Appellate Advocacy

Win or lose, an appeal often follows. Appeals pose a unique challenge for clients: court rules, expected procedure and advocacy style—both written and oral—differ from hearings in the trial court. Having experienced appellate counsel is critical to effective representation on appeal.

We provide creative, collaborative and practical advocacy to our clients who look to us to represent their interests on appeal.

Our Appellate Advocacy Group has the broadest appellate and Supreme Court experience of any firm in Canada, and includes:

- former appellate judges from the Supreme Court of Canada and the Ontario and British Columbia Courts of Appeal
- former judicial law clerks from all levels of court and across the country

We are unparalleled in our leading performance before the Supreme Court and appellate courts. Our appellate litigators provide reliable and trusted counsel in the most complex cases, including:

- constitutional law
- class actions
- banking
- product liability

Our lawyers have:

- represented appellants, respondents and intervenors in appeals, judicial reviews and constitutional “reference” questions
- assisted other firms in preparing their appeals
- provided clients with opinions on various appellate issues

Our appellate lawyers work closely with our subject matter specialists to provide our clients with comprehensive advice and strategies.

Experience

- Fortinet Technologies (Canada) ULC v. Bell Canada, 2018 BCCA 277 reversing in part 2017 BCSC 1066 — res judicata — issue estoppel — arbitration. In early 2016, Bell and Fortinet participated in a

rent arbitration in which the arbitrator held that Bell's rent should be reduced for the second term of the sublease. In December 2016, Fortinet commenced litigation against Bell, in which Fortinet sought to terminate the sublease on the basis that Bell did not negotiate the rent renewal in good faith. Bell applied to strike the claim on the basis of issue estoppel. The chambers judge held that the claim was not res judicata because the arbitrator only had jurisdiction to determine renewal rent, and did not have jurisdiction to determine the validity of the sublease, had either party raised the issue. On appeal, held: appeal allowed, in part. Fortinet's claim was res judicata since the arbitrator's award was based on the common position of the parties that the sublease was validly extended. The validity of the sublease was "necessarily bound up" with the determination of the rent to be paid on renewal. As a result, it was a matter "determined" in the arbitration, and Fortinet was barred from taking a contrary position in the litigation. The Court of Appeal struck Fortinet's claim to terminate the sublease. Fortinet's claim for damages allowed to continue. Robert J.C. Deane and Hunter Parsons for the respondent, Bell Canada.

- Schnarr v. Blue Mountain Resorts Limited, 2018 ONCA 313 — Occupier's Liability. Plaintiffs' commenced action against defendant ski resorts after sustaining injuries while using ski facilities. Plaintiffs required to sign waivers prior to using ski facilities. Defendants argued that waivers were valid under the Occupier's Liability Act. Plaintiffs argued that waivers offended the Consumer Protection Act and waivers did not exempt ski resorts from their statutory obligation under consumer protection legislation. Court held that the Occupier's Liability Act prevails over the general provisions of the Consumer Protection Act and the plaintiffs were bound by the waivers. Robert L. Love, Edona C. Vila, and Samantha Bonanno, counsel for the Intervenors, The Ontario Federation of Snowmobile Clubs and Ontario Cycling Association.
- Centura Building Systems (2013) Ltd. v. 601 Main Partnership, 2018 BCCA 172, reversing 2017 BCSC 1727 — construction law — builders liens — security for claim of lien — The owner obtained an order reducing the amount security for a claim of lien to about half the amount claimed. On appeal, held: a judge must order that security be posted for a claim or component of a claim of lien unless the Owner can demonstrate that it is plain and obvious that the claim is bound to fail; and a judge must consider the evidence as a whole and exercise caution in favour of the lien claimant. This decision puts an end to confusion in the lower courts with respect to who bears the burden of proof on such an application: the burden is squarely on the party who is applying to reduce the security, and not the lien claimant. Rob Deane and Krista Johanson for the appellant, Centura Building Systems (2013) Ltd.
- Sacks v. Ross, 2015 ONSC 7238, aff'd 2017 ONCA 773, affirming 2015 ONSC 7238, leave to appeal to Supreme Court of Canada denied — Civil litigation — Medical negligence — Jury trial — Causation. The plaintiff brought an action in negligence against various health care providers after developing sepsis and necrotizing fasciitis following a bowel surgery. At trial, BLG successfully defended the Hospital Defendants. The jury found that five of the defendants breached the standard of care, but concluded that none of the breaches caused the plaintiff's injuries. The Court of Appeal dismissed the appeal. The appellants argued that a new "global but for" causation test should be used in delayed diagnosis cases, where the actions of the health care providers are examined as one. The Court of Appeal rejected the proposed test and upheld the jury's verdict, finding it was clear that the jury did not accept the plaintiffs' theory of causation presented at trial. The Court also provided a review of the principles grounding jury instructions on causation in complex medical malpractice trials. BLG lawyers, Anna Marrison, William D.T. Carter and John McIntyre successfully represented the Hospital Respondents. Leave to appeal was denied by the SCC.
- Van Sluytman v. Muskoka (District Municipality), 2018 ONCA 32, leave to appeal to the Supreme Court of Canada denied — Civil litigation — Vexatious proceedings – Dismissal under r. 2.1.01. The

self-represented plaintiff brought seven individual actions against various parties regarding his interactions with various government agencies, law enforcement officials, and health care providers across Ontario. These were all dismissed for being vexatious on their face under rule 2.1.01 of the Rules of Civil Procedure. The plaintiff was also separately declared a vexatious litigant. The Court of appeal dismissed the appeals. The Court heard the eight appeals together. It held that the seven actions were facially frivolous and vexatious and were properly dismissed. In doing so, the Court of Appeal clarified that notice of possible dismissal under rule 2.1.01 is not a strict requirement, particularly when there is no resulting prejudice. The Court further held that the vexatious litigant order was discretionary and was amply justified. BLG lawyers Logan Crowell and John McIntyre represented Muskoka Algonquin Healthcare and Orillia Soldiers' Memorial Hospital on the oral and written submissions respectively.

- Campbell (Re), 2018 ONCA 140 – Ontario Review Board — restriction of liberty — transfer between secure forensic units. The appellant had been previously found not criminally responsible by reason of mental disorder and was ordered detained in a specially designated forensic psychiatric hospital by the Ontario Review Board ("ORB"), pursuant to Part XX.1 of the Criminal Code. At the ORB hearing, the accused took the position that her transfer from one secure forensic unit to another amounted to a "significant increase" in the restrictions on her liberty such that an early review hearing was mandatory. The ORB held that it did not amount to a "significant increase". On appeal, held: appeal denied. The Court of Appeal clarified the law on when a forensic hospital must give notice to the ORB of a "significant increase" in an accused's restrictions of liberty under s. 672.56(2) of the Criminal Code. Prior to this decision, there were conflicting decisions of the ORB on the interpretation of "significant increase" and therefore, on when notice to hold a mandatory hearing to review the restriction was required. The Court of Appeal held that this has to be determined on a case-by-case basis, but clarified that the change in liberty status must "clearly deviate" from the accused's liberty norm and "must be so significant" that a reasonable person would think a hearing to review the increase ought to be held prior to the accused's next annual review. In this case, the Court found there was no "significant increase" and accordingly, dismissed the appeal. BLG lawyers, Barbara Walker-Renshaw and John McIntyre, represented the respondent, the person in charge of the Royal Ottawa Mental Health Centre.
- Kalra (Re) (cited to companion case, Ohenhen (Re)), 2018 ONCA 65 — Ontario Review Board — treatment conditions – incapable accused. The appellant was found not criminally responsible by reason of mental disorder and was ordered detained in a specially designated forensic psychiatric hospital by the Ontario Review Board ("ORB"), pursuant to Part XX.1 of the Criminal Code. At the time of the accused's annual review before the ORB, he took the position that despite being incapable with respect to treatment under provincial legislation, he was entitled to consent to a condition requiring him to take treatment under s. 672.55(1) of the Criminal Code ("a treatment condition"). Previously, there was conflicting Court of Appeal jurisprudence regarding the availability of a treatment condition for accused who are incapable of consenting to treatment. The ORB held that treatment conditions were only available to capable accused. On appeal, held: appeal allowed. The Court of Appeal empaneled five judges to review its conflicting jurisprudence. In its decision, the Court drew a clear distinction between an accused's capacity to consent to treatment and an accused's ability to commit to follow a treatment plan that had already been consented to either by the capable accused or by an incapable accused's substitute decision maker. Requiring an accused to have capacity to consent to treatment was seen as being an undue restriction on the accused's liberty, particularly as treatment conditions may facilitate an accused's reintegration into the community. The Court tempered its decision by holding that a treatment condition is not presumptively available — it must be reasonable and

necessary. BLG lawyers, Barbara Walker-Renshaw and John McIntyre represented the interests of the respondent, the person in charge of the Royal Ottawa Mental Health Centre.

- R. v. Comeau, 2018 SCC 15 — Constitutional Law — Interprovincial Trade. A New Brunswick resident purchased liquor in Quebec before crossing the border into New Brunswick. He was charged under New Brunswick's Liquor Control Act for exceeding the amount of allowable liquor not purchased from New Brunswick's liquor corporation. The question was whether the Act contrevened s. 121 of the Constitution Act, 1867, which provides that all articles of manufacture from any province shall be "admitted free" into each of the other provinces. The Court held that s. 121 only prevents provinces from enacting a law which has the primary purpose of restricting cross-border trade. Although the Act restricted trade, the text and effects suggested that its primary purpose was to control the supply and use of liquor within the province. It therefore did not infringe s. 121. Chris Bredt and Ewa Krajewska, counsel for the Interveners the Canadian Chamber of Commerce and the Canadian Federation of Independent Businesses.
- Godbout v. Pagé, 2017 SCC 18 — Insurance law (Québec). The issue was the interpretation of the Québec Automobile Act and whether it permitted individuals to bring civil claims against third parties. The majority held that the immunity conferred by the statute applies to subsequent injuries if they are sufficiently closely linked to the automobile accident; in this case, the civil claims were barred. Mark Phillips and Émilie Jutras, counsel for the Respondents, Anick Dulong, Moreno Morelli, Martin Lavigne, Jacques Toueg and Hôpital du Sacré-Coeur de Montréal.
- D2 Contracting Ltd. v. The Bank of Nova Scotia, 2016 BCCA 366 — banking law — forged cheques. Corporate plaintiff held bank account from which numerous cheques were drawn which it alleged were not authorized. One of the two authorized signatories of the plaintiff forged the signature of the other authorized signatory on the cheques at issue. Both signatories knew that forged cheques were being drawn on the account. After summary trial, the BC Supreme Court held that the plaintiff was precluded from setting up the forgery or want of authority against the Bank and dismissed the action. Held: Appeal dismissed. There was no reviewable error. D. Ross McGowan and Michelle T. Maniago for the respondent, The Bank of Nova Scotia.
- Trinity Western University v. Law Society of Upper Canada, 2018 SCC 33 — Freedom of Religion — Equality Rights — Regulation of Legal Profession. The Court upheld the Law Society of Upper Canada's decision to deny accreditation to Trinity Western University's proposed law school based on its mandatory convenant which prohibited sexual intimacy outside of heterosexual marriage. The Law Society's decision significantly advanced the statutory objectives of equal access to the legal profession and preventing significant harm to LGBTQ people, and had only a minor impact on the religious freedom of TWU's community members. The decision reached a proportionate balance and was therefore reasonable. Guy Pratte, Duncan Ault and Nadia Effendi, counsel for the Respondent, the Law Society of Upper Canada.
- Teva Canada Limited v. TD Canada Trust, 2017 SCC 51 — Commercial Law — Bills of exchange — Banks. A pharmaceutical company which fell victim to a fraudulent cheque scheme claimed that the banks were liable for the tort of conversion. The issue was whether the banks could rely on the defence in s. 20(5) of the Bills of Exchange Act for cheques made out to "fictitious or non-existing" payees. The Court allowed the appeal and found that it was appropriate that the bank bear the risks and losses associated with the bills of exchange system rather than the drawer of the cheques. Martin Sclisizzi, Heather Pessione and Caitlin Sainsbury, Counsel for the Respondent, Bank of Nova Scotia.
- Deloitte & Touche v. Livent Inc, 2016 SCCA No 84 — Negligence — Duty of Care — Auditors. This case concerned Deloitte's exposure to liability as an auditor for corporate/shareholder losses resulting from fraud. The Court held that Deloitte had no duty of care to the shareholders for its actions in

preparing a press release and comfort letter, since they fell outside of its undertaking to assist for the purpose of helping to solicit investment. However, Deloitte did have a previously-recognized duty of care in relation to its preparation of a statutory audit and was therefore responsible for shareholder losses that could have been avoided with a proper audit. Guy Pratte, Duncan Ault and Nadia Effendi, counsel for the Intervener, Chartered Accountants Canada.

- Canadian Pacific Railway Co v. Canada (Attorney General), 2016 SCC 1 — Administrative law. The issue was whether a regulatory agency had the authority to amend regulations pertaining to “interswitching” in the railway industry. The Court ruled that the regulatory body had discretionary powers to both make and amend the impugned regulations. Guy Pratte and Nadia Effendi, counsel for the Intervener, Railway Association of Canada.
- World Bank Group v. Wallace, 2016 SCC 15 — Public International Law — Jurisdictional immunity. The issues were whether the World Bank Group could be subject to a production order in light of certain immunities in the organizations’ governing documents, and if so, whether the documents sought to be produced were relevant to a wiretap challenge. The Court held that the immunities did apply, and in any event the production order should not have been issued. Guy Pratte, Duncan Ault and Nadia Effendi, counsel for the Interveners, European Bank for Reconstruction and Development, Organisation for Economic Co-Operation and Development, African Development Bank Group, Asian Development Bank, Inter-American Development Bank, and Nordic Investment Bank.
- Marshall v. United Furniture Warehouse Limited Partnership, 2015 BCCA 252, aff'g 2013 BCSC 2050, leave to appeal to Supreme Court of Canada denied with costs (March 17, 2016) — Class Actions — Certification Denied — Consumer Law. The plaintiffs sought to certify a class action against the respondents on the basis that they misled consumers into believing that a "cash voucher" program administered by a third party was guaranteed, and in fact administered by the respondents. The BC Supreme Court refused to certify the claim. The Court of Appeal dismissed the appeal. The chambers judge did not err in concluding that the claim lacked commonality. Each customer had a different experience in the stores, as oral representations were made in addition to written representations. Leave to appeal to SCC sought and denied with costs. Brad W. Dixon and Michelle T. Maniago for the respondents, United Furniture Warehouse Limited Partnership, United Furniture Warehouse (2004) Corporation, United Furniture GP Ltd., The Brick Warehouse Limited Partnership, The Brick GP Ltd., The Brick Furniture Warehouse Ltd., and The Brick Warehouse Corporation.
- Loyola High School v. Québec (Attorney General), 2015 SCC 12 — Human rights — Freedom of religion — Schools — Mandatory ethics and religious culture program. Québec had stipulated that schools were required to teach the provincial curriculum from a neutral perspective. The legal issue in this case was whether Loyola High School, a private Catholic school, was required to teach its religion and ethics course from a "neutral" angle. The Court held that Québec’s requirement that the courses be taught from a neutral point of view unjustifiably trenched on the religious freedoms of teachers and religious schools. Mark Phillips and Jacques S. Darche, counsel for the Appellants, Loyola High School and John Zucchi.
- Carter v. Canada (Attorney General), 2015 SCC 5 — Right to life, liberty and security of the person — Fundamental justice. This case was about whether the criminalization of assisted dying violated individuals’ constitutional rights. The Court held that the blanket prohibition concerning physician-assisted death encroached on individuals’ autonomy and dignity. Hence, the impugned provisions were unconstitutional. Christopher D. Bredt and Margot Finley, counsel for the Intervener, the Canadian Civil Liberties Association.
- Hinse v. Canada (Attorney General), 2015 SCC 35 — Crown liability — Prerogatives — Public law immunity. The appellant was wrongfully convicted. As a result, the town of Mont-Laurier paid him

$5,550,000 in compensation. The appellant claimed that this amount was insufficient and argued that since the Minister of Justice did not end his incarceration earlier (based on the Minister's power of mercy), the Crown was liable for damages. The Court held that the Minister did not err in exercising his discretionary power of mercy and, therefore, dismissed the claim. Guy Pratte, Alexander De Zordo and Marc-André Grou, counsel for the Appellant, Réjean Hinse.

- TransCanada Pipeline Ventures Ltd. v. Alberta (Energy and Utilities Board), 2008 ABCA 55; TransCanada Pipeline Ventures Ltd. v. Alberta (Utilities Commission), 2010 ABCA 96; Williams Energy (Canada) Inc. v. Alberta Utilities Commission, 2014 ABCA 51 — These are a series of appeals concerning the interpretation of the Alberta Public Utilities Act and the Gas Utilities Act and regulations thereunder. The appeals related to attempts by shippers to have the AUC override their long term transportation contracts, which they or their assignors signed to have the pipeline built, and regulate the pipeline. Ultimately, the Court of Appeal found that in the absence of an order-in-council, which was not forthcoming, it did not have the jurisdiction to regulate the pipeline. Frank R. Foran, Q.C., counsel for the Appellant, TransCanada Pipeline Ventures Ltd., 2008 ABCA 55.Frank R. Foran, Q.C., Julie G. Hopkins, counsel for Appellant TransCanada Pipeline Ventures Ltd., 2010 ABCA 96. Frank R. Foran, Q.C., Julie G. Hopkins, counsel for the Respondent TransCanada Pipeline Ventures Ltd., 2014 ABCA 51.
- Canadian National Railway Co v. Canada (Attorney General), 2014 SCC 40 — Administrative law — Transportation law — Boards and tribunals. The issue was whether the Governor in Council has the statutory power to vary or rescind regulatory decisions made by the Canadian Transportation Agency pursuant to the Canada Transportation Act. The Court ruled that, based on the broad language in the statute, the Governor in Council can vary the regulatory decisions made by the Canadian Transportation Agency concerning railway freight rates. Guy Pratte, Nadia Effendi and Éric Harvey for the Appellant, Canadian National Railway Company.
- Tsilhqot'in Nation v. British Columbia, 2014 SCC 44 — Aboriginal title — Land claims. The issue in this case was whether a semi-nomadic Aboriginal group could establish their land claims at law and what ought to be the appropriate approach in determining such claims. The Court stated that semi-nomadic Aboriginal peoples can establish land title through a purposive test that infers whether said peoples occupied a territory based on historical inferences. Patrick G. Foy and Kenneth J. Tyler, counsel for the Respondents Her Majesty the Queen in Right of the Province of British Columbia and the Regional Manager of the Cariboo Forest Region.
- Kazemi Estate v. Islamic Republic of Iran, 2014 SCC 62 — Charter of Rights and Freedoms — Right to security of person — Sovereign immunity. The issue was whether statutory provisions which barred Canadian citizens from commencing civil suits against foreign governments passed constitutional scrutiny. The Court held that the impugned statutory provisions were constitutional, whereby individuals were precluded from suing foreign governments in Canadian courts. Christopher D. Bredt and Heather Pessione, counsel for Amicus Curiae (Christopher D. Bredt).
- Bruno Appliance and Furniture Inc v. Hryniak, 2014 SCC 8 — Summary judgment. This case was about the circumstances in which summary judgment can be granted. The Court ruled that in order to improve access to justice, summary judgments should be more liberally granted. David W. Scott, Q.C., co-counsel for the Intervener, the Advocates' Society.
- Cinar Corporation v. Robinson, 2013 SCC 73 — Intellectual Property — Evidence. This case raised questions about how to distinguish whether a work is a copy of a previously published work. Specifically, the Court was tasked with trying to interpret the term "substantial parts" in the intellectual property domain. The Court held that the plaintiff's copyrights were infringed; from a layperson's

perspective, the work in question was very similar to the original. Guy Pratte, Daniel Urbas and Marc-André Grou, counsel for the Intervener, Christian Davin.

- AIC Limited v. Fischer, 2013 SCC 69 — Class actions — Certification — Preferability. The case was about whether it was preferable to pursue this matter as a class action or as a proceeding before the Ontario Securities Commission. The Court ruled that it was preferable to certify this matter as a class action because, among other things, there was no other procedure available to afford meaningful remedies. James D.G. Douglas, David Di Paolo and Margot Finley, counsel for the Appellant, AIC Limited.
- Amaratunga v. Northwest Atlantic Fisheries Organization, 2013 SCC 66 — Public international law — Jurisdictional immunity — International organizations. The legal issue was whether individuals can bring actions against international governmental organizations for domestic matters such as breaches of an employment contract. The Court ruled that to ensure that international organizations are free from domestic interferences, it is important to give effect to the privileges and the legal immunities that such organizations possess. These immunities prohibit the appellant from commencing a suit against an international organization in a Canadian court. Ewa Krajewska and Heather Pessione, counsel for the Intervener, Canadian Civil Liberties Association.
- Ediger v. Johnston, 2013 SCC 18 — Torts — Negligence — Causation.The plaintiff suffered a traumatic incident during her birth, which led to permanent and severe brain damage. The question was whether the doctor (respondent)'s breach of the standard of care caused the plaintiff's injuries. The Court ruled that the trial judge did not err in holding the physician liable. Vincent R.K. Orchard, Paul T. McGivern, Susanne Raab and Steven Hoyer, counsel for the Appellant.
- Québec (Attorney General) v. A, 2013 SCC 5 — Right to equality — Discrimination based on marital status — De facto spouses. The legal issue was whether statutory provisions which excluded de facto spouses from patrimonial and spousal support rights violated equality rights under the Charter of Rights and Freedoms. The Court ruled that although the impugned provisions breached equality rights, they were nonetheless justifiable in a free and democratic society: the provisions imposed reasonable limits concerning to whom spousal support is owed. Guy Pratte and Mark Phillips, counsel for the Respondent, A.
- Opitz v. Wrzesnewskyj, 2012 SCC 55 — Election law. The issue was the appropriate test for determining whether votes should be invalidated on account of procedural irregularities in a contested election. The majority held that the substantive approach should be adopted, consistent with the underlying Charter right to vote. David Di Paolo and Alessandra Nosko, counsel for the Respondents, Marc Mayrand (Chief Electoral Officer) and Allan Sperling (Returning Officer, Etobicoke Centre).
- SL v. Commission scolaire des Chênes, 2012 SCC 7 — Human rights — Freedom of religion — Schools — Mandatory ethics and religious culture program. In this case, the appellants argued that their children should be exempted from a state mandated religion and ethics course that taught various religions' tenets from neutral perspectives. The Court ruled that the school board's refusal to provide such exemption did not breach the parents' and the children's religious freedoms. Mark Phillips and Guy Pratte, counsel for the Appellants, S.L. and D.J.
- Bou Malhab v. Diffusion Métromédia CMR Inc, 2011 SCC 9 — Civil liability — Defamation. The issue was whether, in a proposed class action, a radio host had civil liability for making racist comments over the radio about Montreal taxi drivers. The Court held that the plaintiff was unable to prove that the racist statement in question personally injured him. Accordingly, the Court refused to provide compensation and dismissed the appeal. Guy Pratte and Jean-Pierre Michaud, counsel for the Intervener, the Canadian Broadcasting Corporation.

- Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44 — Charter of Rights and Freedoms — Right to life, liberty and security of the person — Safe injection site. The legal issue was whether a Minister's decision to stop funding safe injection sites breached individuals' constitutional protections. The Court held that such reductions in funding jeopardized the security of vulnerable communities. Hence, the Minister's decision did not pass constitutional muster. Guy Pratte, Nadia Effendi and Jean Nelson, counsel for the Intervener, the Canadian Medical Association.
- R v. Katigbak, 2011 SCC 48 — Criminal law —Defences. The issue was how to interpret a key defence regarding the offence of possessing child pornography. Due to legislative amendments, it was unclear in the statute whether individuals can be exculpated from being charged with possessing child pornography if they were in possession of such materials for educational and artistic purposes. The Court held that an objective approach should be adopted in interpreting such a defence. The test should scrutinize whether "public good" is achieved by the materials in question. Christopher D. Bredt and Margot Finley, counsel for the Intervener, Canadian Civil Liberties Association.
- Koubi v. Mazda Canada, 2010 BCSC 650 and 2011 BCSC 59, rev'd 2012 BCCA 310, leave to appeal to Supreme Court of Canada denied with costs (January 17, 2013) — class actions — certification denied — waiver of tort — consumer law. The plaintiff purchased a vehicle. Third party thieves began targeting that model of vehicle, and the media began reporting about the break-ins. Mazda Canada developed a lock reinforcement, which was installed at no charge. The plaintiff alleged that she had purchased the model of vehicle based on representations that the vehicle had a high level of quality and craftsmanship and exhibited attention to detail, including door locks. She made claims against Mazda Canada under both the Sale of Goods Act and the British Columbia Consumer Protection Act. She claimed "restitutionary damages", disgorgement of profits and waiver of tort. The BC Supreme Court certified the claim. On appeal, held: appeal allowed. The chambers judge erred in certifying the claim. The pleadings did not disclose a cause of action. Leave to Appeal to SCC sought and denied, with costs. Brad W. Dixon and Michelle T. Maniago for the appellant, Mazda Canada.
- The Globe and Mail v. Canada (Attorney General), 2010 SCC 41 — Charter of Rights and Freedoms — Freedom of expression — Publication ban. This case pertained to whether (i) journalists are required to reveal their sources to the court for an ongoing litigation; and (ii) the court can impose a blanket publication ban about settlement negotiations without encroaching on journalists' freedom of expression. The Court ruled that it was contrary to the public interest to compel journalists to reveal their sources. Further, the blanket publication ban breached Charter protections. Christopher D. Bredt and Cara Faith Zwibel, counsel for the Intervener, the Canadian Civil Liberties Association.
- Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23 — Freedom of expression — Scope — Access to government held information — The respondents argued that the Minister's decision to not to disclose reports regarding a murder case and police abuses violated their freedom of expression protections. The Court held that freedom of expression was not violated because some of the documents in question were exempted from public disclosure due to solicitor-client privilege. Guy Pratte and Nadia Effendi, counsel for the Intervener, Federation of Law Societies of Canada.
- Morrow v. Zhang, 2009 ABCA 215, leave to appeal to the Supreme Court of Canada denied — Charter of Rights — Equality — Insurance. Alberta passed the Minor Injury Regulation (MIR) to address concerns relating to the rising cost of motor vehicle insurance premiums and the increase in uninsured drivers. The MIR imposed a $4,000 cap on non-pecuniary damages for minor injuries. Injured plaintiffs challenged the cap, and the trial judge found a violation of s. 15 that was not saved under s. 1. The Court of Appeal allowed the appeal. When the entire legislative scheme was considered, including protocols for diagnosing and treating minor soft tissue injuries, increases in medical benefits, and caps

on automobile insurance for all Albertans, the $4,000 cap was not discriminatory. Frank R. Foran, Q.C., Julie G. Hopkins, as counsel for the Appellant/Cross-Respondent, Her Majesty the Queen in Right of Alberta.

- Canadian National Railway Co v. Royal and Sun Alliance Insurance Co of Canada, 2008 SCC 66 — Insurance — "All risks" insurance — Construction. The issue was whether an "all risk" insurance policy agreed to by the appellant covered damages stemming from an innovative railway technology. The Court held that the policy was broad enough to encompass such damage. Guy Pratte, Richard H. Shaban and Sharon C. Vogel, counsel for the Appellants, Canadian National Railway Company, Grand Trunk Western Railroad Incorporated and St. Clair Tunnel Company.
- Phoenix Bulk Carriers Limited v. Kremikovtzi Trade, 2007 SCC 13 — Maritime law — Jurisdiction in rem. The issue was the interpretation of the Federal Courts Act and the court's in rem jurisdiction thereunder. The Court held that in rem jurisdiction can be exercised, and cargo seized, once a contract of affreightment pertains to the carriage of that cargo and the contract has allegedly been breached. P. Jeremy Bolger, Peter G. Pamel, Jean-Marie Fontaine and Rick Williams, counsel for the Appellant, Phoenix Bulk Carriers Limited.
