

# Raj Anand, Counsel for the David Asper Centre for Constitutional Freedoms in a SCC Constitutional Test

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**Raj Anand**, a senior civil litigation and human rights partner at WeirFoulds, and a bencher of the Law Society of Upper Canada, is featured in the January 15, 2016 edition of *The Lawyers Weekly* in "Government agent immunity issue one of the challenges for SCC: Winter session will also look at penalties, admissibility, infanticide".

Raj is counsel for the David Asper Centre for Constitutional Freedoms, one of seven interveners in the constitutional test case of *Jessica Ernst v. Alberta Energy Regulator*. The case asks whether the general immunity in s. 43 of the Energy Resources Conservation Act (ERCA) is constitutionally inapplicable, or inoperative, to the extent that it bars claims for personal damages for free speech violations of the Charter of Rights and Freedoms.

Jessica Ernst sued the Alberta Energy Regulator for negligence, and for allegedly refusing to accept further complaints unless she stopped expressing her concerns publicly after fracking near her property resulted in groundwater contamination. She claims damages for alleged violation of her Charter right to freedom of expression, and damages under s. 24(1) of the Charter. Ernst's negligence and Charter claims were struck out by the Alberta courts. They ruled that although the Charter claims did disclose a cause of action and were not doomed to fail, the courts were precluded from considering them by the Alberta Energy Regulator's general immunity in pursuance of the ERCA. This decision by the Supreme Court is expected to affect the several statutory immunities at the federal, provincial and municipal levels.

"I think the import of the case is extraordinary because it basically asks whether a legislature is entitled to shield the public service from the Charter," says Raj Anand of Toronto's WeirFoulds. "Can an ordinary statute...make the public service a Charter-free zone?" Anand, counsel for the David Asper Centre for Constitutional Freedoms, one of three interveners, said if the decision below is upheld "it would certainly provide an end-run around the Charter. It basically permits a legislature, which by definition is subject to the Charter, to exempt its executive from the Charter...Our view is it's contrary to rule of law, and our system of government, for a legislature to do what even the common law has not been interpreted to do."

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