Court file no. C70397

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SOLICITOR GENERAL OF ONTARIO SYLVIA JONES, ONTARIO PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE, ONTARIO PROVINCIAL POLICE CHIEF SUPERINTENDENT JOHN CAIN, ONTARIO PROVINCIAL POLICE INSPECTOR PHILIP CARTER and HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO.

Appellants

- and -

POORKID INVESTMENTS INC., THE COACH PYRAMIDS INC., and BRIAN HAGGITH

Respondents

RESPONDENTS' FACTUM

June 22, 2022

ARRELL LAW LLP
Barristers
2 Caithness Street West
Caledonia, Ontario
N3W 1C1

Fax:(905) 765-5144

W. Peter Murray (LSO No. 13055N)

Tel: (905) 765-5414 Ext. 202
Email: peter.murray@arrelllaw.com

Counsel for the Respondents

TO

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax: 416-326-4015

S. Zachary Green (LSO No. 48066K)
Tel: 416- 992-2327
Fax: 416- 326-4015
Email: Zachary.green@ontario.ca

Daniel Huffaker (LSO No. 56804F)
Tel: 416-326-0296
Email: Daniel.Huffaker@ontario.ca

Ryan Cookson (LSO No. 61448D)
Tel: 416-389-2604
Email: Ryan.Cookson@ontario.ca

Counsel for the Appellants, Her Majesty the Queen in Right of Ontario et al.

Table of Contents

PART I - OVERVIEW

1. The issue before the court is the constitutionality of s. 17 of the *Crown Liability and Proceedings Act, 2019,* SO 2019, c 7, Sch 17 ("*CLPA*"). Section 17 creates a new screening mechanism for plaintiffs alleging bad faith or misfeasance against a public official.
2. The issue is, does this screening mechanism as written, constitute an impermissible infringement on a litigant's right of access to justice in a court constituted under s. 96 of *The Constitution Act, 1867,* 30 & 31 Victoria, c 3 (UK) ("*Constitution Act, 1867*") which a right of access to justice is, by necessary implication, part of the protected core of s. 96? Or does s. 17 not constitute a barrier to access at all, but rather does it constitute a valid exercise of provincial power under s. 92 (14) of the *Constitution Act, 1867* to make laws relating to procedure in civil matters in s. 96 courts?

PART II – RESPONDENTS' STATEMENTS AS TO FACTS

3. The respondent agrees with the facts as set out in paragraphs 9, 10, 11, 12 ,13, 14, 17, and 21 of the Appellants' Factum. With respect to the Appellants' statement at paragraph 15 that the leave requirement in s. 17 of the *CLPA* is modelled on s. 138.8 of the *Securities Act*, the respondents' position is that while the test ("good faith and a reasonable possibility of success") are the same, the other requirements of s. 17 differ markedly from s. 138.8. In particular the onerous disclosure requirements imposed upon the plaintiff with lack of any disclosure requirements upon the Crown and the elimination of the normal practice of costs following the event will be discussed in detail later.

PART III - RESPONSE TO THE APPELLANTS' ISSUES

4. **Crown liability and the "core" of s. 96**

5. The "protected core" at issue in the present case has nothing to do with the conferring of essential functions of the superior courts to other bodies or with impairing the "historical jurisdiction" of the superior courts. The comments regarding the absence of Crown liability pre-Confederation in paras 32 and 33 of the Appellant's Factum are not relevant to the true inquiry which is whether s. 17 infringes upon the "core jurisdiction" of s. 96 of which access to justice is an implicit requirement and includes access to the courts to determine government accountability, essential to the rule of law.

6. While the Crown liability Acts may govern the vicarious lability of the sovereign for tortious acts committed by agents and employees of the sovereign, the ability of the subject to access superior courts to hold accountable public officials who act in an illegal manner outside their powers has been a feature of the common law since the seventeenth century.

   Erika Chamberlain, *Misfeasance in a Public Office*, Thomson Reuters, 2016, Chapter 2, "*History of the Tort*".

7. While some areas of Crown decision making may not be justiciable, the exercise of sovereignty and foreign relations being among them, the abuse of discretion by public officials has been a concern of the judiciary as the administrative state has expanded. In *Roncarelli v. Duplessis* Rand J. delivered the classic description of the judiciary's role in controlling arbitrary public power:

   > "That, in the presence of expanding administrative regulation of economic activities, such a step and its consequences are to be suffered by the victim without recourse or remedy, that administration according to law is to be superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signalize the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure"

   Roncarelli v. Duplessis, 1959 SCC 50 at p. 142

8. In *Trial Lawyers*, McLachlin C.J. opined:

> "The s. 96 judicial function and the rule of law are inextricably intertwined … As access to justice is fundamental to the rule of law, and the rule of law is fostered by the continued existence of the s. 96 courts, it is only natural that s. 96 provide some degree of constitutional protection for access to justice."
>
> "In the context of legislation which effectively denies people the right to take their cases to court, concerns about the maintenance of the rule of law are not abstract or theoretical.
>
> *If people cannot challenge government actions in court, individuals cannot hold the state to account - the government will be, or be seen to be, above the law*." [emphasis added]
>
> *Trial Lawyers Association of British Columbia v. British Columbia (AG),* 2014 SCC 59 at para 39

9. In *Leroux,* para 20, Belobaba J. noted:

> "The s. 96 argument, as advanced by the plaintiff and developed in more detail by the intervener, focuses on the "core jurisdiction" analysis to be sure, but adds an important refinement that, in my view, was not satisfactorily rebutted by the defendant. The refinement is based on the three-part proposition, reaffirmed by the decision of the Supreme Court of Canada in *Trial Lawyers* that (i) s. 96 constitutionally protects the core jurisdiction of superior courts; (ii) this core jurisdiction includes access to these courts; and (iii) provincial legislation that denies access to these courts may constitute an impermissible infringement on that core jurisdiction."
>
> *Leroux v. Ontario*, 2020 ONSC 1994 at para20 (reversed on other grounds)

10. This "inextricable intertwining" led to McLachlin C.J. holding that access to justice is implicitly required by s. 96. This approach was commented upon by Wagner C.J. in the *City of Toronto* in which the Supreme Court held the unwritten constitutional "democracy" principle could not be used on an independent basis to strike down provincial legislation changing the rules of an upcoming municipal election.

11. In discussing the decision of the majority in *Trial Lawyers* (written by McLachlin C.J.) and in particular the use of the "rule of law" Wagner C.J. wrote:

> "The rule of law was used in *Trial Lawyers* as an interpretive aid to s 96 which in turn was used to narrow provincial legislative authority under s. 92(14). The rule of law was not being used as an independent basis for invalidating the impugned court fees. In this way McLachlin C.J.'s reasoning simply reflects a purposive interpretation of s 96 informed by unwritten constitutional principles."
>
> *Toronto (City) v. Ontario (Attorney General),* 2021 SCC 34 at paras 74-75

12. If the rule of law, standing on its own, should not be used to strike down s. 17, it should be a powerful interpretative aid in any such inquiry.

13. **Barrier to access**

14. The appellant argues the barrier in s. 17 is "procedural" in nature suggesting only financial (as in *Trial Lawyers*) and physical barriers (as in *B.C.G.E.U.*) infringe upon s. 96. If that is true, then the "procedural" test for obtaining a hearing on the merits could be anything the province may proscribe, including, for example, proof of success beyond a reasonable doubt. That would effectively extinguish the tort of misfeasance in a public office - a result facially possible under 92(14), but not permissible where the tort remains in place and the legislation concerning it must conform to the constitution, including access to justice as an implicit requirement of s. 96. The power conferred to the province to make laws concerning civil matters is not absolute. The exercise of such power must be harmonious with the Constitution and in particular s. 96 and s. 17 cannot exist in harmony with s. 96 as it has been interpreted.

15. In *B.C.G.E.U.*, Dickson C.J. held interference "from whatever source falls into the same category" as picketing. He stated:

> "I would adopt the following passage from the judgment of the British Columbia Court of Appeal (at p.406):

> We have no doubt that the right to access to the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens. …Any action that interferes with such access by any person or groups of persons will rally the courts powers to ensure the citizen of his or her day in court. Here the action happens to be picketing. As we have already indicated, interference from whatever source falls into the same category."

B.C.G.E.U. v. British Columbia (Attorney General), 1988 SCC 3 at para 26

16. The attempt to characterize s. 17 as "procedural" as opposed to "substantive" is artificial and unhelpful. The correct analysis is that adopted by Broad J. and follows from the holding in *Christie* that "not every barrier is automatically unconstitutional". There is a spectrum of barriers that might infringe the right of access to justice implicit in s. 96, and proper inquiry is to determine where on the spectrum a particular barrier falls.

British Columbia (Attorney General) v. Christie, 2007 SCC 21 at para 17

17. **Inconsistency with the rule of law**

18. The discussion in the Appellants' Factum characterizing the remedy sought by the plaintiffs as a "civil proceeding for damages" ignores the unique nature of the cause of action of misfeasance in a public office.

19. It is not the same category as actions against negligent drivers or health care workers or damages against a public issuer who mispresents material facts. It involves the third principle of the rule of law enunciated in *British Columbia v. Imperial Tobacco Canada Ltd*, namely that it applies to government officials and requires that state officials' actions be legally founded. The alternative to a remedy at law would be the ballot box, a theoretical remedy at best. Broad J. did not invalidate s. 17 for being inconsistent with the rule of law on an independent basis. What he did was adopt the reasoning of McLachlin C.J. in *Trial Lawyers,* which reasoning was approved by Wagner C.J. in *City of Toronto v. Ontario* as set out above.

British Columbia v. Imperial Tobacco Canada Ltd., 2005 SCC 49, para 59
Toronto (City) v. Ontario (Attorney General), 2021 SCC 34 at paras 74-75

20. **Disclosure obligations on the plaintiff and the defendant**

21. The provisions of s. 17, as they are written, impose an obligation on the plaintiff to disclose all material facts on which they intend to rely by way of an affidavit, and disclose every document concerning the case in their possession or control by way of an affidavit of documents. There are no disclosure obligations whatsoever on the Crown. In fact, s. 17 provides that the normal rules of procedure which might afford the plaintiff an opportunity to obtain any disclosure do not apply on a s. 17 motion. The comments on the Crown's historical immunity to examination for discovery are not relevant to Broad J.'s holding regarding the lack of any disclosure obligations in the context of the screening mechanism and the difficulty of obtaining some evidence of bad faith without any disclosure, either by way of an affidavit or oral examination, or by way of cross examination on an affidavit, or as a witness under Rule 39.03.

22. Section 138.8(2) of the *Securities Act* provides that the plaintiff and each defendant each shall file and deliver affidavits. The Crown argues this apparent right of the plaintiff to receive some measure of disclosure is illusory as a Superior Court Justice has ruled "shall" actually means "may" citing *Ainslie v. CV Technologies Inc.* 2008 CanLii 63217 (ON SC) as "well established".

23. The decision is not "well established". The reasoning of Lax J. was sharply criticized by Bellamy J. in the reasons granting leave to appeal. Bellamy J. in *Ainslie v. CV Technologies Inc*., 2009 CanLII 7165 granted leave on the issue of whether each defendant (the issuer defendant had filed an affidavit in compliance but the co-defendant auditor had not) was required to file an affidavit quoted van Rensburg J who said of s. 138.8:

> "The fact that proposed defendants are not required generally under the Rules to make documentary production and are not subject to discovery is irrelevant….. *The Securities Act* provides its own procedure in respect of the statutory remedy, that specifically requires proposed defendants to put forward information."

24. And further:

> "In this motion, much more is required of both the plaintiffs and the respondents. The plaintiffs cannot rely on their allegations, but must put forward evidence, which in turn can be tested in cross examination. Likewise, in opposing leave, each prospective defendant shall come forward with evidence in support…"

25. Bellamy J. also quoted Langdon J. who stated in the leave application from the judgment of Van Rensburg J.:

> "s. 138.8 the "gatekeeping" section provides that the plaintiff must obtain leave before commencing such an action, and that, on the leave application the plaintiff and each defendant must serve and file affidavits setting forth the material facts on which each intends to rely."

26. Bellamy J then said:

> "I infer from the italicized emphasis on the words "and each defendant" that Langdon J was concluding, as Van Rensburg J. had done earlier, that the *Securities Act* required each defendant to serve and file affidavits'
>
> *Ainslie v. CV Technologies Inc*., 2009 CanLII 7165 (ON SC) at paras 8-10 appeal discontinued

27. At the very least, this casts serious doubt on the correctness of the decision of Lax J.

28. The interpretation of Lax J. is not consistent with the meaning of the word "shall" of which the Supreme Court of Canada has stated:

> "The word "shall" is normally construed as imperative unless such an interpretation would be utterly inconsistent with the context in which it has been used and would render the sections irrational or meaningless"
>
> *Baron v. Canada* [1993] 1 S.C.R. 416

Further in the Court of Appeal decision in *Mask v. Silvercorp Metals Inc*., decided one year post *Theratechnologies,* Strathy C.J.O. stated that the "robust deterrent screening mechanism" as described by Abella J. in *Theratechnologies* requires a "reasoned consideration of the evidence" which meant "all the evidence adduced by both sides". This, according to Strathy C.J.O. is confirmed by the express provisions of s. 138.8 and in particular s. 138.8(2) and (3)

which provides that both parties "shall" file affidavits and be subject to cross-examination on those affidavits.

Mask v. Silvercorp Metals Inc.,2016 ONCA 641, at paras 44 and 45
Theratechnologies Inc. v. 121851 Canada Inc., 2015 SCC 18, paras 38 and 39.

29. The disclosure requirements are extremely one-sided. In addition to absolving the Crown from any disclosure, the plaintiff is required to produce an affidavit of documents which is not a requirement under s. 138.8 and not consistent with the statement in *Theratechnologies* that while the mechanism is not a speedbump, neither is it intended to be a mini trial. An Affidavit of Documents would come later in the litigation process.

30. In any event the source of ability of the Crown to avoid any disclosure in a leave application under s. 17, whether founded in s. 17(4), (5), and (6) of the *CLPA*, or due to the unusual holding in *Ainslie* is irrelevant. What is relevant is how the lack of any disclosure contrasted to the extensive disclosure required of the plaintiff, forms the barrier or at least contributes to the barrier faced by the plaintiff in the context of a leave motion in a tort action for misfeasance in a public office where some credible evidence of bad faith is required to meet the test.

31. Notwithstanding the suggestion of Lax J. that a defendant was not required to file any material in a s. 138.8 motion, the issuer defendants did file and were compelled to do so if they wanted to assert their main statutory defence of "due diligence". In *Ainslie* and the cases in which *Ainslie* is cited such as *Johnson v. North American Pallidium Ltd., Kwong v. iAthus Capital Holdings Inc, Sharma v. Timminco Ltd* and *Abdula v. Canadian Solar Ltd*, the issue of whether an issuer defendant had to file an affidavit was not dealt with. The affidavits of the defendant issuers (often many affidavits) were filed and cross examinations took place. There was an evidentiary record consisting of evidence from both sides before the court. These cases dealt with ancillary issues, i.e. production of an affidavit from a co-defendant auditor who relied on

the material filed by the issuer defendant, examination of witnesses without evidentiary basis, production of insurance policies, production of an affidavit of documents.

32. The reason for this is spelled out by Taylor J. in *Abdula v. Canadian Solar Inc*. If an issuer defendant did not file any evidence, it could not rely on its statutory defence of due diligence, and it would be presumed that the plaintiff had a reasonable possibility of success. The plaintiff would win by default. No such factor compelling the Crown to lead evidence is involved in a s. 17 motion.

Abdula v. Canadian Solar Inc. 2014 ONSC 5167 at para 80

33. In a s. 17 motion, while the plaintiff need not "prove" bad faith, it is required to file some credible evidence. As Dean Chamberlain points out, in a misfeasance action, the plaintiff may have very good reason to think there was bad faith, but the credible evidence needed to meet the test remains hidden as he has no right whatsoever to any disclosure. This is a reasonable hypothetical and Broad J. was correct to hold it creates an unconstitutional barrier to the right of access to justice implicit under s. 96 jurisprudence.

The Conversation (Online) May 27, 2019, "*Ontario government seeks to insulate itself from lawsuits",* Erika Chamberlain

34. At paras 72 and 73 of its' Factum, the Appellant states that there is "no evidence" to suggest the courts will not take into account the limitations of the process in determining the threshold for "reasonable possibility of success". This comment was made in the context of a s. 138.8 motion. However, the recent case of *Campbell v. HMTQ* involving the first interpretation of "reasonable possibility of success" in the context of s. 17 suggests the opposite. Johnston J. set out the contrasting positions of the parties as follows:

"The Plaintiffs argue the threshold is not particularly onerous and is simply intended to weed out claims without any possibility of success…The Ministry disputes the Plaintiff's suggestion that the test at this stage is not particularly onerous. The Plaintiffs argue the test is simply to

"weed out cases" that are clearly without merit and that the Legislature could not and did not intend to create a high bar or threshold, given there is very little disclosure at this stage in the proceeding. The Defendant argues the contrary, that the test is high, due to the requirement of establishing 'bad faith'."

35. The Court stated that the question was - was the Ministry's conduct such that:

"It's conduct was inexplicable and/or incomprehensible or reckless, to the point that it can be regarded as an actual abuse of power, having regard to the purposes for which it was to be exercised."

36. The Court went on to dismiss the Plaintiff's leave application. It is submitted this establishes a high bar indeed, and not a "tempering" of the test.

Campbell v HMTQ Court File CV-21-018 (ON SC) at paras25-26 and para 38

37. **Judicial Notice and Reasonable Hypotheticals**

38. At paras 76 and 77 of the Appellants' Factum the Appellants argue that the finding of Broad J. regarding the effect of the lack of disclosure on the ability of potential litigants was based on an incorrect application of the doctrine of judicial notice.

39. It is a well-established rule of constitutional law that the court, when considering the constitutionality of legislation, is entitled to rely upon "reasonable hypotheticals" in determining how the law may affect litigants in addition to the party challenging the legislation.

40. This principle was enunciated shortly after the Charter became law in the *R. v. Big M Drug Mart Ltd.* case and followed in a number of Supreme Court of Canada cases where constitutional challenges based upon "reasonable hypotheticals" were advanced against a variety of laws. As an example, in *Baron v. Canada,* the Supreme Court struck down an *Income Tax Act* provision (search warrant provision) as violating the *Charter* on the basis it failed to give judges a residual discretion to decline to issue a warrant even when the statutory preconditions for issuance were satisfied.

41. In holding s. 8 of the *Charter* required this residual discretion, the Court emphasized its potential importance in other hypothetical situations.

R. v. Big M Drug Mart Ltd [1985] 1 S.C.R. 295
Baron v. Canada [1993] 1 S.C.R. 41

PART IV- ADDITIONAL ISSUES

42. Oral examinations are prohibited by s. 17 whether the Crown "leads evidence" or not

43. s. 17(5) limits oral examinations in relation to the motion for leave to the maker of the affidavit. Thus, even if the Crown does file an affidavit, the right of the plaintiff to examine other witnesses with relevant knowledge under Rule 39.03 is barred.

44. In *Thouin* the plaintiffs in a class action alleging price fixing against defendants which did not include the Crown, sought to examine the chief investigator of the Federal Competition Bureau under the applicable provincial civil court rules. The Court interpreted the Federal Crown Liability and Proceedings Act ("Federal *CLPA*") as not permitting such an examination in proceedings in which the Crown was not a party as the Act did specifically provide the ordinary rules would apply where the Crown was a party. The Court also described how the Federal *CLPA*, by providing that the Crown is subject to the rules of practice and procedure of the court in proceedings in which it was a party specifically lifted Crown immunity from discovery in those proceedings. This was the case in Ontario until s. 17 eliminated that right. While this could be a change in civil procedure facially permissible under s. 92(14) it is not permissible if it infringes upon s. 96 as s. 96 has been interpreted by the Supreme Court of Canada. There is no exemption for Crown officers to be examined under Rule 39.03 where the Crown is a party and there is a reasonable evidentiary basis.

Canada (Attorney General) v. Thouin, 2017 SCC 46 at para. 24
Ontario Federation of Anglers & Hunters (MNR) (2001), D.L.R. (4th) 367 at para 56

45. **s. 17 limits the plaintiff to filing only one affidavit**

46. In contrast to s. 138.8 which requires each party to file one or **more** affidavits, s. 17 provides the plaintiff shall file **an** affidavit. This would act as a barrier to the plaintiff presenting an adequate record where more than a single affiant is needed to supply the credible evidence of bad faith necessary to meet the test.

47. Legal fees should be considered as a contributing factor in assessing the barrier

48. Broad J. would not have used legal fees alone to invalidate s. 17 - stating the sole reason is the lack of disclosure on the part of the Crown. However, it would be appropriate for the court to view these fees as a contributing factor - not necessarily because they will be significant, but also because they are not recoverable as the normal rule of costs following the event is removed by s. 17. One obvious consequence is that the Crown would be free to oppose any application, even ones with merit, as it will pay no price in costs. On the other hand, the plaintiff (or the plaintiff's lawyer in a contingency arrangement) is going to be less likely to bring suit as he or she knows that even if they are successful, the fees incurred (or time expended) will not be recoverable. In *Trial Lawyers* the court fees charged were recoverable by a successful plaintiff as a disbursement. s. 138.8 of *The Securities Act* does not disentitle a successful plaintiff from being awarded costs.

49. This fact, taken together with the unequal disclosure requirements and the fact it appears the bar will remain high for s. 17 would make it appropriate for the court to consider all the provisions of s. 17 in coming to a conclusion that it, taken in its entirety, constitutes an undue infringement upon the s. 96 implicit requirement of access to justice. This approach which takes into account the whole of s. 17 was commented upon by Dean Erika Chamberlain in an article on s. 17 in which she concludes:

> "The legislation will undoubtedly prevent some unmeritorious lawsuits from plaguing the government. At the same time, it is likely to prevent some worthy causes from proceeding as well, ultimately cutting off an important option for those seeking to hold public officers accountable for abuse of their powers"
>
> Dean Erika Chamberlain, "*The Crown Liability and Proceedings Act, 2019 and Actions for Misfeasance in a Public Office*, OBA Seminar, September 2019.

50. In Appendix "F" to the Report of the Law Commission of Ontario on Class Actions 2019 the LCO concluded that the leave requirement in s. 17 would not only frustrate the goal of judicial economy but would also have an impact on access to justice in class actions by requiring plaintiffs to show they are likely to succeed in an action prior to **full** discovery. s. 17 bars **any** discovery.

> Law Commission of Ontario, *Class Actions, Objectives, Experiences and Reform: Final Report* (Toronto, July 2019).

PART V- ORDER REQUESTED

50. The Respondents respectfully request that the appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 22, 2022

W. Peter Murray
Counsel for the Respondents

Court file no. C70397

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

SOLICITOR GENERAL OF ONTARIO SYLVIA JONES, ONTARIO PROVINCIAL POLICE COMMISSIONER THOMAS CARRIQUE, ONTARIO PROVINCIAL POLICE CHIEF SUPERINTENDENT JOHN CAIN, ONTARIO PROVINCIAL POLICE INSPECTOR PHILIP CARTER and HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO.

Appellants

- and –

POORKID INVESTMENTS INC., THE COACH PYRAMIDS INC., and BRIAN HAGGITH

Respondents

CERTIFICATE

I estimate that 1.5 hours will be needed by the Respondents for oral argument. An order under Rule 61.09(2) (original record and exhibits) is not required.

W. Peter Murray (LSO No. 13055N)

Counsel for the Respondents

SCHEDULE A

Case Law

1. *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] S.C.R. 121
2. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59
3. *Leroux v. Ontario*, 2020 ONSC 1994
4. *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34
5. *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 SCR 214
6. *Poorkid Investments Inc. v HMTQ*, 2022 ONSC 883
7. *British Columbia (Attorney General) v. Christie*, 2007 SCC 21
8. *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49
9. *Ainslie v. CV Technologies Inc.*, 2008 CanLII 63217 (ON SC)
10. *Ainslie v. CV Technologies Inc.*, 2009 CanLII 7165 (ON SC)
11. *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18
12. *Mask v. Silvercorp Metals Inc.*, 2016 ONCA 641
13. *Johnson v. North American Palladium Ltd.*, 2018 ONSC 4496
14. *Campbell v. HMTQ* Court File CV-21-018 (ONSC)
15. *R. v. Big M Drug Mart Ltd*. [1985] 1 S.C.R. 295
16. *Baron v. Canada* [1993] 1 S.C.R. 416
17. *Ontario Federation of Anglers & Hunters* (2001) D.L.R. (4th) 367
18. *Canada (Attorney General) v. Thouin*, 2017 SCC 46 at para. 24
19. *Abdula v. Canadian Solar Inc. 2014 ONSC 5167* at para 80

Secondary Sources

20. Erika Chamberlain, *Misfeasance in a Public Office,* Thomson Reuters, 2016.

21. The Conversation (Online) May 27, 2019, Ontario government seeks to insulate itself from lawsuits, Erika Chamberlain.

22. Erika Chamberlain, "*The Crown Liability and Proceedings Act 2019 and Actions for Misfeasance in a Public Office",* OBA Seminar September 2019.

23. Law Commission of Ontario, Class Actions, Objectives, Experiences and Reform: Final Report (Toronto, July 2019).

SCHEDULE B

Statutes

1. *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sch 17, s. 17
2. *Constitution Act, 1867 Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, ss. 92(14) and 96
3. *Securities Act*, R.S.O. 1990, c. S.5, s. 138.8

Court File No. C70397

HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO et al. .- and -	POORKID INVESTMENTS INC., THE COACH PYRAMIDS INC., and BRIAN HAGGITH
Appellants	Respondents

COURT OF APPEAL FOR ONTARIO

RESPONDENTS' FACTUM

ARRELL LAW LLP
Barristers
2 Caithness Street West
Caledonia, Ontario
N3W 1C1

W. Peter Murray (LSO No. 13055N)

Email: peter.murray@arrelllaw.com

Counsel for the Respondents