canadian society."[21]

Lastly, most recently in *Sharma*, the dissent argued that intersectionality should have featured more prominently in the decision because the case involved the intersecting grounds of sex, race, and economic status for an economically disadvantaged indigenous female offender.[22]

12. Thus, intersectionality has featured in some of this Court's most prominent jurisprudence on the anti-discrimination provisions of the *Charter*. While this Court has not explicitly adopted an intersectional approach to the s.15(1) analysis, the jurisprudence suggests this kind of analysis is possible - particularly given the recent emphasis on a contextual approach to s.15(1) articulated in *Fraser* and *Sharma* and the flexible evidentiary requirements of the second prong of the test.

13. We submit that the multiple grounds of discrimination raised by the parties on this appeal provide the opportunity for this Honourable Court to revisit the topic of intersectionality and refine its position on the relevance and use of the theory in the s.15(1) analysis in the following ways.

B) Intersectionality helps illuminate the 'full context' of women refugee claimants who are 'multiply-burdened'

14. First, adopting an intersectional approach allows us to recognize that women refugee claimants are "multiply burdened" by various identity markers that intersect to compound their experience of discrimination. These multiple burdens help illuminate the 'full context' of the claimant group, which this Court has deemed useful in establishing discrimination under the first prong of the s.15(1) test.[23] As established in the Affidavit from The Refugee Centre's Executive Director

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[21] *Fraser supra* note 11 at para 116.
[22] *Sharma supra* note 11 at para 196.
[23] Fraser *supra* note 11. See also *Ontario v. G* 2020 SCC 38 [*Ontario v. G*].

submitted in our Motion to Intervene, many of women refugee claimants are ethnic minorities, they are all of a foreign nationality and predominantly racialized, some speak neither French nor English, some are members of the LGBTQ+ community, and a considerable number are economically disadvantaged and on welfare with precarious immigration statuses.[24] Importantly, a large number of these women have fled gender-related persecution and intimate partner violence and require psycho-social support for Post-Traumatic Stress Disorder (PTSD) and other mental health issues. Survivors of gender-based violence often flee their countries alone with their children and become single mothers in Canada. Both single mothers and women from two parent households alike often lack a support system of other family members who can help care for their children because they have been forced to leave their home countries. Taken together, *all* of these factors compound to heighten the disproportionate impact of s.3 *RCR* for women refugee claimants as denying them access to subsidized childcare poses an additional barrier to integrating into the workforce and into Canadian and Quebecois society. These factors are each critical components of the 'full context' of women refugee claimant's situation and identity, which cannot be viewed in isolation.

15. In this regard, it is worth highlighting the jurisprudence in ***Ontario v. G* 2020 SCC 38**, in which this Court drew a connection between intersectionality and substantive equality:

> "Substantive equality demands an approach "that looks at the full context, including the situation of the claimant group and . . . the impact of the impugned law" on the claimant and the groups to which they belong, **recognizing that intersecting group membership tends to amplify discriminatory effects** [...] or can **create unique discriminatory effects not visited upon any group viewed in isolation**."[25]

16. Furthermore, Federal Court of Appeal in ***Turner v. Canada (Attorney General)* 2012 FCA 159** held the following regarding intersectionality and discrimination:

> "[...] [W]hen multiple grounds of discrimination are present, **their combined effect may be more than the sum of their individual effects**. The concept of intersecting grounds

[24] Affidavit of Abdulla Daoud, Executive Director of The Refugee Centre, Motion to Intervene for The Refugee Centre, at pages 8-10.

[25] *Ontario supra* note 23 at para 47, emphasis added. See also *Centrale des syndicats du Québec v. Quebec (Attorney General)*, 2018 SCC 18 at para 27 [*Centrale*] citing *Withler supra note* 16 at para 40.

> also holds that analytically separating these multiple grounds minimizes what is, in fact, compound discrimination. **When analyzed separately, each ground may not justify individually a finding of discrimination, but when the grounds are considered together, another picture may emerge."**[26]

17. In the present case, we submit that it is essential to analyze the multiple grounds of discrimination raised by the parties *together* rather than *separately* in order to capture the 'full context of the claimant group's situation'. It is not enough to ask whether s.3 *RCR* creates a disproportionate impact on women refugee claimants solely on the basis of their sex, citizenship, or immigration status - substantive equality demands that we consider these group identities together to understand the claimant group's experience of discrimination. To view the disproportionate impact through only one lens minimizes the extent of discrimination.

C) An intersectional approach allows us to contemplate more analytically useful comparison groups

18. Intersectionality also allows us to consider different and more analytically useful comparison groups under the first prong of the s.15(1) test because it recognizes that inequality can exist *within* the broad categories contemplated by the law. From this perspective, inequality and discrimination can exist between different sub-groups of women in addition to between women and men. As Colleen Sheppard suggests, "One of the main contributions of intersectionality theory is its insistence on questioning and challenging the adequacy of traditionally binary categories of analysis. The categories of "women," "sex," and "gender," for example, are challenged for the ways in which they have been used to endorse essentialist understandings of "women" that fail to consider the differences between women or problematize categorical dichotomies."[27] In short, intersectionality prompts us to think about the "diversity within the category of 'woman.'"[28]

19. That discrimination can be partial and impact only certain subgroups of a protected group of

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[26] *Turner v. Canada (Attorney General)* 2012 FCA 159 at para 48, emphasis added.
[27] Colleen Sheppard, "Grounds-Based Distinctions: Contested Starting Points in Equality Law" (2024) 35:1 Can J Women & the Law 1 at 1-30, online: Project MUSE <https://muse.jhu.edu/article/947746.> at pg. 22.
[28] *Ibid* at pg. 22-23.

individuals has long been recognized by this Honourable Court.[29] In ***Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252**, one of the first cases that recognized partial discrimination, Dickson C J (as he then was) stated the following:

> "If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value. . . . To deny a finding of discrimination in the circumstances of this appeal is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive."[30]

Furthermore, in ***Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur* 2003 SCR 504**, this Court held that "[t]he question, in each case, will not be whether the state has excluded all disabled persons or failed to respond to their needs in some general sense, but rather whether it has been sufficiently responsive to the needs and circumstances of each person with a disability."[31]

20. This concept was reiterated in *Fraser*, where this Court recognized that not *all* women need to be discriminated against for a law to be discriminatory: "The fact that discrimination is only partial does not convert it into non-discrimination, and differential treatment can occur on the basis of an enumerated ground despite the fact that not all persons belonging to the relevant group are mistreated."[32]

21. Thus, given that this Court has recognized that discrimination that only impacts sub-groups of a protected group is contrary to s.15(1), we submit that intersectionality offers a useful analytical framework to identify and compare those sub-groups in order to gain a better understanding of the claimant group's 'full context'.

22. This line of thinking is useful in the present case because s.3 *RCR* and the subsidized daycare regime in Quebec was initially designed to help address the challenges mothers in particular face in

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[29] *Fraser*, *supra* note 11 at para 72-75; See also *Centrale*, *supra* note 25 at para. 28.
[30] *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 at para 1288-1289 cited in *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur* 2003 SCC 54 at para 76 [*Laseur*].
[31] *Laseur supra note* 30 at para 81.
[32] *Fraser supra* note 11.

accessing the workforce, therefore the regulation clearly does not discriminate against *all* women. Moreover, when we analyze the most obvious comparison under a sex-discrimination claim - whether the impugned legislation impacts women and men differently - the disproportionate impact of s.3 *RCR* might not be as clear. Both women and men refugee claimants are denied access to subsidized daycare under the regulation. However, from an intersectional perspective, we can move beyond the binary categories of 'women' and 'men' and consider inequalities between and amongst the protected group of women. Similar to this Court's approach in *Laseur*, the key question that we need to ask is whether "this law impact[s] women, in all of their diversity, in harmful ways?"[33]

23. To use the example cited above, s.3 *RCR* creates a fundamentally different impact on a white, financially stable Canadian mother with daycare aged children than a black, Congolese woman who is claiming asylum in Canada with her minor children. While the Canadian mother might face the same challenges in accessing the workforce that are associated with her sex, such as being disproportionately responsible for childcare, she would not face the same challenges that the Congolese mother faces on the basis of her national origin and race, her immigration status, her history of trauma, economic precarity, and lack of family support. Each of these factors intersect to impose additional barriers on women refugee claimants that are not experienced by other categories of women seeking to enter the workforce as a mother who do have access to the subsidized daycare regime. The disproportionate impact therefore is clear – s.3 *RCR* is, as the appellant highlights, designed to address the historical disadvantage that mothers face in accessing the workforce. However, it very clearly lightens that disadvantage for only certain categories of women, while excluding and worsening the disadvantage for those who are the most vulnerable.

24. This example highlights why intersectionality is essential to Canadian anti-discrimination law - it helps illuminate the impact of a law on the most vulnerable segments of individuals who are meant to benefit from the protections of s.15(1). In the present case, just because s.3 *RCR* excludes both women and men refugee claimants from subsidized daycare does not mean it is not discriminatory – the disproportionate impact is clear when the law is assessed using the comparison of diverse groups of women. As Colleen Sheppard asserts, if we do not consider the diversity within protected groups of individuals, there is a risk that legal and policy initiatives will be "unresponsive to the

[33] Sheppard *supra* note 27 at pg. 25, emphasis added.

needs of the most vulnerable individuals within the categories of discrimination law."[34] Thus, using an intersectional lens to understand discrimination beyond the binary comparison groups historically contemplated by the law is essential to ensuring that Canadian anti-discrimination jurisprudence is responsive to the needs of the most vulnerable individuals that s.15(1) is designed to protect – including women refugee claimants.

D) Intersectionality illuminates the negative impact of s.3 *RCR* on women refugee claimants

25. The intersecting factors described above are also essential to consider when examining how s.3 *RCR* worsens the situation of women refugee claimants by exacerbating a historical or systemic disadvantage under the second prong of the s.15(1) test. As indicated in the Affidavit of The Refugee Centre's Executive Director, refugee claimants are one of the most vulnerable groups in Canada. They are typically in extremely financially precarious situations and heavily dependent on community-based organizations, such as the Centre, for essential needs such as housing, food, and psycho-social support. This is particularly true when they first arrive in Canada. Furthermore, women refugee claimants, like all women in Canada, are disproportionately responsible for childcare responsibilities - a fact that has been recognized by this court in *Fraser*.[35] This is particularly true for single mothers, which represent a large proportion of women refugee claimants. Already faced with multiple, intersecting barriers to integrating into the workforce and earning a living upon arrival in Canada, denying women refugee claimants access to subsidized child care makes those barriers almost insurmountable. Although women refugee claimants are legally entitled to work in Canada after receiving a work permit once they make their refugee claim, without access to affordable childcare, the work permit becomes meaningless.

26. As a result, many of these women become more reliant on already scarce community services such as those offered by The Refugee Centre, and less able to integrate successfully into Quebecois and Canadian society. Thus, s.3 *RCR* exacerbates the historical disadvantages faced by women refugee claimants not just because of their sex - but also because of the intersecting grounds of race, citizenship, immigration status, economic status, family status, among other factors. It worsens the already precarious situation that most women refugee claimants find themselves in. Viewing the

[34] *Ibid* at pg. 23.
[35] *Fraser supra* note 11 at paras 97-116.

historical disadvantage exclusively from the distinct grounds enumerated in s.15(1) does not fully capture the extent to which s.3 *RCR* exacerbates the disadvantage that women refugee claimants face. Thus, an intersectional lens is critical to understanding the full, practical impact of s.3 *RCR* on women refugee claimants.

27. In summary, the multiple, intersecting grounds of inequality leveraged by this appeal offers an opportunity for this Court to revisit the applicability of intersectionality to the s.15 analysis. This case clearly illustrates the value of applying an intersectional lens. Under the first prong of the s.15 test, an intersectional lens helps provide evidence of the "full context of the claimant group's situation" by examining how the intersecting identities of sex, citizenship, and immigration status - as well as race, ethnicity, disability, language, family status, sexual orientation, and economic status - intersect in a way that heightens the disproportionate impact of s.3 *RCR* for women refugee claimants. Intersectionality also allows us to engage with different comparison groups that go beyond the binary categories of women and men and recognize the inequalities that exist between women. Under the second prong, an intersectional lens sheds light on the multiple historical and systemic disadvantages that this group has and continues to experience, and the ways in which s.3 *RCR* exacerbates that disadvantage.

PART IV - SUBMISSION ON COSTS

28. The Refugee Centre seeks no costs and requests that no order as to cost be awarded against it.

PART V AND VI - NOT APPLICABLE

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF APRIL, 2025.

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PART VII - TABLE OF AUTHORITIES

LEGISLATION

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c 11.

Educational Childcare Act, s-4.1.1, 2005 c.47.

Reduced Contribution Regulation, s-4.1.1, r.1 under the ECA, s.106.

JURISPRUDENCE

Andrews v. Law Society of British Columbia, 1989 CanLII 2 (SCC), [1989] 1 SCR 143

Centrale des syndicats du Québec v. Quebec (Attorney General), 2018 SCC 18 (CanLII), [2018] 1 SCR 522

Fraser v. Canada (Attorney General) 2020 SCC 28 (CanLII), [2020] 3 SCR 113

Janzen v. Platy Enterprises Ltd., 1989 CanLII 97 (SCC), [1989] 1 S.C.R. 1252

Kahkewistahaw First Nation v. Taypotat, 2015 SCC 30 (CanLII), [2015] 2 SCR 548

Law v. Canada (Minister of Employment and Immigration), 1999 CanLII 675 (SCC), [1999] 1 SCR 497

Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur 2003 SCC 54 (CanLII), [2003] 2 SCR 504

Ontario v. G 2020, 2020 SCC 38 (CanLII), [2020] 3 SCR 629

Procureur général du Québec c. Kanyinda 2024 QCCA 144 (CanLII)

R v. Sharma, 2022 SCC 39 (CanLII)

R v. C.P. 2021 SCC 19 (CanLII), [2021] 1 SCR 679

Turner v. Canada (Attorney General) 2012 FCA 159 (CanLII)

Vriend v. Alberta, 1998 CanLII 816 (SCC), [1998] 1 SCR 493

Withler v. Canada (Attorney General), 2011 SCC 12 (CanLII), [2011] 1 SCR 396

DOCTRINE

Colleen Sheppard, "Grounds-Based Distinctions: Contested Starting Points in Equality Law" (2024) 35:1 Can J Women & the Law 1 at 1-30, online: Project MUSE <*https://muse.jhu.edu/article/947746*.>

Kimberlé Crenshaw, "Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics" (1989) U. Chi. Legal F. 139. <*https://philpapers.org/archive/CREDTI.pdf?ncid=txtlnkusaolp00000603*>