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Press Release For Immediate Distribution

Supreme Court ruling on illegally obtained evidence sparks comments from criminal defence bar.

Toronto, ON, July 17, 2009 – The Supreme Court of Canada today released its Judgment in four cases that will decide the future of the exclusionary rule in criminal cases. Keenly anticipated by the legal community, these cases, known as Suberu, Grant, Harrison and Shepherd, concern what should happen with evidence the police obtain by breaking the law.

Frank Addario, president of the CLA said: “The legal community was waiting to see how the Court would respond to calls to restrict remedies for violations of the Charter. In the last couple of years, some judges have worried that the public doesn’t fully understand the Charter or why illegally obtained evidence must sometimes be excluded. The Court put that fear to rest today saying that to be effective, the Charter needs to make a difference in real cases.”

The CLA expressed a mixed reaction to the decisions. Addario said: “Our worst fear was that the Court might respond to the fear-mongering that has been aimed at judges who apply the Charter in real cases. It didn’t. While it rewrote the test for excluding evidence, it gave some hope to those who expect the courts to be the guardian of Canadians’ constitutional rights.”

“There is a strong direction to trial judges to not reward deliberate breaches of the Charter”, Mr. Addario said. “From a civil liberties perspective it sends the right message. The charter is not an optional honour code that can be ignored if it constrains the police. That’s one of its signal purposes.”

Mr. Addario pointed out that one notable change is that the Court re-focused the exclusion of evidence away from giving individual defendants a remedy toward societal rights. This is a shift away from “corrective justice” towards systemic concerns about how Charter rights are protected and enforced. [Paragraph 70 Grant case]. In other words, where an individual suffers a Charter breach, the remedy is society’s, not his.

“This could be good or bad depending on whether trial judges keep their sights on the goal of the Charter or routinely put themselves in the shoes of the police officer” says Addario. “There is a constant risk, as the Court explained, that the failure to exclude illegally obtained evidence sends a signal that judges condone state deviation from the rule of law by failing to dissociate themselves from the fruits of that unlawful conduct.”

“Although we won’t know the full impact of these cases for several years, the architecture of the new test allows trial judges to ignore trivial and inadvertent breaches while excluding evidence where the police have ignored the Charter, deliberately stepped over the line, or just took shortcuts. The Charter is not a self-executing document. It requires lawyers and judges to make it make a difference in real cases.”

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,000 members. The CLA is a voice for everyone concerned with criminal justice and civil liberties in Canada. Our advice and perspective is sought frequently by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. The CLA also assists its members in every aspect of the practice of criminal litigation. A list of our membership and a more detailed description of our organization is located at <http://www.criminallawyers.ca>

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