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David Stratas: Public Law Experience

The *Chambers Global Guide* has ranked David as one of the top litigators in any subject area in Ontario, describing him (2006) as “widely praised” as a “prodigious worker” and “a creative force to be reckoned with – he’s got ideas you’d never think of.”

The annual *Lexpert Survey* has rated David as “repeatedly recommended” by his peers in the area of public law. He is also one of the lawyers featured in *The Best Lawyers in Canada* since its inception and he has been identified as a leading public law lawyer.

In March 2008, David will be inducted into the prestigious American College of Trial Lawyers.

David is often the only private sector lawyer invited by judges to present to judges at judicial educational seminars and conferences on issues of constitutional law and administrative law. He has now presented at ten such seminars and conferences.

David advises on many administrative law and constitutional law issues. He is also retained on many administrative law and constitutional law matters that could reach court, but often settlements are reached. The following are examples of administrative law and constitutional law matters in which David has acted as counsel which resulted in court judgments:

1515545 Ontario Ltd. v. Niagara Falls (City) (2006), 78 O.R. (3d) 783 (C.A.) (Constitutional Law — Whether municipal by-law contravenes ss. 2(b), 7, 8, 9 and 15 of the *Charter* and whether it is justified under s. 1 — whether the by-law is of no force or effect because it is federal criminal law pursuant to s. 91 of the Constitution Act, 1867)

AB Capital Corp. et al. v. Canada (Minister of Citizenship and Immigration), [2000] F.C.J. No. 1156 (F.C.T.D.) (Administrative Law — Judicial Review — Suspension of Immigration Funds — bad faith, improper purpose, irrelevant considerations and lack of statutory jurisdiction) (numerous Federal Court practice issues — requests to admit in judicial review proceedings, propriety of tribunal production request, case management proceedings, addition of “improper purpose” ground to judicial review proceeding, etc.

AB Capital Corp. et al. v. Canada (Minister of Citizenship and Immigration) (Administrative Law — Crown Privilege — s. 37 of the Canada Evidence Act — procedures restricting counsel's access to documents for the purposes of making submissions are unconstitutional)

Adam v. United States, Ont. C.A., unreported, Nov. 12, 2002 (Extradition Act, s. 62 — stay of surrender order pending judicial review)

Atlantic Prudence Corp. et al. v. Canada (Minister of Citizenship and Immigration), [2000] F.C.J. 436 (F.C.T.D.) (Administrative Law — Amending notice of application to add allegations of bad faith decision-making and abuse of public office)

Beauchamp v. North Central Predators AAA Hockey Association, [2006] O.J. No. 2432 (Ont. S.C.J.) (*Discriminatory Business Practices Act* — Mootness)

Bell Canada v. Canadian Telephone Employees' Association et al., [2003] 1 S.C.R. 884 (Constitutional Law — independence of tribunals — unwritten constitutional principles — s. 2(e) of the Canadian Bill of Rights — s. 27 of the Canadian Human Rights Act)

Biscotti v. Ontario Securities Commission (1990), 13 O.S.C.B. 3137, 40 O.A.C. 129, 72 D.L.R. (4th) 385, 74 O.R. (2d) 119, [1991] O.J. No. 35 (Div. Ct.); rev'd in part (1991), 1 O.R. (3d) 409, 76 D.L.R. (4th) 762, 45 O.A.C. 293 (C.A.); lv. dismissed, S.C.C., June 27, 1991 (Constitutional Law — s. 7 Charter — Administrative Law — Disciplinary Tribunals)

Brant Investments Ltd. et al. v. KeepRite Inc. et al., [1991] O.J. No. 683, 45 O.A.C. 320, 80 D.L.R. (4th) 161, 3 O.R. (3d) 289, 1 B.L.R. (2d) 225 (C.A.) (Corporate-Commercial Law — Fiduciary Duty, Statutory Oppression, Valuation)

Brown v. Durham Regional Police Force (Constitutional Law — s. 9 Charter — Arbitrary Detention — Ancillary Powers Doctrine)

Canada (Competition Act, Director of Investigation and Research) v. Warner Music Canada Ltd., [1997] C.C.T.D. No. 53 (Comp. Trib.); also intervention motion, [1997] C.C.T.D. No. 51 (Comp. Trib.) (Administrative Law — Jurisdictional Challenge — Subject-Matter Jurisdiction and Jurisdiction Over the Person — Service ex juris — Extraterritoriality)

Canadian Western Bank v. Alberta, 2007 SCC 22 (Constitutional Law — Division of Powers — Interjurisdictional Immunity — whether banks can offer insurance products constitutionally exempt from provincial legislation — method of analyzing division of powers cases)

Citizens Mining Council of Newfoundland and Labrador v. Voisey's Bay Nickel Company Limited et al., [1999] F.C.J. No. 273, (1999), 163 F.T.R. 36 (F.C.T.D.) (Administrative Law — Environmental Law — Ministerial decisions concerning environmental assessments — Procedural Law — Prematurity)

Criminal Lawyers' Association, unreported, Information and Privacy Commissioner, May 5, 2000 (Freedom of Information — Law enforcement and solicitor and client privilege exemptions — application of Charter to administrative tribunals — s. 2(b) Charter — whether s. 2(b) enhances ability to obtain access to government information)

Criminal Lawyers' Assn. v. Ontario (Ministry of Public Safety) 2007 ONCA 392 (Ont. C.A.), rev'g (2004), 70 O.R. (3d) 332 (Div. Ct.) (Constitutional Law — Administrative Law — Freedom of Information — Law enforcement and solicitor and client privilege exemptions — application of Charter to administrative tribunals — s. 2(b) Charter — whether s. 2(b) enhances ability to obtain access to government information). Leave to appeal to the Supreme Court of Canada has been granted: [2007] S.C.C.A. No. 382.

Del Zotto v. Her Majesty the Queen, [1999] 1 S.C.R. 3, rev'g (1997), 116 C.C.C. (3d) 123, 147 D.L.R. (4th) 457, 215 N.R. 184, 97 D.T.C. 5328, [1997] 3 F.C. 40, [1997] 3 C.T.C. 199, 46 C.R.R. (2d) 324 (F.C.A.) which rev'd (1997), 143 D.L.R. (4th) 340, 41 C.R.R. (2d) 63, [1997] 2 C.T.C. 103, 97 D.T.C. 5145, [1997] 2 F.C. 428, 125 F.T.R. 161 (Constitutional Law — ss. 7 and 8 of Charter — Validity of Inquiries — Fundamental Justice and Unreasonable Search and Seizure — Validity of s. 231.4 of the Income Tax Act)

Del Zotto v. Canada (Minister of National Revenue), [1993] 93 D.T.C. 5455, [1993] 2 C.T.C. 342, 161 N.R. 143 (F.C.A.), lv. to S.C.C. refused (1994), 171 N.R. 224n (Administrative Law — Judicial Review of decision to establish Inquiry — Sufficiency of Evidence)

Del Zotto v. Canada: Constitutional Law -- numerous proceedings concerning stay of an inquiry under s. 231.4 of the Income Tax Act. Stays (suspensions) of this Inquiry granted in the following decisions: [1993] 2 C.T.C. 46, (1993), 93 D.T.C. 5271, [1993] F.C.J. No. 533 (F.T.D.); (1994), 94 D.T.C. 6170, 71 F.T.R. 1, [1994] 1 C.T.C. 254, [1994] 2 F.C. 640, [1993] F.C.J. No. 1264 (F.T.D.). Stays reconfirmed at (1995), 95 D.T.C. 5518, 100 F.T.R. 15, [1995] 2 C.T.C. 298, [1995] 3 F.C. 507, [1995] F.C.J. No. 1107 (F.T.D.). Stays partially lifted at (1995), 95 D.T.C. 5636, 103 F.T.R. 150, [1995] F.C.J. No. 1359, [1996] 1 C.T.C. 120 (F.T.D.), but reimposed before Inquiry could begin at [1996] F.C.J. No. 294, [1996] 1 F.C. 145, [1996] 2 C.T.C. 22, 96 D.T.C. 6222, 195 N.R. 74, 111 F.T.R. 239 (F.C.A.). Other motions: (1995), 95 D.T.C. 5122 (F.T.D.), [1995] 1 C.T.C. 182 (F.T.D.), 90 F.T.R. 200 (F.T.D.).

Del Zotto v. Canada, [1995] T.C.J. No. 1499, [1996] 1 C.T.C. 2767 (Tax Court) (Constitutional Law - ss. 7 and 8 of Charter — Standing — Pre-Requisites for Establishment of Inquiries)

Dickie v. Dickie, [2007] 1 S.C.R. 346 — Family Law — scope of contempt power — access to courts — power of courts to decline an audience to parties who are in default of court orders

East York (Borough) v. Ontario (Attorney-General) (1997), 34 O.R. (3d) 789, 41 M.P.L.R. (2d) 137, 45 C.R.R. (2d) 237, [1997] O.J. No. 3064 (Gen. Div.) (Constitutional Law — Municipal Law — ss. 2(b), 2(d), 3 of the Charter — Challenge to Megacity Legislation)

E.S. Fox Limited v. United Steelworkers of America, unreported, September 15, 1998 (Div. Ct.) (Administrative Law — Judicial Review — Interpretation of s. 57 of the *Employment Standards Act*)

General Motors v. C.A.W. (1996), 31 C.L.R.B.R. (2d) 161, [1996] O.L.R.B. Rep. 409 (O.L.R.B.) (Constitutional Law — Labour Law — Day of Protest — ss. 2(b) and 1 of the *Charter*)

Hall v. Powers et al., (2002), 59 O.R. (3d) 423 (S.C.J.) (Constitutional Law — *Charter*, ss. 2(a), 2(b), 2(d) and 15 — Denominational school rights under s. 93 of the *Constitution Act, 1867* — injunctive relief)

Imperial Consultants Ltd. v. Canada (Minister of Citizenship and Immigration) (Administrative Law — Access to Information Act — application of exemptions)

J.D. Irving Ltd. v. International Longshoremen's Assn., [2006] F.C.J. No. 809 (C.A.) (Constitutional Law — Administrative Law — whether federal Labour Board has jurisdiction under s. 91 of the *Constitution Act, 1867* to regulate certain employees engaged in the unloading of ships)

Laforme v. Canada (Minister of National Revenue), [1991] F.C.J. No. 447, [1991] 2 C.T.C. 28, 48 F.T.R. 92, 91 D.T.C. 5372 (F.T.D.) (Administrative Law — Income Tax — Application Against Limitation Period)

Lyons v. Toronto (Computer Leasing Inquiry -- Bellamy Commission) (2004), 70 O.R. (3d) 39 (Div. Ct.) (Administrative Law – Judicial Review of decision concerning legal professional privilege)

OMERS – a number of unreported judicial reviews (Administrative Law — Family Law — Definition of Spouse — Standard of Review)

Ontario (Attorney General) v. Ontario (Assistant Information and Privacy Commissioner) (1996), 90 O.A.C. 181, [1996] O.J. No. 2478 (Div. Ct.) (Administrative Law — When *Freedom of Information Act* Applies)

Mandeville v. The Manufacturers Life Insurance Company unreported, Ont. S.C.J., September 30, 2002 (Administrative Law — Administrative Orders, Collateral Attack, Issue Estoppel and Abuse of Process — Conflict of Laws — Recognition of Foreign Orders)

Peel (Regional Municipality) v. Ontario, [1990] O.J. No. 2266, 42 O.A.C. 356, 75 D.L.R. (4th) 523, 1 O.R. (3d) 97, 2 M.P.L.R. (2d) 121 (C.A.) (Constitutional Law — Restitution)

Peel (Regional Municipality) v. Canada; Peel (Regional Municipality) v. Ontario, [1992] 3 S.C.R. 762, 12 M.P.L.R. (2d) 229, 98 D.L.R. (4th) 140, 59 O.A.C. 81, 144 N.R. 1 (Constitutional Law — Restitution)

Pritchard v. Ontario (Human Rights Commission) (1998), 45 O.R. (3d) 97 (Div. Ct.) (Administrative Law — Standard of Review — Enforceability of Employment Releases)
R. v. Adam, unreported, Ont. C.A., November 12, 2002 (Constitutional Law — ss. 6, 7, 12 and 24 of the *Charter* — *Extradition Law* — Restraining Order Preventing Removal From Canada)

R. v. Ethyl Canada Inc., [1998] O.J. No. 3478 (Constitutional Law — Environmental Law — Costs Against the Crown — Charter Damages for Failure to Disclose)

R. v. Inco Limited, unreported, Prov. Off. Ct., February 16, 1998, rev'd (1999), 33 C.E.L.R. (N.S.) 240 (Ont. C.J.); leave granted (1999), 139 C.C.C. (3d) 477 (Ont. C.A.); appeal allowed (2001), 54 O.R. (3d) 495 (C.A.), leave to appeal to the S.C.C. dismissed (Constitutionality of Ministry Investigations — ss. 7, 8, 9, 10 and 11(d) of the Charter — Environmental Law — Interpretation of s. 30 of the *Ontario Water Resources Act*)

R. v. Inco Limited, unreported, Prov. Off. Ct., November 22, 1996; rev'd, [1997] O.J. No. 4941 (Gen. Div.) (Constitutional Law – Environmental Law — Crown's Power to Select Judge or Justice to Try Charges)

R. v. Inco Limited, unreported, Prov. Off. Ct., April 3, 1997; rev'd, [1997] O.J. No. 4941 (Gen. Div.) (Environmental Law — Dismissal on Crown's Failure to Appear)

Numerous environmental investigations and approximately 15 contested trials of regulatory charges, most raising constitutional law issues.

R. v. Stelco Inc., unreported, Prov. Off. Ct.; appeal partly allowed, Ont. C.J. (Constitutional Law – Environmental Law — Interpretation of s. 30, *Ontario Water Resources Act* — Abuse of Process Motion)

Re Banks, unreported, Ont. Securities Commission, June, 2003 (Administrative Law – Variation application — request to adjourn pending judicial review)

Re Banks (Administrative Law – Judicial Review from OSC decision — failure to give hearing)

Re National Cheese & Food Co., [1998] O.J. No. 1988 (Public Law – Mutual Legal Assistance in Criminal Matters Act)

Reference Re Pesh Creek Pipeline, unreported, Federal Court of Appeal, January 8, 1997 (Constitutional Law — Division of Powers — Pipelines)

Roach v. Ontario (Workplace Safety and Insurance Appeals Tribunal), [2005] O.J. No. 1295 (C.A.) (Administrative Law — Standard of review — Whether Tribunal decision was patently unreasonable)

Schreiber v. Germany (2000), 48 O.R. (3d) 521 (S.C.J.), appeal dismissed (2001), 52 O.R. (3d) 577 (C.A.), appeal dismissed, [2002] 3 S.C.R. 269 (Constitutional Law — Charter, s. 9 — Arbitrary Detention — Regulatory Negligence — Abuse of Power — State Immunity — Procedural issues)

Schreiber v. Canada (Attorney General) (2000), 48 O.R. (3d) 521 (S.C.), leave to appeal granted [2000] O.J. 4858 (Div. Ct.), appeal allowed (2001), 57 O.R. (3d) 316 (C.A.), application for leave to appeal to the Supreme Court dismissed (Constitutional Law – Simultaneous Civil and Criminal Proceedings — Availability of Stays of Proceedings)

Singh v. Canada (A.G.); Leblanc v. Canada, [1991] O.J. No. 84, 75 O.R. (2d) 615, 75 D.L.R. (4th) 343 (Gen. Div.), [1991] O.J. No. 713, 47 O.A.C. 391, 3 O.R. (3d) 429, 80 D.L.R. (4th) 641 (Ont. C.A.) (Constitutional Law — Power to Appoint Senators)

Smith v. Money Mart, [2007] O.J. No. 46 (Constitutional Law — whether s. 347 of the *Criminal Code* infringes s. 7 of the *Charter* — constitutional sufficiency of *mens rea*)

Sudbury (Regional Municipality) v. Ontario (Director of the Approvals Branch, Ministry of the Environment and Energy) (1996), 18 C.E.L.R.(N.S.) 296, 128 D.L.R. (4th) 765, 86 O.A.C. 66 (Div. Ct.) (Administrative Law — Environmental Law — Jurisdiction of Environmental Appeal Board)

Télé-Mobile Co. v. Telecommunications Workers Union, [2005] 2 F.C.R. 727 (C.A.) (Administrative Law — bias of decision-maker — review of remedial decision made by federal labour board)

Télé-Mobile Co. v. Telecommunications Workers Union, [2004] F.C.J. No. 2123 (C.A.) (Administrative Law — Jurisdiction of federal labour board to order that employees be swept into a union)

Télé-Mobile Co. v. Telecommunications Workers Union, [2004] F.C.J. No. 1257 (C.A.) (Administrative Law — stay of tribunal decision pending review)

Telecommunications Workers Union v. Canada (Canadian Industrial Relations Board), [2005] F.C.J. No. 379 (C.A.) (Administrative Law — stay of tribunal decision pending review)

Telus et al. v. Telecommunications Workers Union, [2002] F.C.J. No. 1235 (C.A.) (Administrative Law — Labour Law — Jurisdiction of Canada Industrial Relations Board under s. 18.1 of the *Canada Labour Code*)

Telus Communications Inc. v. Telecommunications Workers Union, [2005] F.C.J. No. 682 (C.A.) (Administrative Law — stay of tribunal decision pending review)

University of Toronto (Governing Council) v. John N. Harbinson (2006), 78 O.R. (3d) 547 (Ont. S.C.J.) (Administrative Law — Whether an arbitration collaterally attacks a related administrative proceeding)

Vaughan v. Toronto, [1990] S.C.C.A. No. 78 (Administrative Law — Property Law — Expropriation — Municipal Law)

Walmsley v. Ontario (Attorney General), [1997] O.J. No. 2485, 34 O.R. (3d) 611, 101 O.A.C. 140 (Ont. C.A.) (Administrative Law — Freedom of Information Law — Jurisdiction of Information and Privacy Commissioner)