SUPPORTING CASE LAW TO HELP BUILD YOUR CASE

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CASE LAW REGARDING RIGHTS:

Province Cannot Override Fundamental Rights:

The Credit of Alberta Regulation Act; and the Accurate News and Information Act, SCR 100, 1938, Supreme Court of Canada:
https://www.canlii.org/en/ca/scc/doc/1938/1938canlii1/1938canlii1.html

Implied Bill of Rights, the Supreme Court of Canada ruled on the Reference re Alberta Statutes. It found that the Accurate News and Information Act, along with the others submitted to it for evaluation, was ultra vires (beyond the powers of) the Alberta government. In the case of the Accurate News and Information Act, the court found that the Canadian constitution included an "implied bill of rights" that protected freedom of speech as being critical to a parliamentary democracy.

Right to You to Sue for Breach of Privacy:

Jones v. Tsige, 2012, Ontario Court of Appeal:
https://www.canlii.org/en/on/onca/doc/2012/2012onca32/2012onca32.html

The ruling declared that the common law in Canada recognizes a right to personal privacy, more specifically identified as a "tort of intrusion upon seclusion", as well as considering that appropriation of personality is already recognized as a tort in Ontario law.

Case Law Civil Liberties Is Federal Matter:

R. v. Coldbeck, 1970 CanLII 1203 (AB PC)
https://www.canlii.org/en/ab/abpc/doc/1970/1970canlii1203/1970canlii1203.html?searchUrlHash=AAAAAQAVUi4gdi4gQ29sZGJlY2ssIDE5NzAgAAAAAAE&resultIndex=1&fbclid=IwAR2Z-jMnI5U-hs6C7jGuHqtBpebDiz_7sHcUz_Wu6Y8_7pRhqWrZmAVbGf4

This case law indicates that the province cannot enact punitive law with sanction without due process ie a hearing.

The court found that a provincial law must comply with the principles of due process protected of the Canadian Bill of Rights and the Magna Carta which include the right to a trial.

“Substantive law is created which in every instance 'is ultra vires the Lieutenant-Governor in Council, is an invasion of the field of legislation, reserved to the Parliament of Canada, and is unconstitutionally in violation both of the Canadian Bill of Rights and of the fundamental liberties preserved by the Magna Carta in the administration of justice over the past 755 years.”

Corporation of the City of London and London Civic Employees Union, Local 107, 1978 CanLII 3475 (ON LA)
https://www.canlii.org/en/on/onla/doc/1978/1978canlii3475/1978canlii3475.html?searchUrlHash=AAAAAQBSQ29ycG9yYXRpb24gb2YgdGhlIENpdHkgb2YgTG9uZG9uIGFuZCBMb25kb24gQ2l2aWMgRW1wbG95ZWVzIFVuaW9uLCBMb2NhbCAxMDcgMTk3OAAAAAAB&resultIndex=1&fbclid=IwAR0YJ9h4HKmyZbpqpY3uE6VCKmZGQ0HwTsknPqHb4oDmQPEr9dYtL4Okn9U

Free speech is inferred by the province. This reinforces civil liberties as being a federal matter conferred on the provinces.

"Merits For a variety of reasons, I strongly disagree with the decision of the majority that a union official can be disciplined for exercis-ing his rights to free speech. First, a board of arbitration which derives its jurisdiction from provincial legislation, such as this board, cannot impose restric-tions upon freedom of speech unless the statements are made by an employee, qua employee, to his employer. Otherwise, free speech falls within federal control under Parliament's general power to make laws "for the Peace, Order, and good Government of Canada", or under Parliament's power to make laws in rela-tion to criminal law. Attempts by provincial Legislatures to limit free speech have been held by the Supreme Court of Canada to be ultra vires. For example, in Reference re Alberta Legislation, [1938] 2 D.L.R. 81, [1938] S.C.R. 100 [affd [1938] 4 D.L.R. 433, [1939] A.C. 117, [1938] 3 W.W.R. 337], the Supreme Court of Canada was asked to con-sider the constitutionality of provincial legislation which at-tempted to create a tribunal to monitor the press in the Province of Alberta. Chief Justice Duff stated, at p. 108:
Any attempt to abrogate this right of public debate or to suppress the tradi-tional forms of the exercise of the right (in public meeting and through the press) would, in our opinion, be incompetent to the Legislatures of the Prov-inces ... as repugnant to the provisions of the B.N.A. Act ...
Moreover, the Canadian Bill of Rights sets out the wishes of Parliament in the area of free speech in s. 1(d) which states:

> 1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist ... the following human rights and fundamental freedoms, namely, (d) freedom of speech"
>
> Therefore, an arbitral finding which limits the griever's right to free speech is:
> (1) ultra vires the arbitrator's authority as an appointed official pursuant to provincial legislation, and
> (2) an interference with the griever's status as a Canadian citi-zen wherein is found his fundamental and sacred right to ex-press freely his opinion and discuss the matters of public concern.

Cogan et al. and City of Toronto et al. (1974), 3 O.R. (2d) 661

https://www.canlii.org/en/on/onsc/doc/1974/1974canlii586/1974canlii586.html?searchUrlHash=AAAAAQAiIkNhbmFkaWFuIGJpbGwgb2YgcmlnaHRzIiAiYnktbGF3IgAAAAAB&resultIndex=183

This case law required the city of Toronto to treat citizens equally before the law as per the Canadian Bill of Rights section 1 (b).

"It may not be amiss however, to raise serious doubts as to the propriety of municipal legislation that openly invites uneven application to citizens, private or corporate. Such legislation would appear to fly in the face of a principle enshrined in the Canadian Bill of Rights, namely, that all citizens are equal before the law. This legislation openly provides for special treatment for some, who for reasons that can never be truly known, will obtain exemptions from By-law 348-73 or amendments to the zoning by-law and others will be refused. Apart from the objection that it is designed to be unequally applied, despite the declared benevolent intention of such legislation, it is fraught with obvious possibilities for abuse."

Henry Birks & Sons (Montreal) Ltd. v. City of Montreal, 1955 CanLII 69 (SCC), [1955] SCR 799

https://www.canlii.org/en/ca/scc/doc/1955/1955canlii69/1955canlii69.html

The court decided that the restrictive laws regarding religion would be federal jurisdiction because they were criminal laws. The law was struck down.

"Even if it could be said that legislation of the character here in question is not properly "criminal law" within the meaning of s. 91(27), it would, in my opinion, still be beyond the jurisdiction of a provincial legislature as being legislation with respect to freedom of religion dealt with by the statute of 1852, 14-15 Vict., c. 175, Can."

SWITZMAN v. ELBING AND A.G. OF QUEBEC, [1957] S.C.R. 285

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2748/index.do

The court found provincial law ultra vires because it was criminal in nature and therefore in violation of section 91 of the Constitution Act of Canada 1867.

> "The *Act Respecting Communistic Propaganda* of the Province of Quebec, R.S.Q. 1941, c. 52, is *ultra vires of* the Provincial Legislature. *Fineberg v. Taub* (1939), 77 Que. S.C. 233, overruled. *Per* Kerwin C.J. and Locke, Cartwright, Fauteux and Nolan JJ.: The statute is legislation in respect of criminal law which, under head 27 of s. 91 of the *British North America Act, is* within the exclusive competence of the Parliament *of* Canada. *Bédard v. Dawson et al.,* [1923] S.C.R. 681, distinguished. *Per* Rand, Kellock and Abbott M.: The subject-matter of the statute is not within any of the powers specifically assigned to the Provinces by s. 92 *of* the *British North America Act* and it constitutes an unjustifiable interference with freedom of speech and expression essential under the democratic form of government established in Canada."

R. v. Asante-Mensah, 2003 SCC 38 (CanLII), [2003] 2 SCR 3
https://www.canlii.org/en/ca/scc/doc/2003/2003scc38/2003scc38.html

This case law showed that the supreme court used the criminal code to analyze whether the use of force was done according to Criminal Code of Canada regulation on use of force section 25 which includes private citizens enforcing the law under the provincial Trespass to Property Act. Trespass to Property Act arrest authority is federal jurisdiction and therefore subject federal regulations and therefore the provisions of the Canadian Bill of Rights.

Canadian Bill of Rights

Canadian Bill of Rights - Post Charter relevance:

R. v. Andrew, 1986 CanLII 966 (BC SC)
https://www.canlii.org/en/bc/bcsc/doc/1986/1986canlii966/1986canlii966.html?searchUrlHash=AAAAAQAlUi4gdi4gQW5kcmV3LCAxOTg2IENhbkxJSSA5NjYgKEJDIFNDKQAAAAAB&resultIndex=1

The fact that I have held that the principle of equality before the law does not fail within s. 7 does not mean however that it is not a principle of fundamental justice. It simply means that the principle is not yet entrenched by the Charter. The Charter did not repeal the Canadian Bill of Rights nor did it do away with principles of fundamental justice existing independently of the Bill of Rights. In the Gustavson decision McKenzie J. said at pp. 6-7, p. 474 C.C.C., p. 495 D.L.R.:

The Queen v. Beauregard, 1986 CanLII 24 (SCC), Para [1986] 2 SCR 56
https://www.canlii.org/en/ca/scc/doc/1986/1986canlii24/1986canlii24.html?searchUrlHash=AAAAAQA-VGhlIFF1ZWVuIHYuIEJlYXVyZWdhcmQsIDE5ODYgQ2FuTElJIDI0IChTQ0MpLCBbMTk4Nl0gMiBTQ1IgNTYAAAAAAQ&resultIndex=1

I have reached the conclusion that s. 29.1(2) of the Judges Act is inconsistent with s. 1(b) of the Canadian Bill of Rights and that the respondent is entitled to a declaration that this subsection is inoperative in so far as the respondent is concerned.

Singh v. Minister of Employment and Immigration, 1985
https://www.canlii.org/en/ca/scc/doc/1985/1985canlii65/1985canlii65.html?searchUrlHash=AAAAAQA1U2luZ2ggdi4gTWluaXN0ZXIgb2YgRW1wbG95bWVudCBhbmQgSW1taWdyYXRpb24sIDE5ODUAAAAAAQ&resultIndex=1

It has not been declared by any Act of the Parliament of Canada that the Immigration Act, 1976 shall operate notwithstanding the Canadian Bill of Rights. In view of s. 5(2) of An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms, 1960 (Can.), c. 44, in Part II which follows the Canadian Bill of Rights, I do not see any reason not to apply the principle in the Drybones case to a provision enacted after the Canadian Bill of Rights.

MacBain v. Lederman, 1985 CanLII 5548

https://www.canlii.org/en/ca/fca/doc/1985/1985canlii3160/1985canlii3160.html?searchUrlHash=AAAAAQAlTWFjQmFpbiB2LiBMZWRlcm1hbiwgMTk4NSBDYW5MSUkgNTU0OAAAAAAB&resultIndex=1

Another successful outcome was in the 1985 Federal Court of Appeal case of MacBain v Lederman, where the Court considered whether parts of the federal Human Rights Act violated the right to a fair hearing. Para [18] In that case, Mr. MacBain faced a discrimination complaint brought against him by one of his employees. Para [19] However, the procedures outlined in the Act allowed the same people who prosecuted the complaint against Mr. MacBain to select the decision makers in the hearing process. Para [20] The Court found that those sections of the Act that defined how decision makers were appointed were inoperative because they violated Mr. MacBain's right to a fair hearing in section 2(e) of the Bill of Rights. Para [21].

More recently, the Federal Court in Hassouna v Minister of Citizenship and Immigration Canada found that parts of the Citizenship Act were inconsistent with the right to a fair hearing, and declared those sections inoperative. Para [22] The Court said that allowing a federal minister to revoke citizenship without giving individuals the opportunity for a hearing was contrary to the protections in the Bill of Rights. Para [23] R. v. Demers, Para [2004] 2 S.C.R. 489 harkens back to The Bill to inform judgement and further, to, an 'implied bill of rights' birthed in the Constitution Act, 1867 in paras. 80-84. Although The Bill maintains as law, its modern application is questioned, as seen in R. v. Kapp, Para [2008] 2 S.C.R. 463.

Whether or not its stand-alone power has diminished, little can be taken away from. The Canadian Bill of Rights, as it compels and informs both statute, common law and the Canadian way of life, long-after it was conceived.

Oglaza v. J.A.K.K. Tuesdays Sports Pub Inc., 2021 ONSC 7701

https://www.canlii.org/en/on/onsc/doc/2021/2021onsc7701/2021onsc7701.html?searchUrlHash=AAAAAQA7T2dsYXphIHYuIEouQS5LLksuIFR1ZXNkYXlzIFNwb3J0cyBQdWIgSW5jLiwgMjAyMSBPTlNDIDc3MDEAAAAAAQ&resultIndex=2

Para [23] As for the Bill of Rights, it applies only to federal laws and, thus, is of no effect on provincial law. This, as well as the limited effect of the law even in the federal context, was explained by the Supreme Court in Authorson v. Canada (Attorney General), 2003 SCC 39, Para [2003] 2 S.C.R. 40, at paras. 10 and 31: Para [10] The Bill of Rights is a federal statute that renders inoperative federal legislation inconsistent with its protections. It protects rights that existed when the Bill of Rights was enacted, in 1960. If Parliament wishes to circumvent the protections of the Bill of Rights, it must do so explicitly by stating that the legislation in question operates notwithstanding the Bill of Rights. [...]

NOTE: These caveats are intended not to sound a note of caution regarding the renewed interest in the Bill of Rights, but rather to anticipate the more rigorous examinations which will accompany Bill of Rights' juris- prudence if this revival continues. It would be a strange and perhaps happy irony if the orphan of Canada's constitutional order were to be- come a principal vehicle to elaborate and explore the most intriguing quandaries of administrative law. This proves the adage that if you leave something in the back of the closet long enough, it is bound to come back in fashion eventually.

66 There has been at least some indication that Courts might approach "due process" as a broader procedural guarantee, encompassing "a total process" including a reasonableness requirement. See: Smith, Kline & French Laboratories Ltd. v. Canada (Attorney General), supra, note 16.

CASE LAW REGARDING THE RIGHT TO PROTEST:

Right to Protest, In a Time of Emergency:

Beaudoin v British Columbia, 2021, Supreme Court of BC:
https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc512/2021bcsc512.html?resultIndex=1

Judge ruled the Ministry of Health orders regarding restricting gatherings and events are an infringement of rights under the Charter (NOTE: you can reference case law that uses the Charter, this is NOT the same as invoking the charter that requires an application).

"Mr. Beaudoin is entitled to a part of the declaration he seeks, pursuant to ss. 24(1) and 52(1) of the *Constitution Act, 1982*. I declare that orders made by Dr. Henry entitled "Gatherings and Events" pursuant to ss. 30, 31, 32 and 39(3) of the *PHA*, including the orders of November 19, 2020, December 2, 9, 15 and 24, 2020 are of no force and effect as against Mr. Beaudoin as they unjustifiably infringe his rights and freedoms with respect to public protests pursuant to ss. 2(c) and (d) of the *Charter*."

Police Cannot Arrest to Prevent a Breach of the Peace:

Fleming v Ontario, 2009, Supreme Court of Canada:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17947/index.do

Mr. Fleming was on his way to join a protest in Caledonia, Ontario in 2009. The protest was against the occupation of a piece of land by a First Nations group. He was carrying a Canadian flag on a wooden pole and walking down a street beside the occupied land.

Mr. Fleming was known to the police and had been violent in the past. Mr. Fleming was arrested by the police to prevent a breach of the peace, because of their belief the situation would get escalated. The police forced him to the ground, took his flagpole and took him to jail where he was held for a few hours.

Police officers saw him as they drove by. There had been violence in the past, and they were planning to keep the groups apart. The officers turned their vehicles around and sped toward him. Mr. Fleming got off the road and crossed a low fence. He said he did this to get away from the speeding vehicles and onto level ground. The officers were yelling. Mr. Fleming said he didn't think they were yelling at him because he hadn't done anything wrong. He was charged with obstructing a police officer (preventing a police officer from doing their job). He went to court a dozen times to fight the charge, which was later dropped.

In 2011, Mr. Fleming sued the Province of Ontario and the officers involved in his arrest. He said the officers acted wrongfully. He said they assaulted and battered him, wrongfully arrested him, and falsely imprisoned him. He also said they violated several of his rights under the *Canadian Charter of Rights and Freedoms*, part of Canada's Constitution.

Police officers get their powers from statutes (like the *Criminal Code*) and common law (the law made by judges deciding cases). They can only act within those laws. Under the common law, the police can limit someone's freedom (for example, arrest them) if it's reasonably necessary to carry out their duties. The police argued they had the power to arrest Mr. Fleming under the common law. They said it was to prevent a "breach of the peace." A breach of the peace is more than a disturbance. It means there is a risk of violence and that someone will get hurt.

The Supreme Court unanimously said the officers didn't have the power to arrest Mr. Fleming. The police can't arrest someone acting lawfully just because they think it will stop others from breaching the peace. They already have other powers to deal with these situations under the *Criminal Code*. Since they had these less drastic options, arresting Mr. Fleming wasn't really necessary.

The Court noted that preserving the peace, preventing crime, and protecting life and property are the main duties of police officers under the common law. They have the power to take actions to support these duties, even if these actions aren't specifically set out in the *Criminal Code*. Preventing breaches of the peace is obviously related to preserving the peace, preventing crime, and protecting life and property. But the Court said it wasn't reasonably necessary to arrest someone to prevent a breach of the peace, if that person hadn't done (and wasn't about to do) anything wrong.

Police are allowed to use as much force as reasonably necessary to carry out their duties. But in this case, they weren't allowed to arrest Mr. Fleming, so no amount of force was justified.

Taking away someone's freedom, even temporarily, is serious. Often, in situations like Mr. Fleming's, the person wouldn't have any way to challenge their arrest in court, because there wouldn't be any charges. The only option would be an expensive civil lawsuit. This was another reason the Court said the standards for judging police actions should be strict.

Right to Protest on Public Land:

Bracken v Town of Fort Erie, Court of Appeal Ontario 2017:

https://www.canlii.org/en/on/onca/doc/2017/2017onca668/2017onca668.pdf

Ban on 'loud' protester from town property overturned as unconstitutional. Ruled that "The area in front of a Town Hall is a place where free expression not only has traditionally occurred but can be expected to occur in a free and democratic society," Miller said. "The literal town square is paradigmatically the place for expression of public dissent."

CASE LAW ON EMPLOYMENT RIGHTS:

Leave Without Pay:

Cabiakman v. Industrial Alliance Life Insurance Co., 2004, Court of Appeal for Quebec:

https://canliiconnects.org/en/commentaries/46624

Supreme Court of Canada ruling states that the following are required when placing an employee on administrative suspension:

- The suspension must be necessary to protect the legitimate business interest;
- The employer must be acting in good faith;
- The suspension must be for a relatively short time period for a fixed term; and
- Other than in exceptional circumstances, the suspension must be paid.

If you are placed on an unpaid suspension for administrative reasons where your employer is refusing to pay you, you are able to refuse the suspension and this would not be construed as a resignation but rather a constructive dismissal.

Arbitration Ruling Upholding Section 63 Of OHSA and a Collective Agreement:

St. Patrick's Home of Ottawa Inc. v Canadian Union of Public Employees, Local 2437, 2016:
https://www.occupationalhealthandsafetylaw.com/employer-breached-ohsa-collective-agreement-by-sharing-employees-medical-information-with-another-employer/

Summary: Employer (long-term care home) breached OHSA, collective agreement by sharing employee's medical information with another employer. This case illustrates the increasing importance of privacy – particularly of medical information – in the workplace, and that privacy obligations can come from unexpected places, including the OHSA.

CASE LAW ON INFORMED CONSENT:

Informed Medical Consent:

Parmley vs Parmley, 1945, Court of Appeal BC:
https://www.canlii.org/en/ca/scc/doc/1945/1945canlii13/1945canlii13.html

Hopp vs Lepp, 1980, Supreme Court of Appeal Alberta:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2553/index.do

Both of the above case laws concluded that consent must be made freely and information about the risks must be given.

If There is No Consent, the Act is Assault:

R vs Ewanchuk, 1999, Court of Appeal Alberta:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1684/index.do

Where there is a threat of harm or reprisal or pressure from an authority there is no consent and therefore the act is assault. Therefore, forced masks, forced vaxx, quarantine including business lockdown and stay home order is a criminal offence.

PERSONAL/CRIMINAL LIABILITY OF AGENTS OF THE CROWN/MEMBER OF EXECUTIVE BRANCH:

Immunity Regarding Crown Agent:

R. v. Eldorado Nuclear Ltd.; R. v. Uranium Canada Ltd, 1983, Supreme Court of Canada:
https://www.canlii.org/en/ca/scc/doc/1983/1983canlii34/1983canlii34.html

When a Crown agent acts outside of Crown purposes, and not on behalf of the state, there is no immunity of the Crown agent:

"The conclusion that a Crown agent is personally responsible for an unlawful act still leaves the question whether an act is unlawful. Where the unlawfulness or the wrongfulness of the act arises without any recourse to a statute, the Crown's immunity from a statute, as expressed in s. 16 of the Interpretations Act, is irrelevant. If, for example, the agent commits a tortious act, it is the common law which characterizes it as unlawful. There is no immunity that the agent can claim."

"Where the only source of unlawfulness is a statute, however, the analysis is entirely different…the preliminary question…is whether that person is bound by that statute…"

"When the agent steps outside the ambit of Crown purposes, however, it acts personally, and not on behalf of the state, and cannot claim to be immune as an agent of the Crown. This follows from the fact that s.16 of the Interpretations Act works for the benefit of the state, not for the benefit of the agent personally."

The Court adopted this approach in the CBC v. The Queen 1983
"For all purposes of this Act…" the corporation "was not acting for the purposes entrusted to it under the Act… when the Corporation exercises its powers with a view to carrying out the purposes …it acts as agent of Her Majesty and only as agent of Her Majesty. But, when it exercises its powers in a manner inconsistent with the purposes of the Act, it steps outside its agency role.
"The position at common law is not that those under de jure control are entitled to Crown immunity, but rather that immunity extends to those acting on behalf of the Crown."

"This Court's decision in Formea Chemicals Ltd. v. Polymer Corporation Ltd., supra, is also instructive. The case concerned s. 19 of the Patent Act, R.S.C. 1952, c. 203….
Martland J., speaking for the Court, equated "Government of Canada" with the Crown.

Member of Executive Branch Liable for Punishment for Acting in Excess of Their Lawful Authority:

Roncarelli v. Duplessis, 1959, Supreme Court of Canada:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.do

The proposition that in Canada a member of the executive branch of government does not make the law but merely carries it out or administers it requires no citation of authority to support it. Similarly, I do not find it necessary to cite from the wealth of authority supporting the principle that a public officer is responsible for acts done by him without legal justification. I content myself with quoting the well-known passage from Dicey's "Law of the Constitution", 9th ed., p. 193, where he says

... every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of state, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is any private and unofficial person.

Peace officer civil liability:

Hudson v. Brantford Police Services, 2001, Court of Appeal Ontario:
https://www.canlii.org/en/on/onca/doc/2001/2001canlii8594/2001canlii8594.html?searchUrlHash=AAAAAQAfUzI1ICgxKSBDcmltaW5hbCBDb2RlIG9mIENhbmFkYQAAAAAB&resultIndex=1

S. 25(1) of the Criminal Code of Canada, which provides that a peace officer who is authorized by law to do something in the enforcement of the law is justified in doing what he or she is authorized to do if the officer "acts on reasonable grounds". In effect, s. 25(1) protects the officer from civil liability for reasonable mistakes of fact and authorizes the use of force. It does not protect against reasonable mistakes of law, such as mistake as to the authority to commit a trespass to effect an arrest.

English Bill of Rights, Dispensing of Power:
https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction

Dispensing Power.

That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyament is illegall.

PROCEDURAL CASE LAW:

Police Cannot Escalate Bylaw to Criminal Charges:

R v Sharma, SCC 1993:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/970/index.do:

The power of arrest...has to be exercised promptly, yet, strictly speaking, it is impossible to say that an offence is committed until the party arrested has been found guilty by the courts. If this is the way in which this provision [now s. 495 of the Criminal Code] is to be construed, no peace officer can ever decide, when making an arrest without a warrant, that the person arrested is "committing a criminal offence". In my opinion...the power to arrest without a warrant is given where the peace officer himself finds a situation in which a person is apparently committing an offence.

"In my view, Arbour J.A. was correct in holding that, even if s. 11 of Metro By-law 211-74 were valid, the police cannot circumvent the lack of an arrest power for a violation of the by-law by ordering someone to desist from the violation and then charging them with obstruction. The power to arrest in order to enforce the by-law cannot be inferred in the face of clear language in the Municipal Act and the Provincial Offences Act setting out more moderate means of dealing with repeated infractions. The officer had no authority, either at common law or under statute, to arrest the appellant for failing to comply with an order to desist from conduct prohibited by the by-law. The power to arrest without a warrant for disobeying an order to desist from conduct prohibited by s. 11 of Metro By-law 211-74 cannot be founded upon the language of Metro By-law 211-74, nor on ss. 3 and 23 of the Provincial Offences Act, nor on s. 57 of the Police Act. Johanson v. The King, supra, has no application in the absence of a statutory duty of obedience to police officers. The police constable in this case indeed had an obligation to enforce the by-law. The legislature defined the enforcement power as ticketing the offender, and the appellant did not obstruct the constable in the performance of this duty. The power of arrest cannot be derived as a matter of common law from the officer's duty to enforce the by-law given the legislature's definition of what such enforcement entails."

Right To Be Tried Within a Reasonable Time:

R. v. Jordan, 2016, SCC:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16057/index.do

At paragraph [5] A change of direction is therefore required. Below, we set out a new framework for applying s. 11(b). At the centre of this new framework is a presumptive ceiling on the time it should take to bring an accused person to trial: 18 months for cases going to trial in the provincial court, and 30 months for cases going to trial in the superior court. Of course, given the contextual nature of reasonableness, the framework accounts for case-specific factors both above and below the presumptive ceiling. This framework is intended to focus the s. 11(b) analysis on the issues that matter and encourage all participants in the criminal justice system to cooperate in achieving reasonably prompt justice, with a view to fulfilling s. 11(b)'s important objectives.

R. v. Ghraizi, 2022, ABCA:
https://www.canlii.org/en/ab/abca/doc/2022/2022abca96/2022abca96.html?autocompleteStr=2022%20ABCA%2096&autocompletePos=1
Decision of the Trial Judge

[2] After finding that none of the delay was attributable to the defence and the case was not complex, the trial judge concluded that the 20-month delay was presumptively unreasonable, as it exceeded the 18-month ceiling set by R v Jordan, 2016 SCC 27, [2016] 1 SCR 631.

[3] Mr Ghraizi's one-day trial was originally set for November 28, 2019, 11 months after he was charged. The trial did not proceed on this date due to Crown illness and was adjourned to March 2, 2020. The trial did not conclude on March 2 and was scheduled to continue March 16, 2020, but did not proceed because the assigned Crown counsel was in a jury trial that went longer than its anticipated finish date.

[4] The matter was put over to March 23, 2020 to schedule a further date.

[5] As a result of the Covid-19 pandemic, the Provincial Court of Alberta on March 17, 2020 restricted all in-person appearances in the courthouse and presumptively adjourned most matters for 10 weeks. On March 23, the matter was presumptively adjourned for 10 weeks to June 1. On April 29, 2020, defence was able to reschedule the trial. The earliest date which the system could accommodate was September 25, 2020, 21 months from the date Mr Ghraizi was charged. ... The Crown argued that both Crown counsel illness and the Covid-19 pandemic were exceptional circumstances as contemplated in Jordan and that the entirety of these time periods should be deducted from the delay.

[6] The trial judge rejected this argument. Relying on Jordan, at para 70, the trial judge found that it was not enough for the Crown, once the ceiling was breached, to point to past difficulty. The Crown also had an obligation to show it took reasonable steps to avoid and address the problem before the delay exceeded the ceiling. The trial judge found that there was no information before her to indicate "any particular steps were taken or contemplated by the Crown to address the delay occasioned by [Crown counsel's illness] and indeed the next adjournment occasioned by the Crown" and instead, that the Crown simply participated in defence counsel's rescheduling of the matter in the ordinary course. She declined to deduct the first period from the delay

Self-Represented Litigants are Afforded Leeway:

Sanzone v. Schechter, 2016 ONCA 566:
https://www.canlii.org/en/on/onca/doc/2016/2016onca566/2016onca566.html

Para [37] In those circumstances, the motion judge should not have granted summary judgment but, instead, should have focused on the moving parties' alternative relief – the dismissal of the action because the appellant had not set it down for trial by December 31, 2014, as directed by a master. Had the motion judge done so, no doubt he would have concluded that this action had reached the point where case management by a single judge was required in order to address the legitimate desire of the respondents to see the action moved along, while accommodating, in a reasonable and practical manner, the self-represented appellant's unfamiliarity with the process to enable her to present her case to the best of her ability.

MISCHIEF CRIMINAL CHARGES:

Damage is Essential for a Mischief Charge:

R vs K. T., 2005, Manitoba Court of Appeal:
https://www.canlii.org/en/mb/mbca/doc/2005/2005mbca78/2005mbca78.html?resultIndex=1

Damage is an essential element of the actus reus (the act or omission that comprise the physical elements of a crime as required by statute) for a mischief charge. Failure of the crown to show property in question was damaged will be fatal to a conviction. Paragraph 17 states "...without damage there was no mischief to property"

The charge of "Obstructing" police includes disobeying a lawful police order. It was not a LAWFUL order under the EA:
http://criminalnotebook.ca/index.php/Obstruction_of_a_Peace_Officer_(Offence)

There are several criteria that must be met for proof of offence. Point 7 "the peace officer was engaged in lawful duty at all relevant times". The Emergencies Act and orders carried out under it were not lawful. Therefore, the peace officers were not engaged in lawful duty. As such, the proof of offence has not been fulfilled, and there was no legal cause for arrest.