



OVERSEAS DECISIONS BULLETIN

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Decisions from the Supreme Court of the United Kingdom, the Supreme Court of Canada, the Supreme Court of the United States, the Constitutional Court of South Africa and the Supreme Court of New Zealand.

Administrative Law

Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others

Constitutional Court of South Africa: [\[2013\] ZACC 39](#).

Judgment delivered: 20 November 2013.

Coram: Moseneke DCJ, Cameron, Froneman, Jafta, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen, Zondo JJ and Mhlantla AJ.

Catchwords:

Administrative law – Land-use approval – Planning decisions – Respondents applied to George Municipality and appellant for certain land-use approvals in order to undertake large scale development – Acting under Cape Land Use Planning Ordinance the Municipality granted approval and referred matter to appellant for authorisation – Appellant refused application – Whether appellant has power to involve himself in rezoning and subdivision decisions – Whether refusals met standard for just administrative action prescribed by the *Promotion of Administrative Justice Act*.

Held (10-0): The Court dismissed the challenge to the Appellant's rezoning decision and remitted the respondent's subdivision application to the Municipality for reconsideration.

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Katz Group Canada Inc. v Ontario (Health and Long-Term Care)
Supreme Court of Canada: [\[2013\] SCC 64](#).

Judgment delivered: 22 November 2013.

Coram: McLachlin CJ, LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

Catchwords:

Administrative law – Food and drugs regulations – Validity – Ontario enacted Regulations to effectively ban sale of private label drugs by pharmacies – Purpose of Regulations to reduce drug prices – Whether Regulations are ultra vires as inconsistent with statutory scheme and mandate.

Held (7-0): Appeal dismissed. Regulations contribute to the legislative pursuit of transparent drug pricing by ensuring that pharmacies make money exclusively from providing professional health care services, instead of sharing in the revenues of drug manufacturers by setting up their own private label subsidiaries.

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In the matter of an application by Martin Corey for Judicial Review (Northern Ireland)

Supreme Court of the United Kingdom: [\[2013\] UKSC 76](#).

Judgment delivered: 4 December 2013.

Coram: Lord Mance, Lord Kerr, Lord Clarke, Lord Hughes and Lord Toulson JJSC.

Catchwords:

Administrative law – Procedural fairness – Prisoner release on bail revoked – Parole commissioners reviewed decision – Judge subsequently found breach of procedural fairness in conduct of review hearing – Whether respondent entitled to grant prisoner bail pending re-hearing of review.

Human rights – Prisoners' rights – Bail.

Held (5-0): Appeal dismissed.

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R (on the application of Hodkin & Anor) v Registrar-General of Births, Deaths and Marriages

Supreme Court of the United Kingdom: [\[2013\] UKSC 77](#).

Judgment delivered: 4 December 2013.

Coram: Lord Neuberger PSC, Lord Clarke, Lord Wilson, Lord Reed and Lord Toulson JJSC.

Catchwords:

Administrative law – Judicial review – Registration – Chapel – Registrar-General refused to certify Scientologist chapel as “place of meeting for religious worship” – Whether “religious worship” necessarily involved reverence to a deity – Whether religion included any spiritual or non-secular belief system – Whether Scientology services “religious worship” – Whether Registrar-General erred.

Held (5-0): Appeal allowed.

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McLean v British Columbia (Securities Commission)

Supreme Court of Canada: [\[2013\] SCC 67](#).

Judgment delivered: 5 December 2013.

Coram: LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Administrative law – Securities – Standard of review – Limitation of Actions – Appellant entered into settlement agreement with Ontario Securities Commission in respect to certain possible improper actions – Respondent initiated secondary proceedings based on settlement agreement – British Columbia Securities Act established limitation period of six years from date of “events” giving rise to proceedings – Whether “events” triggering six-year limitation period are underlying misconduct giving rise to settlement agreement, or settlement agreement itself – Whether standard of review of Commission’s decision should be correctness or reasonableness – Having regard to standard of review, whether there is any basis to interfere with Commission’s interpretation.

Held (7-0): Appeal dismissed. Although the Commission’s interpretation significantly extends the duration of time for which a person may be subject to regulatory action, of itself, that is not offensive to the purpose

of limitation periods. Limitation periods are always driven by policy choices that attempt to balance the interests of the parties. The Commission's interpretation strikes a reasonable balance between facilitation of interprovincial cooperation and the underlying purposes of limitation periods.

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Minister of Mineral Resources and Others v Sishen Iron Ore Company (Pty) Ltd and Another

Constitutional Court of South Africa: [\[2013\] ZACC 45.](#)

Judgment delivered: 12 December 2013.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron, Jafta, Froneman, Madlanga, Nkabinde, Skweyiya and Van der Westhuizen JJ and Mhlantla AJ.

Catchwords:

Administrative law – Mineral and Petroleum Resources Development Act (“MPRDA”) – Interpretation and application of transitional provisions – Respondents failed to convert old order mining rights within five-year period – Whether respondent mining companies competent to apply for and be granted mining right in terms of s 23 of MPRDA.

Held: Appeal allowed in part. Sishen Iron Ore Company (Pty) Ltd competent to apply for and be granted mining rights but AMSA is not.

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Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining And Development Company Ltd and Others

Constitutional Court of South Africa: [\[2013\] ZACC 48.](#)

Judgment delivered: 13 December 2013.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron, Jafta, Froneman, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen and Zondo JJ and Mhlantla AJ.

Catchwords:

Administrative law – Legitimate expectations – Review of Ministerial decision – Respondent initiated review action of Ministerial decision regarding prospecting rights – Subsequent decisions adverse to appellant's interests – Promotion of Administrative Justice Act (“PAJA”) – Whether respondent failed to

exhaust internal remedies as required by s 96 read with s 7 of PAJA – Whether respondent had delayed unreasonably in instituting review application – Whether review application was invalid.

Practice and Procedure – Condonation – Late delivery of argument – Whether delay excessive – Whether prejudice or inconvenience to any party or the Court.

Held: Appeal dismissed. Appellant's late delivery of argument condoned, but respondent had not delayed unreasonably in instituting review application.

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Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal

Constitutional Court of South Africa: [\[2013\] ZACC 49.](#)

Judgment delivered: 18 December 2013.

Coram: Moseneke DCJ, Cameron, Jafta, Froneman, Madlanga, Skweyiya, Nkabinde, Van der Westhuizen, Zondo JJ and Mhlantla AJJ.

Catchwords:

Administrative law – Standard of review – Labour Court – Department of Education: KwaZulu-Natal – Two candidates promoted within Department – Respondent Member of the Executive Council for Education: KwaZulu-Natal subsequently discovered irregularities in appointment process – Respondent applied to Labour Court to have appointments set-aside – Whether Respondent's application is to be reviewed on basis of legality of promotions in terms of Public Service Act or "administrative action" in terms of Promotion of Administrative Justice Act.

Held (11-0): Appeal allowed. MEC's delay in bringing application was unreasonable.

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G (AP) v Scottish Ministers and another (Scotland)

Supreme Court of the United Kingdom: [\[2013\] UKSC 79.](#)

Judgment delivered: 18 December 2013.

Coram: Lady Hale DPSC, Lord Wilson, Lord Sumption, Lord Reed and Lord Hodge JJSC.

Catchwords:

Administrative law – “entrapped patients” – Appellant acquitted of rape, assault and breach of the peace in 1998 on grounds of insanity – Appellant confined to a state hospital under a compulsion order and a restriction order – Appellant applied to be released from state hospital under s 264(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 – Application was dismissed – Whether Tribunal failed to exercise its discretion in accordance with purpose of s 264(2) – Whether Tribunal erred in interpretation of s 264(2) such that the Tribunal erred in law.

Held (5-0): Appeal dismissed.

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The New Zealand Pork Industry Board v The Director-General of the Ministry for Primary Industries

Supreme Court of New Zealand: [\[2013\] NZSC 154.](#)

Judgment delivered: 20 December 2013.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Administrative law – Judicial review – Director-General of Ministry of Primary Industries issued import health standards for pork which permitted importation of raw pork from certain countries in consumer-ready cuts – Whether Director-General acted unlawfully – Whether consultation process under Biosecurity Act ss 22 and 22A complied with.

Held (4-1): Appeal dismissed. By 5-0 the Supreme Court held that the Director-General complied with requirements under s 22A of the Biosecurity Act, and by 4-1 the Supreme Court held that the Director-General complied with requirements under s 22 of the Biosecurity Act.

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Citizenship and Migration Law

Patel and Ors; Anwar; Alam v Secretary of State for the Home Department

Supreme Court of the United Kingdom: [\[2013\] UKSC 72.](#)

Judgment delivered: 20 November 2013.

Coram: Lord Mance, Lord Kerr, Lord Reed, Lord Carnwath and Lord Hughes JJSC.

Catchwords:

Citizenship and Migration – *Immigration Act 1971* – Limited leave to enter – Application to extend stay – Home Secretary refused application to extend stay – Home Secretary failed to make removal direction at time of decision to refuse application to extend stay – Whether failure to do so invalidates refusal of extension.

Citizenship and Migration – Appeal – First-tier Tribunal – New evidence presented to First-tier Tribunal to support application to extend stay – Whether s 85A of *Nationality, Immigration and Asylum Act 2002* precludes new evidence being presented – Whether this material could be taken into account under Article 8 of the *European Convention on Human Rights*.

Held (5-0): Appeal dismissed. In the Patel appeal the Court held that the Secretary of State was under no duty to issue removal directions at the time of the decision to refuse leave to remain, and that the actual decision was not invalidated by her failure to do so. In the Anwar and Alam appeals, although the First-tier Tribunal was obliged under s 120 of the 2002 Act to consider the new evidence filed, this evidence did not significantly improve their respective cases under Article 8 of the Convention.

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Zoumbas v Secretary of State for the Home Department
Supreme Court of the United Kingdom: [\[2013\] UKSC 74](#).

Judgment delivered: 27 November 2013.

Coram: Lady Hale DPSC, Lord Kerr, Lord Reed, Lord Toulson and Lord Hodge JJSC.

Catchwords:

Citizenship and Migration – Immigration – Asylum – Removal – Congolese petitioner and wife entered United Kingdom – Claims for asylum refused – Three children born in United Kingdom – Petitioner claimed removal would interfere with Convention right to respect for private and family life – Whether Home Secretary properly considered children’s best interests – Relevance of children not having British citizenship.

Held (5-0): Appeal unanimously dismissed.

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AA (Somalia) (FC) v Entry Clearance Officer (Addis Ababa)
Supreme Court of the United Kingdom: [\[2013\] UKSC 81](#).

Judgment delivered: 18 December 2013.

Coram: Lady Hale DPSC, Lord Wilson, Lord Reed, Lord Carnwath and Lord Hughes JJSC.

Catchwords:

Citizenship and Migration – Refusal of entry – Family of refugee – Child lived as member of sister’s husband’s family in Somalia for five years – Sister’s husband granted asylum in United Kingdom – Child sought entry as “child of” sister’s husband – Whether “de facto adoption” of child by sister’s husband – Whether child entitled to entry clearance.

Held (5-0): Appeal dismissed.

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Constitutional Law

Gaertner and Others v Minister of Finance and Others
Constitutional Court of South Africa: [\[2013\] ZACC 38](#).

Judgment delivered: 14 November 2013.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron, Froneman, Jafta, Nkabinde, Skweyiya, Van der Westhuizen, Zondo, Madlanga JJ and Mhlantla AJ.

Catchwords:

Constitutional law – Right to privacy – Inconsistency with fundamental rights – Declaration of invalidity – Customs and Excise Act (“the Act”), s 4 permits officers of South African Revenue Service (SARS) to conduct search of premises without warrant – Whether inconsistent with right to privacy.

Held (11-0): Appeal allowed. Section 4 of the Act unjustifiably limits the right to privacy. Declaration of invalidity issued but suspended for 6 months to allow Parliament time to remedy the constitutional defect. In the interim, to allow SARS officials to ensure compliance with the Act,

the Court read in a warrant requirement when SARS officials wish to search private residences for purposes of the Act.

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Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401

Supreme Court of Canada: [\[2013\] SCC 62.](#)

Judgment delivered: 15 November 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Constitutional law – Charter of Rights – Freedom of expression – Industrial relations – Privacy – Union video-taping and photographing individuals crossing picket line for use in industrial relations dispute – Whether legislation restricting the collection, use and disclosure of personal information violates union’s expressive right under s 2(b) of Charter and, if so, whether violation is justified.

Industrial relations law – Industrial dispute – Union video-taping and photographing individuals crossing picket line for use in industrial relations dispute – Whether collection of personal personal information without consent lawful.

Held (9-0): Appeal substantially dismissed. To the extent that the *Personal Information Protection Act* restricts collection of personal information without consent for legitimate industrial relations purposes, it is in breach of s 2(b) of the *Charter* and cannot be justified under s 1. A declaration of invalidity is declared, but it is suspended for 12 months to allow the legislature the opportunity to decide how best to make the legislation constitutionally compliant.

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Mansingh v General Council of the Bar and Others

Constitutional Court of South Africa: [\[2013\] ZACC 40.](#)

Judgment delivered: 28 November 2013.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron, Froneman, Jafta, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen, Zondo JJ and Mhlantla AJ.

Catchwords:

Constitutional law – Royal prerogative – Conferral of honours – Interpretation of s 84(2)(k) – Whether s 84(2)(k) of the Constitution which permits the President to confer honours extends to the conferral of silk.

Held (11-0): Appeal dismissed. Section 84(2)(k) permits the President to confer the status of senior counsel on barristers.

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Minister of Justice and Constitutional Development and Another v Masingili and Others

Constitutional Court of South Africa: [\[2013\] ZACC 41.](#)

Judgment delivered: 28 November 2013.

Coram: Jafta, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen, Zondo JJ and Mhlantla AJ.

Catchwords:

Constitutional law – Constitutional rights – Right not to be deprived of freedom arbitrarily or without just cause – Right to be presumed innocent – Criminal Procedure – Aggravating circumstances – Whether robbery with aggravating circumstances and consequent statutory minimum mandatory sentence infringes constitutional rights.

Held (7-0): Appeal upheld. Constitutional rights not infringed.

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Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others

Constitutional Court of South Africa: [\[2013\] ZACC 42.](#)

Judgment delivered: 29 November 2013.

Coram: Mogoeng CJ, Moseneke DCJ, Cameron, Jafta, Froneman, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen, Zondo JJ and Mhlantla AJ.

Catchwords:

Constitutional law – Social services – Tender process – Invalidity – Section 217 of the Constitution requires that government tender

process must be fair, equitable, transparent, competitive and cost effective – Whether award of tender by Respondent to Cash Paymaster Services Pty Ltd (“Cash Paymaster”) for countrywide payment of social grants to beneficiaries was constitutionally valid – Whether if so, award should be set aside.

Held: Appeal allowed and order of the Supreme Court set aside. The award of the tender to Cash Paymaster (the third respondent) to provide services for payment of social grants over a period of five years for all nine provinces is constitutionally invalid. The declaration of invalidity is suspended pending determination of a just and equitable remedy.

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Canada (Attorney General) v Bedford
Supreme Court of Canada: [\[2013\] SCC 72.](#)

Judgment delivered: 20 December 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Constitutional Law – Charter of Rights – Right to security of person – Freedom of expression – Criminal law – Prostitution – Common bawdy-house – Living on avails of prostitution – Communicating in public for purposes of prostitution – Prostitutes challenged constitutionality of prohibitions on bawdy-houses, living on avails of prostitution and communicating in public for purposes of prostitution under Criminal Code – Prostitutes alleged impugned provisions violate security of the person rights by preventing implementation of safety measures that could protect them from violent clients – Prostitutes also alleged prohibition on communicating in public for purposes of prostitution infringes freedom of expression guarantee/

Human Rights – Canadian Charter of Rights and Freedoms – Right to security of person – Freedom of expression.

Courts – Decisions – Stare decisis – Standard of review – Prostitutes challenged constitutionality of prohibitions on bawdy-houses, living on avails of prostitution and communicating in public for purposes of prostitution under Criminal Code – Under what circumstances application judge could revisit conclusions of Supreme Court of Canada in Prostitution Reference which upheld bawdy-house and communicating prohibitions – Degree of deference owed to application judge’s findings on social and legislative facts.

Held (9-0): Appeals dismissed and cross-appeal allowed. Sections 210, 212(1)(j) and 213(1)(c) of the *Criminal Code* are declared to be inconsistent with the *Charter*. The declaration of invalidity is suspended for one year.

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Contract Law

Quebec (Agence du Revenu) v Services Environnementaux AES Inc.

Supreme Court of Canada: [\[2013\] SCC 65.](#)

Judgment delivered: 28 November 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell and Karakatsanis JJ.

Catchwords:

Contract law – Interpretation – Intention of parties – Intention declared in documents relating to transactions did not reflect common intention of parties because of errors made by professional advisors – Transactions had unforeseen tax consequences – Whether it is open to the court to intervene to find that amendments made by parties to documents associated with transactions were legitimate and necessary.

Held (7-0): Appeal dismissed. The common intention of the parties was expressed erroneously in all the writings prepared to carry out the tax plans on which they had agreed. It was open to the courts to intervene to find that the amendments made by the parties to the acts at issue were legitimate and necessary.

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Heimeshoff v Hartford Life & Accident Ins. Co.

Supreme Court of the United States: [No. 12-729.](#)

Judgment delivered: 16 December 2013.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Contract law – Limitations provisions – Enforceability – Contract specified a three-year limitations period which began to run at

time proof of loss was due – Whether contract inconsistent with general rule that statutes of limitations commence upon accrual of cause of action – Whether three-year period reasonable.

Held: Appeal dismissed.

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Planet Kids Ltd v Auckland Council

Supreme Court of New Zealand: [\[2013\] NZSC 147.](#)

Judgment delivered: 17 December 2013.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Gault JJ.

Catchwords:

Contract law – Doctrine of frustration – Respondent Council entered into agreement with Appellant business to acquire Appellant's lease under Public Works Act 1981 – Before settlement date Appellant's premises destroyed by deliberately lit fire – Both parties accepted that lease was terminated – Whether settlement agreement also ended by doctrine of frustration – Whether settlement agreement subsists and is enforceable.

Held: Appeal allowed. A declaration is made that the settlement agreement subsists.

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Corporations Law

BFSL 2007 Ltd & Ors (In Liquidation) v Steigrad

Supreme Court of New Zealand: [\[2013\] NZSC 156.](#)

Judgment delivered: 23 December 2013.

Coram: Elias CJ, McGrath, Glazebrook, Gault and Anderson JJ.

Catchwords:

Corporations law – Bankruptcy – Insurance policies limiting director's pecuniary liability – Law Reform Act 1936 (NZ) (the "Act") – Section 9 of the Act imposes a statutory charge over insurance money payable to an insured to indemnify the insured for damages or compensation payable to third party claimants – Nature and effect of such a charge – Whether statutory charge covers whatever the amount of liability to the third party it

eventually turns out to be – Whether reimbursement to the directors of their defence costs is within the statutory charge

Held (3-2): Appeals allowed.

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Courts

See also [Constitutional Law](#): *Canada (Attorney General) v Bedford*

Criminal Law

R v Hay

Supreme Court of Canada: [\[2013\] SCC 61](#).

Judgment delivered: 8 November 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell and Wagner JJ.

Catchwords:

Criminal law – Charge to Jury – Eyewitness evidence – Whether trial judge instructed jury that it could convict accused based on eyewitness evidence alone – If so, whether such instruction constitutes an error.

Evidence – Fresh Evidence – Hair clipping evidence relied upon by Crown to explain accused's appearance at time of arrest as well as after-the-fact change of appearance – New forensic evidence reports and testimony to effect that most hair clippings did not originate from scalp – Whether accused's motion to adduce fresh evidence should be granted.

Held (7-0): Appeal allowed. The motion to adduce fresh evidence granted and the matter remanded for retrial.

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La Souveraine, Compagnie d'assurance générale v Autorité des marchés financiers

Supreme Court of Canada: [\[2013\] SCC 63](#).

Judgment delivered: 21 November 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law – Financial products and services – Nature of offence – Strict liability – Appellant insurance company charged with committing offence on number of occasions by helping or inducing, through its content and/or authorisation, third party to violate regulatory provision – Respondent regulator did not respond to written explanations from insurance company before issuing statements of offence – Whether offence at issue on of strict liability – If so, whether proof of mens rea required – Whether actus reus of offence proved beyond reasonable doubt – Whether offence is discrete offence or party liability offence – Whether single conviction should be substituted for multiple convictions entered at trial.

Criminal law – Defences – Due diligence – Officially induced error – Conditions for availability of defence based on reasonable mistake of law – Whether official's passive conduct may be reasonably relied on as approval or inducement.

Held (6-3): Appeal allowed in part in order to substitute a single conviction for the 56 convictions entered at trial and restored by the Court of Appeal.

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R v McRae

Supreme Court of Canada: [\[2013\] SCC 68.](#)

Judgment delivered: 6 December 2013.

Coram: LeBel, Fish, Abella, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law – Offences – Uttering threats – Elements of offence – Actus reus – Mens rea – Respondent stated to fellow detainees that he would kill and/or harm Crown prosecutor, officer-investigator and witnesses involved in his trial – Whether it is necessary to prove threats were conveyed to their subjects and/or that accused intended they be so conveyed – Whether lower courts erred in finding that elements of offence not made out.

Held (7-0): Appeal allowed and new trial ordered.

The *actus reus* of the offence of uttering threats will be made out if a reasonable person fully aware of the circumstances in which the words were uttered or conveyed would have perceived them to be a threat of death or bodily harm. The Crown need not prove that the intended recipient of the threat was made aware of it, or if aware of it, that he or she was intimidated by it or took it seriously. Nor must the words be directed toward a specific person; a threat against an ascertained group of people is sufficient.

The *mens rea* of the offence is made out if the accused intended the words uttered or conveyed to intimidate *or* to be taken seriously. It is not necessary to prove an intent that the words be conveyed to the subject of the threat or that the accused intended to carry out the threat. A subjective standard of fault applies. However, in order to determine what was in the accused's mind, a court will often have to draw reasonable inferences from the words and the circumstances, including how the words were perceived by those hearing them.

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Kansas v Cheever

Supreme Court of the United States: [No. 12-609](#).

Judgment delivered: 11 December 2013.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Criminal law – Trial – Defendant's rights – Right to remain silent – Whether Fifth Amendment prohibited the government from introducing evidence from a court-ordered mental evaluation of defendant to rebut defendant's presentation of expert testimony in support of voluntary intoxication defence .

Constitutional law – Bill of Rights – Fundamental rights – Procedural due process – Self-incrimination privilege.

Held (9-0): Appeal allowed, case remanded for further proceedings.

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Taueki v R

Supreme Court of New Zealand: [\[2013\] NZSC 146](#).

Judgment delivered: 17 December 2013.

Coram: Elias CJ, McGrath, William Young, Chambers* and Glazebrook JJ.

*Chambers J passed away before judgment was delivered.

Catchwords:

Criminal law – Defences – Assault – Defence of property – Crimes Act 1961 (“Act”) s 56 authorises use of force in defence of property – Whether appellant was in peaceable possession of land where incident took place – Whether appellant was justified in using reasonable force to prevent complainant from trespassing on that land.

Held: Appeal dismissed. The appellant did not have actual control of the land where the incident occurred and, therefore, was not in possession of the land. The defence under s 56 accordingly did not apply.

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Wood v Schaeffer

Supreme Court of Canada: [\[2013\] SCC 71](#).

Judgment delivered: 19 December 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Criminal law – Police – Investigations – Special Investigations Unit – Right to counsel – Duty to make notes – Whether police officers have right to consult with counsel before making notes on incident – Whether police officers are entitled to basic legal advice as to nature of rights and obligations in connections with incident.

Held (6-3): Appeal dismissed and cross-appeal allowed. Police officers are not entitled to legal advice, basic or otherwise, prior to completing their notes.

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B(SC12/2013) v R

Supreme Court of New Zealand: [\[2013\] NZSC 151](#).

Judgment delivered: 19 December 2013.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Criminal law – Appellant convicted of rape but found not guilty of sexual violation by oral connection – Whether trial judge erred in excluding certain evidence relating to appellant’s defence that sexual activity was consensual – Whether excluded evidence went directly to reputation of complainant in sexual matters – Whether two verdicts inconsistent such that appellant’s conviction on rape charge unsafe

Held (5-0): Appeal dismissed. Verdicts not inconsistent and trial judge right to exclude evidence though decided on different reasons.

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Evidence

See also [Criminal Law](#): *R v Hay*

Extradition

Bucnys; Sakalis v Ministry of Justice, Lithuania; Ministry of Justice, Estonia v Lavrov

Supreme Court of the United Kingdom: [\[2013\] UKSC 71](#).

Judgment delivered: 20 November 2013.

Coram: Lord Mance, Lord Kerr, Lord Wilson, Lord Hughes and Lord Toulson JJSC.

Catchwords:

Extradition – European arrest warrant (EAW) – Validity – Requirement for issue by “judicial authority” per *Extradition Act 2003* and *European Council Framework Decision 2002/584/JHA* – Government ministries issued warrants for arrest and extradition of absconding convicted persons – Ministries variously acted at request of court and of prison authority – Whether in each case they acted as a “judicial authority” so as to validate issue of warrant.

Held (5-0): The arrest warrants issued for Mr Bucnys and Mr Lavrov were valid, whereas that issued for Mr Sakalis was not. The Court therefore dismisses Mr Bucnys appeal, and allows Mr Sakalis' appeal and the Estonian Ministry's appeal in Mr Lavrov's case. In issuing the EAWs for the arrest of Mr Bucnys and Mr Lavrov, the respective ministries acted only at the request of and by way of endorsement of a decision made by a court responsible for the sentence. However, in issuing the EAW for Mr Sakalis' arrest, the Lithuanian ministry was acting only on the request from the prison service.

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Family Law

In the matter of KL (A Child)

Supreme Court of the United Kingdom: [\[2013\] UKSC 75](#).

Judgment delivered: 4 December 2013.

Coram: Lord Neuberger PSC, Lady Hale DPSC, Lord Wilson, Lord Hughes and Lord Hodge JJSC.

Catchwords:

Family law – Children – Custody rights – Jurisdiction – Habitual residence – Child born in Texas – Mother claimed child's habitual residence in England and removed child to England pursuant to United States court order under Hague Convention on the Civil Aspects of International Child Abduction ("Convention") – United States return order reversed on appeal – Father applied to High Court for return of child under Convention or court's inherent jurisdiction – Whether child's habitual residence England – Whether child to be returned under inherent jurisdiction.

International law – Children – Custody rights – Hague Convention on the Civil Aspects of International Child Abduction ("Convention") – Proper approach courts should take when child brought to England pursuant to court order made abroad in Convention proceedings which is later overturned on appeal.

Held (5-0): Appeal allowed. The Supreme Court orders the return of KL to the US on the basis of the undertakings offered by the father to enable the mother to live in Texas, independently of the father and sharing the care of K between them, pending any application she might make to the Texas court to modify the order relating to K's residence.

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Health Law

See also [Administrative Law](#): *In the matter of an application by Martin Corey for Judicial Review (Northern Ireland)*

Human Rights Law

See also [Constitutional Law](#): *Canada (Attorney General) v Bedford*

Bull and Anor v Hall and Anor

Supreme Court of the United Kingdom: [\[2013\] UKSC 73](#).

Judgment delivered: 27 November 2013.

Coram: Lord Neuberger PSC, Lady Hale DPSC, Lord Kerr, Lord Hughes and Lord Toulson JJSC.

Catchwords:

Human Rights Law – Discrimination on basis of sexual orientation – Less favourable treatment – Homosexual couple booked double-bedded room at private hotel – Hoteliers refused to honour booking – Hoteliers held genuine belief that sexual relations outside marriage sinful – Couple claimed damages for unlawful direct discrimination on grounds of sexual orientation contrary to subordinate legislation – Judge upheld claim – Whether direct discrimination – Whether justified if indirect discrimination – Whether incompatible with hoteliers’ Convention right to manifest religion – Whether unlawful discrimination on grounds of sexual orientation.

Held (5-0): Appeal unanimously dismissed. Appellant’s policy constituted direct discrimination on grounds of sexual orientation, if it constitutes indirect discrimination it is not justified, and there is no breach of Article 9 of the European Convention of Human Rights.

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Industrial Relations Law

See also [Constitutional Law](#): *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*

Intellectual Property

Cinar Corporation v Robinson

Supreme Court of Canada: [\[2013\] SCC 73](#).

Judgment delivered: 23 December 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell and Wagner JJ.

Catchwords:

Intellectual property – Copyright – Infringement – Reproduction of a substantial part of an original work – Whether trial judge failed to follow correct approach in assessing whether a “substantial part” of a work was reproduced – Whether trial judge failed to give sufficient weight to differences between works at issue – Whether trial judge erred in finding that features of original work are protected by the Copyright Act – Whether trial judge erred by relying on inadmissible expert evidence.

Intellectual property – Copyright – Infringement – Damages – Quantum – Disgorgement of profits – Whether Court of Appeal erred in interfering with trial judge’s assessment of profits – Whether liability for disgorgement of profits may be imposed on a solidary basis – Whether Andrews trilogy cap applies to non-pecuniary damages that do not stem from bodily injury – Whether Court of Appeal erred in interfering with trial judge’s assessment of punitive damages – Whether punitive damages may be awarded on a solidary basis.

Held (7-0): Appeals in files 34466, 34467 and 34468 dismissed, and the appeal in file 34469 allowed in part.

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International Law

See also [Family Law](#): *In the matter of KL (A Child)*

Amaratunga v Northwest Atlantic Fisheries Organization
Supreme Court of Canada: [\[2013\] SCC 66](#).

Judgment delivered: 29 November 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

International law – Jurisdictional immunity – International organisations – Former senior manager of international organisation headquartered in Canada filed wrongful dismissal suit – International organisation claimed immunity under Order reflecting agreement with Canada – Whether claimed immunity applies – Meaning of immunities “required” for performance of functions.

Held: Appeal allowed in part. NAFO is entitled to immunity, except from A’s separation indemnity claim under the Staff Rules. Without immunity, an international organization would be vulnerable to intrusions into its operations by the host state and that state’s courts. For NAFO to perform its functions, however, it does not require immunity from A’s separation indemnity claim. This claim should be allowed to proceed and the appeal should be granted to that extent.

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Labour Law

Mbatha v University of Zululand
Constitutional Court of South Africa: [\[2013\] ZACC 43](#).

Judgment delivered: 5 December 2013.

Coram: Moseneke DCJ, Cameron, Jafta, Froneman, Madlanga, Nkabinde, Skweyiya, Van der Westhuizen and Zondo JJ and Mhlantla AJ.

Catchwords:

Labour law – Employment contract – Appellant commenced work at respondent university in 1984 – From June 2008 appellant’s salary not paid – Whether appellant’s contract had been taken over by Isikhungo Sesichazamazwi SesiZulu (“ISS”) in terms of tripartite agreement between the respondent, ISS and PanSA Language Board – Whether if so, appellant had consented.

Held: Appeal dismissed.

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IBM Canada Limited v Waterman

Supreme Court of Canada: [\[2013\] SCC 70](#).

Judgment delivered: 13 December 2013.

Coram: McLachlin CJ, LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Labour law – Wrongful dismissal – Damages – Compensating advantage – Dismissed employee drew pension benefits upon dismissal – Trial judge established appropriate notice period at 20 months without deduction for pension benefits – Whether pension benefits constitute compensating advantage – Whether pension benefits should be deducted from damages for wrongful dismissal.

Held (7-2): Appeal dismissed. Pension benefits do not constitute compensating advantage and should not be deducted from damages for wrongful dismissal.

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Chhabra v West London Mental Health NHS Trust

Supreme Court of the United Kingdom: [\[2013\] UKSC 80](#).

Judgment delivered: 18 December 2013.

Coram: Lady Hale DPSC, Lord Kerr, Lord Reed, Lord Hughes and Lord Hodge JJSC.

Catchwords:

Labour law – Contract of employment – Disciplinary proceedings – Mental health NHS trust commissioned investigation into alleged breaches of patient confidentiality by psychiatrist – Relative roles of case investigator and case manager – Whether a case investigator is able to report evidence of misconduct closely related to, but not precisely within, the terms of reference of the investigation – Whether case manager limited to considering on the case investigator's findings of fact when deciding on further procedure.,

Held (5-0): Appeal allowed.

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Practice and Procedure

See also [Taxation](#): *Commissioners For Her Majesty's Revenue & Customs v Cotter*

See also [Administrative Law](#): *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining And Development Company Ltd and Others*

In the matter of "The Alexandros T"; In the matter of "The Alexandros T" (No 2); In the matter of "The Alexandros T" (No 3)
Supreme Court of the United Kingdom: [\[2013\] UKSC 70](#).

Judgment delivered: 6 November 2013.

Coram: Lord Neuberger PSC, Lord Mance, Lord Clarke, Lord Sumption and Lord Hughes JJSC.

Catchwords:

Practice and Procedure – Jurisdiction – Stay of proceedings – Starlight Shipping Company ("Starlight"), the Greek owner of the "Alexandros T" issued English court proceedings against insurers in 2006 in relation to claim for total loss of vessel in May 2006 – Shortly before trial was to commence Starlight and Overseas Marine Enterprises Inc ("OME") (managers of vessel) entered into settlement agreement with insurers – English court proceedings stayed on terms of settlement agreements which contained exclusive jurisdiction clauses in favour of English courts – In April 2011 nine sets of Greek proceedings, in materially identical form, were issued by Starlight – Insurers sought to enforce earlier settlement agreements – Starlight applied for stay of Greek proceedings – Whether proceedings should be stayed.

Held (5-0): Insurers appeal allowed and the proceedings stayed.

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Atlantic Marine Construction Co. v United States District Court for the Western District of Texas
Supreme Court of the United States: No. [12-929](#).

Judgment delivered: 3 December 2013.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Practice and Procedure – Forum selection – Sub-contractor sued over pay dispute in District Court for the Western District of Texas – Court denied appellant construction company’s motion to dismiss suit as improper and alternatively to transfer – Whether forum selection clause could be enforced by motion to dismiss or motion to transfer – Whether venue wrong or improper.

Held: Appeal allowed.

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R (on the application of Edwards & Anor) v Environment Agency & Ors

Supreme Court of the United Kingdom: [\[2013\] UKSC 78 & \[2010\] UKSC 57](#).

Judgment delivered: 4 December 2013.

Coram: Lord Neuberger PSC, Lord Hope, Lord Mance, Lord Clarke and Lord Carnwath JJSC.

Catchwords:

Practice and Procedure – Costs – Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“Convention”) – Article 9.4 of the Convention requires procedures should be “fair, equitable, timely and not prohibitively expensive” – Substantive dispute resolved in [2010] UKSC 57 with order of costs against Appellants – One Appellant in that case, Mrs Pallikaraopolous, provided security for costs in sum of £25,000 – Respondents submitted bills for £55,810 and £32,290 – Whether costs order made in [2010] UKSC 57 “prohibitively expensive”.

Held (5-0): Appeal allowed in part. The Supreme Court makes an order for costs in the amount of £25,000 in favour of the respondents jointly.

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Sprint Communications, Inc. v Jacobs

Supreme Court of the United States: [No. 12-815](#).

Judgment delivered: 10 December 2013.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Practice and Procedure – Courts abstained from hearing case – Appellant telecommunications service provider sued respondent utilities board members seeking declaration that the Telecommunications Act (“Act”) pre-empted board’s decision that intrastate fees applied to Internet long distance service – Lower courts abstained in deference to parallel state-court proceeding between provider and local telecommunications carrier – Whether abstention appropriate.

Held (9-0): Appeal allowed. Abstention not appropriate.

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AIC Limited v Fischer

Supreme Court of Canada: [\[2013\] SCC 69.](#)

Judgment delivered: 12 December 2013.

Coram: McLachlin CJ, LeBel, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

Catchwords:

Practice and Procedure – Class actions – Certification – Market timing – Investors sued mutual fund managers for breaching fiduciary duties to investors and negligence for failing to curb market timing activities – Investors sought certification of action as class proceeding under provincial class action legislation – Whether proposed investor class action meets preferability requirement for certification given settlement payments made to investors following proceedings conducted by Ontario Securities Commission.

Held (7-0): Appeal dismissed. The correct legal principles support the decision to certify the proposed class action.

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Competition Commission of South Africa v Pioneer Hi-Bred International Inc and Others

Constitutional Court of South Africa: [\[2013\] ZACC 50.](#)

Judgment delivered: 18 December 2013.

Coram: Moseneke ACJ, Skweyiya ADCJ, Cameron, Jafta, Froneman, Madlanga, Nkabinde, Van der Westhuizen, Zondo JJ and Dambuzza and Mhlantla AJJ.

Catchwords:

Practice and Procedure – Jurisdiction – Competition Appeal Court (“CAC”) – Scope of the CAC’s powers to award costs against the Competition Commission (the “Commission”) when the Commission litigates in course of its duties in terms of the Competition Act.

Held (11-0): Appeal allowed. The CAC has no power to award costs against the Commission in Competition Tribunal proceedings but does in relation to proceedings before the CAC. Nevertheless the CAC did not properly exercise its discretion. Costs set-aside in both proceedings.

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P (SC 87/2012) v Bridgecorp Ltd (In Receivership and in Liquidation)

Supreme Court of New Zealand: [\[2013\] NZSC 152.](#)

Judgment delivered: 19 December 2013.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ.

Catchwords:

Practice and procedure – Appellant in debt to Respondent company – Appellant agreed to repay debt in instalments if Respondent agreed that it would not seek to recover debt by court action if Appellant met his obligations – Bridgecorp did however require Appellant to sign a Draft Statement of Claim alleging breach of the terms of settlement and required Appellant to execute an admission of liability and give Bridgecorp irrevocable authority to file it on his behalf should proceedings be issued – Appellant subsequently failed to meet payment obligations and Bridgecorp issued proceedings – Whether an admission executed prior to the issue of proceedings in this way complies with the requirements of r 15.16 of the High Court Rules.

Held (4-1): Appeal dismissed. Bridgecorp did comply with requirements of r 15.16. Although r 15.16(1) requires that proceedings be filed and served before an admission of liability can be filed, nothing in the language of this rule prevents an admission of liability executed before the issue of proceedings from being filed

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Statutes

Terminals (NZ) Ltd v Comptroller of Customs
Supreme Court of New Zealand: [\[2013\] NZSC 139](#).

Judgment delivered: 6 December 2013.

Coram: Elias CJ, McGrath, William Young, Glazebrook and Gault JJ.

Catchwords:

Statutes – Interpretation – Customs and Excise Act 1996 (“Act”) – Appellant blends butane with motor spirit as part of its operations – Whether blending motor spirit with butane constitutes “manufacture” for purposes of the Act – Whether blending constitutes “any operation, or process, involved in the production of the” motor spirit per s 2(1) of the Act.

Held: Appeal dismissed. The blending process was the manufacture of motor spirit.

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Taxation

Commissioners For Her Majesty’s Revenue & Customs v Cotter
Supreme Court of the United Kingdom: [\[2013\] UKSC 69](#).

Judgment delivered: 6 November 2013.

Coram: Lord Neuberger PSC, Lord Sumption, Lord Reed, Lord Toulson and Lord Hodge JJSC.

Catchwords:

Taxation – Income tax assessment – *Taxes Management Act 1970* (“TMA”) – Respondent filed tax return for 2007/8 and made no claim for loss relief – Appellant calculated tax due for year at £211,927.77 – Respondent subsequently filed provisional loss relief claim and amendments to respondent’s original return, claiming an employment-related loss of £710,00 for 2008/9 financial year for which respondent claimed relief in tax year 2007/8 under the *Income Tax Act 2007* – Whether the respondent entitled to use loss claim to reduce to nil tax otherwise payable for 2007/8.

Practice and procedure – Jurisdiction – Tax claims – Appellant initiated proceedings in County Court – Proceedings transferred to High Court – Whether First-tier Tribunal (Tax Chamber) has exclusive jurisdiction to determine respondent’s claim.

Held (5-0): Appeal allowed.

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United States v Woods

Supreme Court of the United States: [No. 12-562](#).

Judgment delivered: 3 December 2013.

Coram: Roberts CJ, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor and Kagan JJ.

Catchwords:

Taxation – Penalties – Partnerships entered into for tax purposes – Partnerships lacked economic substance – Whether valuation-misstatement penalty could be imposed on taxpayer – Whether penalty warranted.

Held (9-0): Appeal allowed, valuation-misstatement penalty validly imposed.

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Trusts

Alyxe John Wood-Luxford v Mark John Wood

Supreme Court of New Zealand: [\[2013\] NZSC 153](#).

Judgment delivered: 19 December 2013.

Coram: Elias CJ, McGrath, William Young, Chambers* and Glazebrook JJ.

*Chambers J passed away before judgment was delivered.

Catchwords:

Trusts – Will – Family Protection Act 1955 (NZ) (the “Act”) – Child conceived but not born at date of marriage of his mother to a man who was not his father – Child born 7 months after marriage and lived with his mother and her husband – Mother and stepfather died in car accident when child was 4 years old – Mother and Stepfather had made wills at time of marriage with no provision for child as not yet born – Child has claim under the Act for provision out of his mother’s estate – Whether child has claim

under the Act for provision out of his stepfather's estate –
Whether child is a "stepchild" under terms of s 3(1) of the Act.

Held (4-1): Appeal dismissed. Child not "living" per s 2 of the Act as
was not "living at the date on which the deceased married" his mother.

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