IN THE HIGH COURT OF THE DOMINION OF CANADA

(ON APPEAL FROM THE ONTARIO COURT OF APPEAL)

BETWEEN

CLAIRE PLAINVIEW

Appellant

-AND-

ONTARIO (MINISTRY OF THE ENVIRONMENT)

Respondent

FACTUM OF THE RESPONDENT

COUNSEL FOR THE RESPONDENT
Team #9

CONTENTS

PART I—OVERVIEW

[1] The government of Ontario must pursue the goals of reducing industrial pollution and maintaining financial stability within the province. These goals do not exist in a hierarchical system. Rather, they must be pursued hand-in-hand. The *Environmental Protection Act* (the "*EPA"*) and the *Air Pollution – Local Air Quality Regulations* (the "*Regulations*") is aimed at fulfilling both of these goals.

[2] Schedule 3 of the *EPA* limits the degree of benzene emissions production plants are permitted to produce. To ensure the Schedule 3 limit does not have a draconian effect on Ontario's economy, the *EPA* also empowers the Director of the Ministry of the Environment ("the Director") to determine "site-specific standards" for particular production plants which support the industrial sector of Ontario's economy. Determining site-specific standards is a complex exercise which requires the Director to balance competing interests and further the *EPA's* statutory objectives.

[3] In 2018, VulCAN Corporation ("VulCAN") applied for a site-specific standard. After consulting potentially affected Indigenous communities, the Director delicately balanced the interests at stake and crafted a decision. The Decision specifically tailors a realistic standard of benzene-emissions for VulCAN, reduces pollution, incentivizes investment, does not significantly affect the health of nearby residents, and keeps business in Ontario.

[4] The Decision does not violate the Appellant's *Charter* protected rights under s. 15 or s. 7 of the *Charter*. The Decision does not perpetuate arbitrary disadvantage because it does not draw a distinction on an enumerated or analogous ground. The Decision does not engage the Appellant's life, liberty, or security of the person. In substance, the Appellant is claiming a novel positive right to be free from an industrially-polluted environment. This claim must fail.

PART II—STATEMENT OF FACTS

Factual background

[5] VulCAN operates a rubber and latex production facility in the village of Spragge. It plays a crucial role in the local economy and employs 900 people. Benzene is a base material in the production of rubber and VulCAN necessarily emits some benzene through its operations. Galvanex Industries also operates a rubber factory in the village of Spragge.

The *Environmental Protection Act*

[6] The *Air Pollution – Local Air Quality Regulations* under the *Environmental Protection Act* regulate emissions of industrial pollutants in Ontario. Schedule 3 of the *Regulations* sets 0.45 micrograms per cubic meter as the standard for annual benzene emissions within the province (the "Schedule 3 standard").

> *Air Pollution – Local Air Quality Regulations*, O. Reg 419/05 at Schedule 3 [*Regulations*]; under the *Environmental Protection Act*, RSO 1990, c E 19 [*Act*].

[7] Under s. 35(1) of the Regulations, the Director may approve requests for site-specific benzene air standards where the she is satisfied that: the business is unable to comply with the Schedule 3 standard for technical or economic reasons; the difference between the Schedule 3 standard and the site-specific standard is minimal; and public interests do not militate against the site-specific standard.

> *Regulations*, *supra* para 1 at ss. 35(1).

[8] The Director is empowered to protect industries that are crucial to Ontario's economy, particularly within the manufacturing sector. The *EPA* establishes evidence-based standards of general application and the *Regulations* authorize the Director to balance competing interests on a case-by-case basis. In this way, the legislative scheme recognizes that it is impossible to eliminate

pollution without crippling Ontario's economy. Instead, the *EPA* and the *Regulations* are designed to gradually reduce air pollution while keeping jobs and investment in Ontario.

Official Problem, the Wilson Moot 2020 at 7 [Official Problem].

The site-specific standard at the VulCAN facility in Spragge

[9] In October 2014, VulCAN began upgrades to its facility, aiming to increase production by 35%. Unfortunately, the facility's new vapour collection and air pollution controls did not function properly, causing VulCAN to emit benzene in excess of the Schedule 3 standard. The only way VulCAN could comply with the Schedule 3 would require it to lay-off at least 50 people.

[10] After VulCAN and the Ministry each conducted broad public consultations, the Director granted a site-specific benzene air standard, pursuant to s. 35(1) of the *Regulations* (the "Decision"). The site-specific standard is for a finite five-year term and requires VulCAN to reduce its emissions over time.

The Appellant

[11] Claire Plainview (the "Appellant") is a member of the Turtle Creek First Nation and a resident of the Turtle Creek Reserve No. 3 (the "Reserve"). The Reserve is located 5-kilometers from the VulCAN facility in Spragge where 275 of its residents work. The residents of the Reserve suffer from physical and mental health problems. The Appellant alleges these health problems are caused by pollution in their surrounding environment. Expert medical evidence cannot determine whether benzene is linked to the problems at the Reserve. The Appellant and other residents of the Reserve voiced their concerns to the Director through in-person meetings and written submissions.

Official Problem, *supra* para 8 at 1, 4, 6, 8.

[12] Communities living within a 10-kilometre radius of industrialized areas are subject to increased risk of health consequences. Within this radius, risks increase with proximity. While

benzene exposure may lead to adverse health effects, Anton Block's expert evidence states that the likelihood that the levels permitted by the decision will increase illnesses is extremely low. Furthermore, benzene degrades rapidly and concentrations do not remain in the environment for long periods of time.

Official Problem, *supra* para 8 at 5, 7.

Procedural History

[13] In January 2019, Justice Florés de Aguirre allowed the Appellant's application for judicial review. Justice de Aguirre found that the *EPA* and its *Regulations* are consistent with the Appellant's s. 15 and 7 *Charter* rights but the Decision was not. The Court found a violation of the Appellant's s.7 rights to life, liberty and security of the person stating the health effects of the pollutants exposed her to harm that was grossly disproportionate to thme purposes of the *EPA* and its *Regulations*. Finally, applying s. 1 Justice de Aguirre held the Ministry's stated purposes were not a reasonable and proportionate balance in light of the applicable statutory objectives.

[14] The Ontario Court of Appeal overturned the decision. Writing for the majority of the Court, Justice Oh Dae-Su held that it was an error to attribute the impacts of the cumulative effects of the pollution in the Spragge area to the Decision. According to Justice Oh, the Decision does not permit pollution *ad infinitum* nor could it have ended pollution of the Turtle Creek First Nation. Rather it was a tailored solution recognizing the technological and economic limitations of the VulCAN facility. Lastly, Justice Oh held that the thrust of the Appellant's litigation is an action against private polluters against which the *Charter* cannot be invoked.

[15] In dissent, Justice Cléo Victoire found violations of the Appellant's s. 15(1) rights under the analogous ground of Indigenous status and recognized on-reserve status as an analogous s. 15(1) ground. Justice Victoire found it unnecessary to address the s. 7 issue.

PART III—STATEMENT OF POINTS IN ISSUE

[16] This appeal raises the following constitutional issues:

1. Does the Decision violate the Appellant' rights under s. 15 of the *Charter*?

The Decision does not violate the Appellant's rights under s. 15 of the *Charter*. The Decision does not draw a distinction on an enumerated or analogous ground. Any benzene exposure borne by Indigenous Peoples or residents of Turtle Creek Reserve are borne equally by non-Indigenous residents of the Town of Spragge. In the alternative, the Decision does not perpetuate disadvantage.

2. Does the Decision violate the Appellant's rights under s. 7 of the *Charter*?

The Decision does not violate the Appellant's rights under s. 7 of the *Charter.* The Decision lacks a sufficient causal connection to health risks to deprive the appellant of her life, liberty or security interest. In the alternative, the Decision is neither arbitrary, overbroad, nor grossly disproportionate. Therefore, the Decision accords with the principles of fundamental justice.

3. If either of the foregoing questions are answered in the affirmative, is the Decision reasonable?

The Decision is reasonable because it reflects a proportionate balance of the Appellant's *Charter* protected rights with the statutory objectives of the *EPA*. The Director is entitled to deference and the Decision need only fall within the range of reasonable outcomes.

4. If the Decision is unreasonable, should the Appellant be awarded damages under subsection 24(1) of the *Charter* for the breach of her s. 15 and/or s. 7 rights?

The Appellant should not be awarded *Charter* damages. *Charter* damages are not functionally justified. Alternatively, *Charter* damages should be denied because alternative remedies are adequate and an award of *Charter* damages would interfere with good governance. Any award of *Charter* damages should be nominal.

PART IV—STATEMENT OF ARGUMENT

Issue 1: The Decision Does Not Infringe the Appellant's S. 15(1) Right to Equality

[17] The Decision does not infringe the Appellant's s. 15(1) equality rights. To prove a violation of s. 15(1), the Appellant must show that the challenged law: (1) on its face or in its impact, draws a distinction on an enumerated or analogous ground under s. 15(1); and (2) that the law imposes burdens or denies a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage (*Syndicats*).

> *Centrale des syndicats du Québec c Québec (Procureure Générale)*, 2018 SCC 18 at para 22 [*Syndicats*].

[18] The Decision only draws a distinction on the ground of residency. The Supreme Court has repeatedly rejected residency as an analogous ground. Even if the Decision draws a distinction on an enumerated or analogous ground, its impacts do not impose burdens in a manner that reinforces, perpetuates, or exacerbates disadvantage. For these reasons, the Decision is not discriminatory and does not infringe the Appellant's s. 15(1) rights.

(a) The Decision draws a distinction on the ground of residency

[19] The Decision draws a distinction on the ground of residency because the site-specific standard affects everyone living within a 10-kilometer radius of the VulCAN facility. It does not draw a distinction on the basis of living on the Turtle Creek Reserve specifically.

[20] The facts on this issue parallel *Anawak*. In that case, election residency requirements prevented Mr. Anawak from voting and running in Nunavut elections. Since Nunavut is part of the traditional territory of the Inuit, Mr. Anawak analogized this to an Indigenous Reserve. Relying on *Corbière*, he argued that the prevention of his participation in territorial elections discriminated against him on the basis of his Inuk residency. The Nunavut Territorial Court rejected this argument, finding no violation of his equality rights.

Anawak v Nunavut (Chief Electoral Officer), 2008 NUCJ 26 [Anawak].

[21] The Court dismissed Mr. Anawak's claim because residency in Nunavut is not an analogous ground (*Anawak*). In *Corbière*, the Supreme Court of Canada held that the disenfranchisement of off-reserve members of Indigenous Nations was a violation of the s. 15(1) equality right (*Corbière*). However, the Court explained that *Corbière* exclusively concerns the analogous ground of off-reserve residence rather than residence in a broad territory with constitutional status (*Anawak*).

Anawak supra para 20 at para 126.
Corbière v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203, [1999] SCJ No 24 [*Corbière*].
Anawak supra para 20 at para 112.

[22] Pursuant to *Anawak*, where a distinction is drawn on the basis of a broad geographical area such as a province or territory – rather than on the basis of on- or off-reserve residence – the distinction is drawn on the basis of residency. The Federal Court previously held that geographical distinctions other than province of residence, such as a "designated area," are sufficiently similar such that the same reasoning applies for establishing a distinction on an analogous ground (*Archibald*). Thus, the *Anawak* reasoning applies to this case where the distinction is on the basis of a 10-kilometer radius.

Archibald v Canada, [1997] 3 FC 335 at para 121, 146 DLR (4th) 499 [*Archibald*].

[23] Evidence from Dr. Maya Satyajit, a professor at the University of British Columbia's School of Population and Public Health, provides that communities living within a 10-kilometer radius of heavily industrialized areas may be subject to an increased risk of adverse effects from industrial pollutants. Although the Appellant is a resident of the Reserve, like Mr. Anawak, it is neither her Indigenous identity nor her residence on reserve that subjects her to the effects of the Decision. Rather, all people residing in the vicinity of the VulCAN facility are exposed to the same

level of benzene emissions. This includes the residents of Spragge, who may or may not be Indigenous. Moreover, off-reserve members of the Turtle Creek First Nation are not affected by the emissions because they do not reside within 10-kilometres of the VulCAN facility.

Official Problem, *supra* para 8 at 5.

[24] The only common ground shared by all of the individuals affected by the Decision is that they reside within 10-kilometers of the VulCAN facility. As was the case in *Anawak*, the distinction is not drawn on the basis of the Appellant's on-reserve residence or her status as an Indigenous person. Instead, the only distinction drawn is on the basis that the Appellant happens to reside within a geographical area that may be adversely affected by the benzene emissions.

(b) Place of Residence is not an analogous ground

[25] The Supreme Court has repeatedly rejected place of residence as an analogous ground for s. 15(1) (*Turpin*, *Haig*, *Siemens*). In *Corbière*, the Supreme Court held that an analogous ground is a personal characteristic that is immutable or changeable only at an unacceptable cost to personal identity. These are personal characteristics that cannot be changed or that the government has no legitimate interest in expecting people to change (*Corbière*).

R v Turpin, [1989] 1 SCR 1296 at para 53, [1989] SCJ No 47 [*Turpin*]; *Haig v R*, [1993] 2 SCR 995 at para 90. [1993] SCJ No 84 [*Haig*]; *Siemens v Manitoba (Attorney General)*, 2003 SCC 3 at para 48 [*Siemens*].
Corbière supra para 21 at para 13.

[26] In *Haig*, the Supreme Court held that it would be a "serious stretch of the imagination" to find that persons changing their province of residence for less than six months are analogous to persons suffering discrimination on the basis of race, religion or gender (*Haig*). Underlying the Court's reasoning in *Haig* is that province of residence does not create "discreet and insular" groups. Any groups based on provincial residence were highly fluid as people constantly flowed in or out once they met Quebec's residency requirements (*Haig*).

Haig supra para 25 at para 90.

[27] Following the Supreme Court's reasoning in *Haig*, the Northwest Territories Court of Appeal stated in *Canadian Egg Marketing Agency* that residence is not an immutable characteristic that cannot be easily changed. Likewise, the Supreme Court in *Siemens* and the Federal Court in *Archibald* have held that geographical distinctions such as municipality of residence (*Siemens*) and "designated area" (*Archibald*) are not analogous grounds for the purpose of s. 15(1) claims.

> Canadian Egg Marketing Agency v Richardson, [1996] 3 WWR 153 at para 113, [1996] NWTR 201 [*Canadian Egg Marketing Agency*]; rev'd on different grounds in *Canadian Egg Marketing Agency v Richardson*, [1998] 3 SCR 157, [1998] SCJ No 78.
> *Siemens supra* para 25 at para 48.
> *Archibald supra* para 22 at paras 121, 123.

[28] Individuals who live within 10-kilometers of the VulCAN plant do not form a discreet and insular minority. Rather, the residents of this geographic area are dynamic and diverse. This area includes not only the Reserve but also the village of Spragge. Unlike the Turtle Creek Reserve, the village of Spragge does not have residency restrictions. Just like the province of Quebec in *Haig*, the municipality in *Siemens*, or the "designated area" in *Archibald*, people can flow in and out of residency within the region.

[29] Place of residence is not an analogous ground under s. 15(1). Since the only common ground between those affected by the Decision is their residence within 10-kilometers of the VulCan plant, the Appellant has not proven that the Decision draws a distinction on the basis of an enumerated or analogous ground. The failure to do so defeats the Appellant's s. 15(1) claim.

(c) The Decision does not perpetuate disadvantage

[30] Even if the Court finds that the Decision draws a distinction on an enumerated or analogous ground, the Decision is not discriminatory. A distinction is discriminatory if it imposes a burden or denies a benefit that reinforces, exacerbates or perpetuates disadvantage (*Syndicats*).

Syndicats, *supra* para 17 at para 22.

I) The Decision does not impose a burden

[31] The site-specific standard does not impose a burden on the residents of the Reserve. In *Withler*, the Supreme Court of Canada held that the s. 15(1) analysis "involves looking at the circumstances of members of the group and the negative impact of the law on them" (*Withler*). In this case, the Appellant alleges that the increase in benzene emissions permitted by the Decision would negatively impact the health of the residents of the Reserve.

Withler v Canada (Attorney General), 2011 SCC 12 at para 37 [*Withler*].

[32] Benzene is only known to cause acute myeloid leukaemia. While statistics show an elevated rate of *leukaemia* on the Reserve, the evidence does not prove there is an elevated rate of *acute myeloid leukaemia* on the Reserve. Even so, the Decision is unlikely to increase the risk of an individual developing cancer. Anton Block – an environmental scientist with expertise in industrial pollutants – explains that the difference between the site-specific standard and the Schedule 3 standard poses an extremely low risk in this regard.

Official Problem, *supra* para 8 at 6, 5, 7.

[33] Moreover, the evidence connecting benzene to the other prevalent illnesses on the Reserve is limited. Dr. Satyajit concedes that environmental and demographic factors could account for these health disparities. Therefore, evidence before the Court does not prove that the Decision imposes a burden by negatively impacting the Appellant's health.

Official Problem, *supra* para 8 at 6.

ii) The Decision does not reinforce, exacerbate or perpetuate the Appellant's disadvantage

[34] The Decision is not discriminatory solely because the Appellant experiences historical disadvantage. There is no presumption that differential treatment for historically disadvantaged persons is discriminatory (*Law*). Rather, differential treatment for historically disadvantaged

persons is only discriminatory where the state conduct "widens the gap between the historically disadvantaged group and the rest of society" (*A)*.

> *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 67, [1999] SCJ No 12 [*Law*].
> *Quebec (Attorney General) v A*, 2013 SCC 5 at para 332 [*A*].

[35] OBJ The Decision does not widen the gap between the residents of the Reserve and the rest of society. The evidence of Dr. Satyajit shows that the residents of the Reserve experience disadvantage as a result of disparities in social determinants of health. However, this "constellation of physical and psychosocial health effects" predates the Decision; the likelihood that the Decision will reinforce, exacerbate, or perpetuate this disadvantage is "extremely low".

> *Official Problem*, *supra* para 8 at 5-6.

[36] In fact, the Decision may narrow the gap between the residents of the Reserve and the rest of society. The Decision protects the average income for the 275 residents of the Reserve who work at the VulCAN facility. By doing so the Decision reduces disparities in average income, an important social determinant of health. To this extent, the Decision promotes—rather than undermines—substantive equality.

Issue #2: The Decision does not violate the Appellant's S. 7 rights to life, liberty and security of the person

[37] The Decision does not violate the Appellant's s. 7 rights under the *Charter*. Section 7 does not promise that the state will never interfere with a person's life, liberty or security of the person. Rather, it promises that the state will not do so in ways that violate the principles of fundamental justice (*Carter*). The principles of fundamental justice include arbitrariness, overbreadth, and disproportionality (*Bedford*).

> *Carter v Canada (Attorney General)*, 2015 SCC 5 [*Carter*].
> *Bedford v Canada (Attorney General)*, 2013 SCC 72 at para 97 [*Bedford*].

[38] Section 7 is only engaged where there is a "sufficient causal connection" between the state action and the harm to the claimant's life, liberty or security of the person (*Bedford*). There is no sufficient causal connection between the Decision and any impairment to the Appellant's life, liberty or security of the person. As such, the Decision does not engage the Appellant's s. 7 rights. Even if a sufficient causal connection was shown, the Decision is not arbitrary, overbroad or grossly disproportionate.

Bedford, *supra* para 37 at para 75.

(a) There is no sufficient causal connection between the Decision and the deprivation of the Appellant's life, liberty or security of the person

[39] The Appellant has not proved that there is a "sufficient causal connection" between the Decision and the deprivation of her s. 7 rights. A sufficient causal connection must be based on a real—rather than speculative—link (*Bedford*). In *Revell*, the Federal Court of Appeal elaborated that where circumstances lack an evidentiary foundation, s. 7 interests are not engaged.

Bedford, *supra* para 37 at para 75.
Revell v Canada (Citizenship and Immigration), 2019 FCA 262 at para 67 [*Revell*].

[40] There is no sufficient causal connection between the Decision and the harms the Appellant claims. Rather, the evidentiary record shows that the link between the health problems experienced at the Reserve and the risks from benzene exposure is merely speculative.

[41] Statistics presented by Dr. Satyajit indicated that Turtle Creek First Nation members experience higher rates of leukaemia, non-Hodgkin's lymphoma and multiple myeloma. However, Mr. Block opined that there is only limited evidence linking benzene to these illnesses. Benzene is only known to cause acute myeloid leukaemia. There is no evidence disclosing the rate of this specific cancer in the Reserve.

Official Problem, *supra* para 8 at 6.

[42] If benzene emissions contribute to the diminished health status of the residents of Turtle Creek Reserve, one would expect residents of Spragge to experience similar symptoms. In fact, because both VulCAN and Galvanex have plants *within* Spragge and the risk off adverse health effects increases with proximity, one would expect that the residents of Spragge would experience even greater symptoms.

[43] However, there is no evidence that residents of Spragge experience similarly diminished health statuses. There is also no evidence that the residents of Spragge experience similar rates of leukaemia, non-Hodgkin's lymphoma, or multiple myeloma to the residents of the Reserve. If the residents of Spragge do not share the residents of the Reserve's diminished health status, then the link between benzene emissions and these conditions is purely speculative.

[44] Moreover, the Decision is not responsible for the benzene emissions in the area surrounding the Turtle Creek Reserve and Spragge. The Decision merely authorized VulCAN to emit benzene at a site-specific standard in excess of the Schedule 3 standard. Mr. Block explains that the site-specific standard is extremely unlikely to increase the risk of cancer in an individual who would otherwise be exposed to benzene emissions at the Schedule 3 standard. Accordingly, it is extremely unlikely that the Decision will have any effect on the Appellant's health.

[45] Pursuant to *Bedford*, to establish a violation of s. 7, the Appellant cannot merely speculate that the Decision will harm her health. While there is evidence that residents of the Reserve experience elevated rates of certain cancers, the Appellant makes the assumption that the Decision will negatively impact the health status of her community by increasing the incidence of cancer.

[46] This assumption contradicts Mr. Block's evidence that there is a limited connection between benzene and the types of cancer prevalent amongst residents of the Turtle Creek Reserve. It also contradicts Mr. Block's testimony that it is extremely unlikely the Decision will increase

the risk of cancer in any individual. Thus, the Appellant's assertion that the Decision impairs her s. 7 rights is not supported by the evidentiary record.

Official Problem, *supra* para 8 at 6-7.

(b) The Site-Specific Standard is not contrary to the principles of fundamental justice

[47] Even if the Appellant's s. 7 rights are deprived by the Decision, any deprivation accords with the principles of fundamental justice. In *Bedford*, the Supreme Court identified three principles of fundamental justice: arbitrariness, overbreadth and gross-disproportionality (*Bedford*). Determining whether a deprivation accords with these principles requires comparing the object of the challenged law with its effects (*Carter*).

Bedford, *supra* para 37 at para 97.
Carter, *supra* para 37 at para 71.
Bedford, *supra* at para 125.

[48] The purpose of the *EPA* and *Regulations* is to balance the protection of human health and the environment with the need to safeguard industries that are critical to Ontario's economy, particularly in the manufacturing sector. Pursuant to the Director's duties under this legislative scheme, the Decision permits benzene emissions in excess of the Schedule 3 standard for a finite period while requiring the gradual reduction of emissions from VulCAN over time. This effect is not arbitrary, overbroad or grossly disproportionate to the purpose of the *EPA* and *Regulations*.

Official Problem, *supra* para 8 at 7, 2.

(i) The Decision is not arbitrary

[49] The Director's decision to grant VulCAN a site-specific standard is not arbitrary. The principle of arbitrariness targets the situation where there is no rational connection between the object of the law and the limit it imposes on life, liberty or security of the person (*Carter*).

Carter, supra para 37 at para 83.

[50] There is a clear connection between the purposes of the *EPA* and *Regulations* and the limited period of increased benzene emissions the Decision allows. VulCAN is an economically productive manufacturer that employs approximately 900 people, 275 of whom are residents of the Turtle Creek Reserve. Compliance with the Schedule 3 standard would force VulCAN to reduce production, leading to the immediate loss of at least 50 jobs.

Official Problem, *supra* para 8 at 7.

[51] As a result of its site-specific standard, VulCAN is required to reduce its emissions through technology-based solutions and best practices. This affords VulCAN the opportunity to fix the problems with its air pollution control mechanisms. Once operating as anticipated, these upgrades would allow VulCAN to maintain its productivity at 35% above the pre-2014 level, while reducing its benzene emissions over time. The Decision maintains investment in Ontario while requiring VulCAN to work towards environmentally responsible operations. This is closely connected to the purpose of the *EPA* and *Regulations*.

Official Problem, *supra* para 8 at 2.

(ii) The Decision is not overbroad

[52] The Decision is not overbroad. The overbreadth inquiry asks whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object (*Carter*).

Carter, supra para 37 at para 85.

[53] The Decision applies only to the VulCAN facility in Spragge. The *Regulations* authorize the Director to grant site-specific standards on a case-by-case basis only when they are deemed technically or economically necessary. As such, it ensures site-specific standards are granted only when they are required to fulfill the statutory objectives of balancing environmental risks with

economic development. Therefore, by following the statutory framework, this Decision does not deny rights to any individuals in a way that bears no relation to the statutory objective.

Regulations, supra para 6 at s. 35(1)(b)(ii).

(iii) The effects of the Decision are not grossly disproportionate to its purpose

[54] The effects of the Decision are not grossly disproportionate to its purposes. The inquiry into gross disproportionality compares the law's purpose "taken at face value", with its negative effects on the rights of the claimant, and asks if this impact is completely out of sync with the object of the law (*Bedford*). The standard is high and the law's object and its impact may be incommensurate without reaching the standard for gross-disproportionality (*Suresh*).

Bedford, *supra* at para 125.
Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1 at para 47 [*Suresh*].

[55] The purposes of the *EPA* and *Regulations* are to balance protection of human health and the environment with preserving industries that are critical to Ontario's economy, particularly in the manufacturing sector. The purpose of the Decision is to prevent VulCAN from being forced to reduce production, thereby jeopardizing the jobs of 900 people. Had the Director not granted VulCAN the site-specific standard, at least 50 people would have immediately lost their jobs. In comparison, the site-specific standard represents only the minimum difference from the Schedule 3 standard necessary to enable VulCAN to comply with the *Regulations*. At this level of emissions, there is an extremely low likelihood that the risk of cancer in an individual would increase.

Regulations supra at s. 35(1)(b)(ii).
Official Problem, *supra* para 8 at 7-8.

[56] Finally, since benzene degrades rapidly, concentrations would not remain in the air, soil or water for long periods of time. Once the site-specific standard expires, any adverse effects on the

environment will quickly dissipate. Therefore, the effects of the Decision are not grossly disproportionate to the statutory purposes it facilitates.

(c) There is no positive right to a clean environment

[57] The Court should not recognize a positive right to a clean environment. The recognition of a positive right in this case would violate the fundamental features of *Charter* challenges in Canada, undermine democracy, and pose a threat to the economy.

[58] In *Tanudjaja*, the Ontario Court of Appeal notes that the archetypal feature of *Charter* challenges under s. 7 and 15 is the challenge being directed at a particular law or particular application of such law (*Tanudjaja*). While the Appellant can point to the Decision as an application of the law, a general freestanding right to a clean environment would enable future challenges where no law or application of law is at stake.

Tanudjaja v Canada (Attorney General), 2014 ONCA 852 at para 22 [*Tanudjaja*].

[59] A freestanding right to a clean environment would allow parties to challenge the absence of government action addressing environmental issues. This poses significant problems for courts because, absent a challenge to a specific law, there is no judicially discoverable and manageable standard for assessing the adequacy of government policies in general (*Tanudjaja*).

Tanudjaja, *supra* para 58 at para 33.

[60] Furthermore, creating a freestanding right to a clean environment would undermine the separation of powers that is essential to Canada's democracy. Decision making power on environmental issues properly belongs to the elected legislature, not the judiciary. Courts are not an academy of science and are not equipped to second-guess experts employed by government on environmental issues (*Inverhuron*). Nonetheless, as in the present case, a freestanding right to a

clean environment would require courts to scrutinize causal connections between various lawfully emitted substances and their hypothetical effects on health and wellbeing.

> *Inverhuron & District Ratepayers' Assn. v Canada (Minister of the Environment)*, [2000] FCJ No 682, 191 FTR 20 [*Inverhuron*].

[61] Finally, the constitutional right to a healthy environment should not be the right to be free from industrial pollution. The purpose of environmental rights should be to compel or increase the likelihood of sustainable development. In essence, sustainable development *is* the purpose of the *EPA* and the *Regulations*. On the one hand, the *EPA* and *Regulations* accommodate manufacturers who are unable to meet their regulatory standards. On the other, these manufacturers are required to reduce emissions over time by investing in new technologies and best practices. This fulfils the purpose of balancing the protection of human health and the environment with preserving industries that are critical to Ontario's economy. Reversing a decision made pursuant to these purposes undermines the goal of sustainable development, and disproportionately favours environmental preservation over the health of the economy.

Issue #3: The decision is reasonable

[62] Even if the Court finds that the Decision infringes s. 15 or s. 7, the Decision is reasonable. The Appellant and the Respondent agree that administrative decisions that engage the *Charter* are subject to review on the standard of reasonableness (*Doré;* Clarifications). Reasonableness is rooted in the principle of judicial restraint and demonstrates respect for the distinct role of administrative decision-makers (*Vavilov*).

> *Doré v Barreau du Québec*, 2012 SCC 12 at para 45 [*Doré*].
> *Canada (Minister of Citizenship and Immigration Vavilov,* 2019 SCC 65 at paras 13, 15 [*Vavilov*].

1. **The Director's reasons reveal a rational chain of analysis**

[63] Reasons are the starting point for reasonableness review (*Vavilov*). A decision-maker's reasons will be upheld as reasonable if they disclose a rational chain of analysis (*Vavilov*).

Vavilov, supra para 62 at para 81, 103.

[64] Reviewing courts must read administrative decisions "holistically and contextually" (*Vavilov*). The Court is entitled to consider the evidentiary record, the parties' submissions and publicly available policies or guidelines that informed the decision (*Vavilov*). In doing so, the Court may elucidate an aspect of the decision-maker's reasoning that was not apparent from the reasons themselves (*Vavilov*).

Vavilov, supra para 62 at para 97, 94, 103.

[65] Read holistically and contextually, the Director's reasons disclose a rational chain of analysis. The Director's reasons demonstrate that she ruled in favour of granting the site-specific standard because doing so would incentivize investment in benzene-reducing technologies and reduce benzene emissions while maintaining productivity, all while minimally impairing nearby communities, including the Turtle Creek Reserve. Consistent with *Vavilov*, this reveals a rational chain of analysis.

[66] The Director is not required to make an explicit finding regarding each argument or submission (*Vavilov*). Nor is the Director required to explicitly reference *Charter* rights; it is sufficient for the Director to address the substance of *Charter* claims (*Ktunaxa*). The relevant *Charter* protections in this case predominantly relate to adverse health effects on the Turtle Creek Reserve, which were expressly contemplated by the Director.

Vavilov, supra para 62 at para 128.
Ktunaxa Nation Council v British Columbia (Forests, Lands and Natural Resource Operations), 2014 BCSC 568 at para 271, 306, affirmed at 2017 SCC 54.

2. **The Director struck a proportionate balance**

[67] Reasonableness focuses on whether the decision-maker advanced their statutory objectives in a manner that is proportionate to limitations of *Charter* protections. First, the decision-maker must determine the severity of the Decision's impact on the *Charter* protection. Second, the decision-maker must analyze the statutory objectives. Finally, the decision-maker must proportionately balance the *Charter* values against the statutory objectives by weighing the severity of the *Charter* limitation against the statutory objectives.

Doré, supra para 62 at paras 55-6.

[68] The Decision is entitled to deference by the Court (*Vavilov; Doré*). It remains for each administrative body—not the courts—to determine how to balance *Charter* values against its legislative mandate (*Doré*). It is the decision-makers who are in the best position to consider the impact of the *Charter* values on the specific facts of each case, not judges who operate at a distance from the administrative scheme (*Doré)*.

Vavilov, supra para 62 at para 30.
Doré, supra para 62 at para 54.

a. The impacts on the *Charter* protections are minimal

[69] The Decision has a minimal impact on s. 15 *Charter* protections. The Appellant's s. 15 claim is based on her status as an Indigenous person and the corresponding strong connection with the land. The Appellant's affidavit explains her culture and heritage are tied to Turtle Creek Reserve and her personal identity hinges on her living on the Reserve. It is the potential harm to the environment on the Reserve that allegedly discriminates against the Appellant's Indigeneity or on-reserve status.

Official Problem, *supra* para 8 at 4.

[70] The Decision's potential negative impact on Turtle Creek Reserve's environment is minimal. First and foremost, the site-specific standard is temporary. The Director carefully crafted

the exemption so that it will expire after a relatively short timeframe; VulCAN is required to become compliant with the Schedule 3 Standard within five years. Additionally, the exemption requires VulCAN to make developments that reduce benzene emissions incrementally within the five-year period.

Official Problem, *supra* para 8 at 2, 6.

[71] Since benzene degrades rapidly and concentrations do not remain in the environment for long periods of time, the increase in benzene emissions over the five-year period will not cause permanent damage to the environment. The Decision does not permanently or notably affect the land or the Appellant's relationship to it. Therefore, the impact on the Appellant's s. 15 protection is minimal.

Official Problem, *supra* para 8 at 6.

[72] The Decision has a minimal impact on the Appellant's s. 7 *Charter* right. The Decision does not pose a serious threat to the health of the Appellant or the other residents of the Turtle Creek First Reserve. As Mr. Block explained, the likelihood that VulCAN's site-specific standard would increase the risk of cancer in an individual is extremely low. Moreover, the Decision does not create a risk that would otherwise be avoided because benzene has already been lawfully emitted in Spragge and is a non-threshold toxicant with no safe level of exposure. The Decision only marginally increases a pre-existing risk and therefore the impact on s. 7 is minimal.

Official Problem, *supra* para 8 at 7.

b. The statutory objectives of the *EPA* and the *Regulations* favour granting the site-specific standard

[73] The statutory objectives of the *EPA* weigh in favour of granting the site-specific standard. An objective of the *EPA* is to improve air quality to protect human health and the environment. The *EPA's* goal is simply to *reduce* emissions through continuous improvement. Even modest

improvement that helps Ontario achieve its long-term goals is within the scope of the *EPA's* statutory objectives.

Official Problem, *supra* para 8 at 7.

[74] The Decision substantially achieves this goal by requiring VulCAN to reduce its emissions throughout a five-year period and eventually become compliant with the Schedule 3 standards. The fact that an alternative decision could have achieved even greater reduction does not detract from the Decision's furtherance of the legislative goals. The *EPA* includes the authority to craft site-specific standards because the legislature recognized that the Schedule 3 standard are not always achievable due to limitations in technology or economic factors, as is the case for VulCAN. Denying the site-specific standard, then, would undermine the *EPA's* and the *Regulations'* legislative intent by rendering the power to craft site-specific standards hollow.

Official Problem, *supra* para 8 at 2, 7.

[75] The *EPA* and the *Regulations* also aim to incentivize production companies to invest in technologies that reduce industrial pollution. Granting the exemption furthers this goal. As a result of being granted a site-specific standard, VulCAN must comply with the *EPA*'s general standards within a five-year period and must invest in modern technologies which allow them to maintain their production levels while reducing benzene-emission levels. These technologies could be used at benzene-producing sites across Ontario and Canada. As a result, granting the site-specific standard may drastically reduce benzene emissions while maintaining productivity levels. In contrast, denying the site-specific standard would trigger the lay-off of employees and/or the relocation of VulCAN to a different jurisdiction while upholding the industry's status quo with regard to benzene emissions.

Official Problem, *supra* para 8 at 7, 2.

[76] Additionally, the provincial government and the scheme of the *EPA* is dedicated to promoting Ontario's economy by maintaining economic investment within the province. The Decision formidably furthers this goal. Denying a site-specific standard may threaten VulCAN's willingness to continue to do business in Ontario. There are at least three instances in the last thirty years in which companies have relocated their facilities because of "unduly restrictive" environmental regulatory standards. Crafting a site-specific standard that allows VulCAN to maintain production levels helps ensure their continued production in Ontario and continued employment of Ontarians, including hundreds of Turtle Creek Reserve residents.

Official Problem, *supra* para 8 at 7.

c. The Director proportionately balanced the *Charter* values with the statutory objectives of the *EPA*

[77] The Director struck a proportionate balance between the Appellant's s. 15 and s. 7 *Charter* values and the statutory objectives of the *EPA* and the *Regulations.*

[78] Decisions affecting *Charter* protections only need to fall within a range of acceptable outcomes (*Doré*); the fact that the Court may have struck a different balance than the Director does not defeat the reasonableness of the Decision.

[79] The Decision falls within a range of acceptable outcomes. The Decision strikes a proportionate balance between the *Charter* rights at stake and the objectives of the *EPA* and the *Regulations*. The site-specific standard minimally impacts the Appellant's *Charter* protections and has considerable environmental and economic benefits.

Doré, *supra* para 62 at para 56.

[80] A decision is disproportionate and therefore unreasonable if there was an option reasonably open to the decision-maker that would reduce the impact on Charter protected rights while furthering the relevant statutory objectives (*TWU*).

TWU v Law Society of Upper Canada, 2018 SCC 33 at para 36.

[81] Denying the site-specific standard was not an option "reasonably open" to the Director. Although denial of the site-specific standard may reduce the impact on the Appellant's rights, it would not sufficiently further the statutory objectives. The government's goals of investing in technologies to reduce pollution and retaining business in Ontario would not be fulfilled.

Issue #4: The Appellant should not be awarded *Charter* damages

[82] An award of damages under s. 24(1) of the *Charter* is an exceptional remedy that should not be granted even if the Court finds that the Decision violates the Appellant's s. 15 or s. 7 rights (*Ward*). The Appellant is not entitled to *Charter* damages because this remedy is not available on judicial review (*Ernst*). Alternatively, *Charter* damages are not functionally justified and countervailing factors militate against their award.

Vancouver (City) v Ward, 2010 SCC 7 at para 31 [*Ward*].
Ernst v Alberta Energy Regulator, 2017 SCC 1 at para 37.

1. *Charter* damages are not available on judicial review

[83] *Charter* damages are not available on judicial review (*Ernst; Yang*). The remedies available on judicial review are different from those available in an action (*Yang*). Complainants may turn to judicial review to access relief from a breach of *Charter* rights, but judicial review "does not include as a remedy *Charter* damages" (*Yang*).

Ernst, *supra* para 82 at para 37.
Yang v Real Estate Council of British Columbia, 2019 BCCA 43 at para 36.

[84] The present case is a judicial review; the Appellant has not initiated an action. Therefore, the Appellant is not entitled to an award of *Charter* damages.

2. *Charter* damages are neither just nor appropriate

[85] Even if the Court finds that *Charter* damages are available on judicial review, damages should only be awarded under s. 24(1) where they are just and appropriate (*Ward*). The onus is on

the Appellant to establish that damages are functionally justified because they would (a) compensate for personal loss, (b) vindicate the violation of *Charter* rights, and/or (c) deter future *Charter* breaches.

Ward, *supra* para 82 at paras 16, 24-25.

[86] If the Appellant establishes that damages are just and appropriate, the Respondent may defeat an award of *Charter* damages by demonstrating that countervailing factors frustrate their functional justification, rendering their award unjust and inappropriate (*Ward*).

Ward, *supra* para 82 at para 33.

[87] The Appellant should not be awarded *Charter* damages. The Appellant has not established that *Charter* damages are functionally justified. Even if they are functionally justified, countervailing factors render their award unjust and inappropriate.

a. Damages are not Functionally Justified

[88] *Charter* damages are not functionally justified because they would not serve the goals of compensation, vindication, or deterrence.

i) Damages would not serve compensatory functions

[89] The compensatory function is only fulfilled when a *Charter* breach causes personal loss and damages can place the claimant in the same position they would have been in but for the *Charter* breach (*Ward*). In the present case, awarding *Charter* damages would not compensate the Appellant because she has not established that the Decision has caused her personal loss.

Ward, *supra* para 82 at paras 25, 27, 71.

[90] The Appellant has not suffered any compensable loss because of the Decision. The increase in benzene emissions is extremely unlikely to increase the likelihood that the Appellant will be diagnosed with cancer. Further, the rapid rate at which benzene degrades mitigates any enduring

harm to the Appellant's environment. The psychological harm the Appellant suffers as a result of living in a polluted area pre-dates the Decision; it was not caused by the Decision.

Official Problem, *supra* para 8 at 7, 6.

ii) Damages would not serve the function of vindication

[91] The vindication function is only fulfilled where government action impairs public confidence in the efficacy of constitutional protection (*Ward*). Even if the Decision imperfectly balanced the Appellant's *Charter* values, the Decision does not impair public confidence in the efficacy of constitutional protection, and therefore damages would not be vindicatory.

Ward, *supra* para 82 at para 28.

[92] The Decision followed a thorough process undertaken by the Ministry to consult community members. All members of the Turtle Creek First Nation had various opportunities to participate by attending public meetings and providing written submissions. The Appellant herself participated in this process.

Official Problem, *supra* para 8 at 4.

[93] By undertaking this process, the Director defended—rather than subverted—constitutional protections. The public's confidence in constitutional protection would not be impaired by the Ministry's genuine efforts to respect *Charter* rights while fulfilling its statutory obligations under the *EPA* and the *Regulations*.

iii) Damages would not serve deterrence functions

[94] Deterrence is aimed at achieving future government compliance with the *Charter*. Awarding the Appellant *Charter* damages would not serve this function. The Director's decision was made pursuant to a unique statutory scheme and the Decision is highly fact-specific. As such,

denouncing the Decision will not provide any guidance for future decision-makers who are tasked with balancing *Charter* rights with legislative objectives.

Ward, *supra* para 82 at para 29.

[95] Moreover, the goal of deterrence cannot be used to punish good faith yet imprecise balancing acts under complex legislative schemes. If this were the case, virtually every administrative decision that is quashed would require *Charter* damages. In the present case, the Director thoroughly considered the expansive record and made a good-faith effort to respect the Appellant's *Charter* rights while realizing the objectives of the *EPA*. This should not attract *Charter* damages on the ground of deterrence.

b. Countervailing factors render *Charter* damages inappropriate and unjust

[96] Even if the Court finds that *Charter* damages are functionally justified, there are countervailing factors that render damages inappropriate and unjust. Countervailing factors include (a) the availability of adequate alternative remedies and (b) concerns that *Charter* damages will interfere with good governance. In the present case, both factors defeat any potential functional justification for *Charter* damages.

Ward, *supra* para 82 at para 32.

i) Alternative Remedies are More Responsive to the Breach

[97] *Charter* damages are an exceptional remedy (*Ward*). Other remedies will frequently be "more responsive" to *Charter* violations, rendering *Charter* damages inappropriate and unjust (*Ward*). In the present case, alternative remedies are more responsive to any breach of the Appellant's *Charter* rights.

Ward, *supra* para 82 at para 31, 21.

[98] *Certiorari* is an adequate remedy. The availability of judicial review remedies, including *certiorari*, are "strong" countervailing factors against an award of *Charter* damages (*Ernst*). The Respondent agrees that *certiorari* is appropriate if the Appellant establishes the Decision is unreasonable (Clarifications).

Ernst, *supra* para 82 at para 32, 35.
Clarifications to the 2020 Wilson Moot Problem at 1.

[99] *Certiorari* is a substantial and effective form of relief (*Ernst*). The Appellant's claim is rooted in VulCAN's authorization to emit benzene above the Schedule 3 standard. By mandating VulCAN's compliance with the Schedule 3 standard, *Certiorari* prevents any infringement to the Appellant's s. 15 and s. 7 *Charter* rights.

Clarifications to the 2020 Wilson Moot Problem at 1.

[100] *Certiorari* fulfills the compensatory function of *Charter* damages. The Appellant's primary concern is that the Decision will cause future harm to her and her community. *Certiorari* would properly address the concern at issue by denying VulCAN a site-specific standard, thus eliminating any purported future impact.

Ward, *supra* para 82 at para 37.

[101] *Certiorari* also serves the deterrence and vindication functions of *Charter* damages. In *Ernst*, Justice Cromwell held that judicial review remedies, including *certiorari*, have the power "to vindicate *Charter* rights and to clarify the law so as to prevent similar future breaches". This defeats an award of *Charter* damages.

Ernst, *supra* para 82 at para 30.

ii) *Charter* Damages Interfere with Good Governance

[102] Discretionary powers are critical to good governance. Discretionary powers ensure that legislation does not operate arbitrarily or have an unexpected or undesirable effect (*Insite*).

Accordingly, *Charter* damages must not be awarded where they would stymie the government's policy-making functions (*Ward*). To maintain good governance in the arena of policy-focused administrative decision-making, *Charter* damages should not be awarded against discretionary decision makers absent bad faith errors.

> *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 113.
> *Ward*, *supra* para 82 at para 40.

[103] Good faith errors should not attract *Charter* damages (*Henry*). In *Henry*, the Supreme Court held that *Charter* damages should not be awarded against prosecutors for good faith errors given the complexity of prosecutorial decisions; such an award would interfere with the proper execution of their functions.

> *Henry v British Columbia*, 2015 SCC 24 at para 70.

[104] The same analysis applies here. Ministerial decisions to grant site-specific standards are complex exercises of discretion that are ripe for good faith errors. Accordingly, awarding *Charter* damages against administrative decision-makers who make good faith errors would similarly interfere with the proper execution of their functions.

c. Any Award of Charter Damages Should be Nominal

[105] If the Court awards *Charter* damages to the Appellant, the quantum should be nominal. The quantum of *Charter* damages depends on the seriousness of the government misconduct: the less egregious the behaviour, the less the quantum of *Charter* damages should be (*Ward*).

> *Ward*, *supra* para 82 at para 52.

[106] The Respondent's conduct was not egregious. The Director genuinely attempted to reconcile the Appellant's *Charter* interests with the various statutory objectives of the *EPA* and the *Regulations*. A good faith but imprecise balance is not egregious government conduct that

should attract a significant quantum of *Charter* damages. The Ministry's efforts to reduce industrial pollution while maintaining Ontario's economic wellbeing should not be thwarted by a high quantum of damages. For Ontario to maintain and attract investment, the Court must recognize that economic and environmental sustainability are not mutually exclusive.

PART V – ORDER SOUGHT

[107] The Respondent requests that the appeal be dismissed.

All of which is respectfully submitted this 23rd day of January 2020.

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Team 9

Counsel for the Respondent

PART VI—LIST OF AUTHORITIES AND STATUTES

LEGISLATION

Canadian Charter of Rights and Freedoms, s 7, s 15, Part I of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
Air Pollution – Local Air Quality Regulations, O Reg 419/05, s 35.
Environmental Protection Act, RSO 1990, c E 19.

JURISPRUDENCE

Anawak v Nunavut (Chief Electoral Officer), 2008 NUCJ 26.
Archibald v Canada, [1997] 3 FC 335 at para 121, 146 DLR (4th) 499.
Bedford v Canada (Attorney General), 2013 SCC 72.
Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44.
Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65.
Canadian Egg Marketing Agency v Richardson, [1996] 3 WWR 153, [1996] NWTR 201.
Canadian Egg Marketing Agency v Richardson, [1998] 3 SCR 157, [1998] SCJ No 78.
Carter v (Attorney General), 2015 SCC 5, [2015] 1 SCR 331.
Centrale des syndicats du Québc c Québec (Procureure Générale), 2018 SCC 18.
Corbière v Canada (Minister of Indian and Northern Affairs), [1999] 2 SCR 203, [1999] SCJ No 24.
Doré v Barreau du Québec, 2012 SCC 12.
Ernst v Alberta Energy Regulator, 2017 SCC 1.
Gosselin v Québec (*Attorney General)*, 2005 SCC 35.
Haig v R, [1993] 2 SCR 995, [1993] SCJ No 84.
Henry v British Columbia, 2015 SCC 24.
Inverhuron & District Ratepayers' Assn v Canada (Minister of Environment), [2000] FCJ No 682, 191 FTR 20.
Kahkewistahaw First Nation v Taypotat, 2015 SCC 30.
Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations), 2014 BCSC 568.
Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54.
Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR 497, [1999] SCJ No 12.
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R v Turpin, [1989] 1 SCR 1296, [1989] SCJ No 47.
Revell v Canada (Citizenship and Immigration), 2019 FCA 262.
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Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1.
Tanudjaja v Canada (Attorney General, 2014 ONCA 852.
Vancouver (City) v Ward, 2010 SCC 7.
Withler v Canada (Attorney General), 2011 SCC 12.
Yang v Real Estate Council of British Columbia, 2019 BCCA 43.

SECONDARY SOURCES

David R Boyd, *The Right to a Healthy Environment Revitalizing Canada's Constitution* (Vancouver: UBC Press, 2012).

OFFICIAL PROBLEM

Clarifications to the 2020 Wilson Moot Problem.
Official Problem, Wilson Moot 2020