MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This case raises fundamental issues regarding legislative delegation and statutory interpretation which are of importance to all Legislatures, administrative tribunals and the courts. The issues in this case are also of specific importance to Canadian businesses, big and small, which expect to be able to plan their affairs and manage risks based on clear and valid regulatory instruments.

2. Central to this case is the importance of the Legislature's decision to provide defined terms in a statute which are relevant to: (a) the making of regulations under that enactment; and (b) the ability of, and deference owed to, administrative tribunals to advance a policy preference where that policy is inconsistent with the Legislature's intent as evinced through the parent statute's defined terms.

3. Pursuant to its regulation-making authority under s. 225 of the *Workers' Compensation Act*, R.S.B.C. 1996, c. 492 (the **"*Act*"**), the Respondent Workers' Compensation Board of British Columbia (the **"Board"**) enacted s. 26.2 of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 (the **"*Regulation*"**). The *Regulation* purports to impose particular obligations upon the "owner of a forestry operation", which obligations differ from the duties of "owners" as that term is defined in the *Act* and with the conjoined duties of owners set out in s. 119 of the *Act*. The Applicant submits that, on the proper standard of review of correctness, the Board exceeded its jurisdiction in enacting the *Regulation*. The *Regulation* is not authorized by the *Act* and is *ultra vires*.

4. Section 196(1) of the *Act* permits the Board to impose an administrative penalty on an "employer". The terms "employer" and "owner" are defined terms in the *Act*. The Applicant submits that the Respondent Workers' Compensation Appeal Tribunal's (**"WCAT"**) finding that s. 196(1) of the *Act* permitted the Board to impose an administrative penalty upon an

"owner" on the basis that the Applicant was otherwise an "employer", albeit not of the injured worker, was patently unreasonable.

5. The proposed appeal offers this Honourable Court the opportunity to provide guidance on the general legal importance of defined terms in legislation as being indicative of legislative intent and the constraints which defined terms impose upon the interpretative functions of administrative tribunals.

B. Background Facts in the Proceedings Below

6. The Applicant is an integrated forest company that produces lumber, laminated veneer, fibre board, plywood and pulp and paper. It is the holder of a forest license issued by the British Columbia Ministry of Forests, Lands and Natural Resource Operations.[1]

7. In April 2010 the Applicant entered into a contract with a contractor who operated an unincorporated business falling trees to manually fall trees at a specified location owned by the Applicant.[2]

8. On April 16, 2010 a faller employed by the contractor (the **"Faller"**) was fatally injured in the course of his employment with the contractor while working within the area owned by the Applicant.[3] The Applicant was the "owner" of the workplace but was not the employer of the Faller.[4]

9. The Board investigated the accident and completed an Incident Investigation Report on January 28, 2011.[5] On February 21, 2011 the Board issued an Inspection Report making an Order (among other Orders not relevant to this appeal) that the Applicant had failed to fulfill its obligations as an "owner of a forestry operation" under s. 26.2(1) of the *Regulation*[6] which provides:

---

[1] 2016 BCCA 473 (**"BCCA Reasons"**), paras. 1, 21 **[Tab 2E]**.
[2] *Ibid.*, para. 10 **[Tab 2E]**.
[3] *Ibid.*, paras. 1, 8-15 **[Tab 2E]**.
[4] *Ibid.*, para. 1 **[Tab 2E]**.
[5] *Ibid.*, paras. 16-20 **[Tab 2E]**.
[6] *Ibid.*, para. 22 **[Tab 2E]**.

26.2(1) The owner of a forestry operation must ensure that all activities of the forestry operation are both planned and conducted in a manner consistent with this Regulation and with safe work practices acceptable to the Board.

10. The Board's Order was made pursuant to Part 3 of the *Act*. Section 106 of the *Act* defines certain terms for the purposes of Part 3. These include the following:

"**employer**" means

(a) an employer as defined in section 1,

(b) a person who is deemed to be an employer under Part 1 of the regulations under that Part, and

(c) the owner and the master of a fishing vessel for which there is crew to whom Part 1 applies as if the crew were workers,

but does not include a person exempted from the application of this Part by order of the Board;

"**owner**" includes

(a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and

(b) a person who acts for or on behalf of an owner as an agent or delegate;

"**worker**" means

(a) a worker as defined in section 1, and

(b) a person who is deemed to be a worker under Part 1 or the regulations under that Part, or to whom that Part applies as if the person were a worker,

but does not include a person exempted from the application of this Part by order of the Board.

11. The definition of "employer" in s. 106 of the *Act* incorporates by reference the definition of "employer" in s. 1 of the *Act* which provides:

"employer" includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person employed in work in or about an industry.

12. The duties of an employer are set out in s. 115(1) of the *Act* which provides:

> **115** (1) Every employer must
>
> (a) ensure the health and safety of
>
> (i) all workers working for that employer, and
>
> (ii) any other workers present at a workplace at which the employer's work is being carried out, and
>
> (b) comply with this Part, the regulations and any applicable orders.
>
> . . . .

13. The duties of an owner are set out in s. 119 of the *Act* which provides:

> **119** Every owner of a workplace must
>
> (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
>
> (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
>
> (c) comply with this Part, the regulations and any applicable orders.

14. On July 26, 2011, the Board imposed an administrative penalty on the Applicant for the violation identified in the Inspection Report, purporting to do so under s. 196 of the *Act*:[7]

> **196** (1) The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that
>
> (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
>
> (b) the employer has not complied with this Part, the regulations or an applicable order, or
>
> (c) the employer's workplace or working conditions are not safe.

---

[7] *Ibid.*, para. 23 [**Tab 2E**].

C. Applicant Seeks Judicial Review of the *Vires* of the Board's *Regulation* and WCAT's Interpretation of the *Act*

15. The Applicant requested that the Board review the Orders. The Applicant contended that the Board could not impose liability on it as the owner of a worksite in respect of responsibilities that were those of the employer of the deceased Faller.[8] The Applicant further contended that s. 196 of the *Act* only authorized the imposition of an administrative penalty against a person who had violated the statute or regulations while acting in the capacity of an "employer" as defined in the *Act*.[9] On April 16, 2012, a review officer confirmed the Board's penalty order and the finding that the Applicant violated the *Regulation*.[10]

16. The Applicant then appealed to WCAT contending that the Board lacked the jurisdiction to enact the *Regulation* and, further, that the Board had misinterpreted s. 196 of the *Act* as permitting an administrative penalty to be imposed upon it as an "owner" and not the "employer" of the deceased Faller. WCAT dismissed the appeal.[11]

17. The Applicant unsuccessfully applied to the Supreme Court of British Columbia for a judicial review of the WCAT decision.[12]

18. The Applicant appealed to the British Columbia Court of Appeal (the **"BCCA"**) which dismissed the Applicant's appeal in Reasons dated November 28, 2016 (2016 BCCA 473).[13]

19. In response to the Applicant's position that s. 26.2 of the *Regulation* was not authorized by the *Act*, the BCCA accepted that the appropriate standard of review was "correctness".[14] It then noted that s. 225(2)(a) of the *Act* authorized the Board to make regulations "for the

---

[8] *Ibid.*, para. 25 **[Tab 2E]**.
[9] *Ibid.*, para. 27 **[Tab 2E]**.
[10] WorkSafeBC Review Decision (Reference Nos. R0126792 and R0134069) **[Tab 2A]**; BCCA Reasons, paras. 25-28 **[Tab 2E]**.
[11] WCAT Decision No. WCAT–2013 – 01952 **[Tab 2B]**.
[12] 2015 BCSC 1098 **[Tabs 2C and 2D]**.
[13] BCCA Reasons **[Tab 2E]**.
[14] *Ibid.*, paras. 42, 51 **[Tab 2E]**.

protection of the health and safety of workers and other persons present at the workplace, and for the well-being of workers in their occupational environment". It held:

> [66] In my view, the impugned regulation is manifestly one "respecting standards and requirements for the protection of the health and safety of workers and other persons present at the workplace and for the well-being of workers in their occupational environment." It is, therefore, authorized by s. 225(2)(a) of the *Workers' Compensation Act*. It is unnecessary, in the circumstances, to determine whether it might also be authorized under another provision.
>
> [67] The regulation is not contrary to any provision of the *Act*, and conforms with the purposes and objectives of the statute, and with the Board's mandate.
>
> [68] In the result, I would reject West Fraser's challenge to the *vires* of the regulation. Section 26.2(1) of the *Occupational Health and Safety Regulations* is *intra vires*.[15]

20. In respect to the Applicant's position that s. 196(1) of the *Act* only permitted the Board to impose an administrative penalty on an "employer" when acting in the capacity of employer, the BCCA accepted[16] that the standard of review for WCAT's interpretation of s. 196(1) of the *Act* was that of "patently unreasonable" as that term is used in s. 58(2)(a) of the *Administrative Tribunals Act*.[17]

21. The BCCA rejected the Applicant's position that pursuant to s. 196(1)(b) of the *Act* an administrative penalty could only be imposed upon the Applicant if the contravention of the *Act* had been committed by the Applicant while it was acting in its capacity as an employer. After setting out certain contextual arguments, the BCCA held:

> [98] It is not necessary to decide which of these contextual arguments is the stronger, because the Court cannot interfere with WCAT's interpretation unless it finds it to be "patently unreasonable". In my view, no such finding can be made in this case. The statute is capable of supporting an interpretation of s. 196(1) that subjects employers to administrative penalties for violations of the *Act*, even when those violations consist of

---

[15] *Ibid.*, paras. 66-68 **[Tab 2E]**.
[16] *Ibid.*, paras. 70, 75 **[Tab 2E]**.
[17] *Administrative Tribunals Act*, S.B.C. 2004, c. 45.

breaches of duties belonging to the Employer in its capacity as a "supervisor", "owner" or "supplier", rather than as "employer" *per se*.[18]

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

22. This case raises the following issues of public importance warranting guidance by this Honourable Court:

Issue 1: Are the introductory words of the statutory provision authorizing the making of regulations to further the purposes of the *Act* sufficient to authorize the promulgation of regulations which are inconsistent with specific conduct-regulating provisions of the legislation that are conjoined with specific defined terms?

Issue 2: Is the application of a deferential standard of review sufficient to permit an administrative tribunal to act inconsistently with the legislative intention expressed in defined terms in legislation?

PART III – STATEMENT OF ARGUMENT

A. Public Importance of Clear Rules for Statutory Construction Where the Legislature Provides Defined Terms in a Statute

23. The issues raised in this application each involve a consideration of the role played by definitions in legislation. If legislative intention is to be the "polar star" of interpretation[19], nowhere does that star shine more brightly than where the Legislature defines a term used in an enactment. As noted in *Sullivan on the Construction of Statutes*,[20] when a word is defined by statute, the binding character of the stipulated meaning depends not on shared linguistic convention amongst lawyers and judges, but on legislative sovereignty. The Legislature dictates that for the purpose of interpreting certain legislation the defined term is to be given the stipulated meaning.

---

[18] BCCA Reasons, para. 98 **[Tab 2E]**.

[19] *CUPE v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, para. 149.

[20] Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 5th ed. (Ontario: LexisNexis Canada Inc., 2008) at pp. 61-62.

24. In British Columbia, ss. 12 and 13 of the *Interpretation Act*, R.S.B.C. 1996, c. 38, contain further statements of legislative intention with regard to the role played by definitions in a statute. They provide:

> 12. Definitions or interpretation provisions in an enactment, unless the contrary intention appears in the enactment, apply to the whole enactment including a section containing a definition or interpretation provision.
>
> 13. An expression used in a regulation has the same meaning as the enactment authorizing the regulation.

25. The same or similar provisions appear in legislation in other jurisdictions throughout Canada; for example: *Interpretation Act*, R.S.A. 2000, c. I-8, s. 13; *Interpretation Act, 1995*, S.S. 1995, c. I-11.2, s. 13; *Interpretation Act*, R.S.C. 1985, c. I-21, ss. 15 and 16; *Interpretation Act*, R.S.N.W.T. 1988, c. I-8, ss. 15 and 16; *Interpretation Act*, R.S.Y. 2002, c. 125, s. 5(5); *Interpretation Act*, R.S.N.S. 1989, c. 235, s. 11(2). The role played by definitions in a statute is a matter of national importance.

26. Legislation may dictate that, for the purpose of interpreting certain legislation, the defined term is to be given a stipulated or exhaustive meaning. An exhaustive definition is normally introduced by the verb "means". Among other uses, exhaustive definitions are used to ensure that the scope of a word or expression is neither narrowed nor enlarged.[21] This, too, is an important aspect of legislative sovereignty. Legislators intend the words of a statute to have a particular meaning so that citizens can look to the statute and determine their obligations. The existence of exhaustively-defined terms is a clear indication that the Legislature did not intend to cede any aspect of their legislative function, or the role of illuminating the Legislature's intentions, to an administrative tribunal administering the statute containing the definition. Legislative intention is clearly expressed by virtue of the definition.

27. When defined terms are then conjoined with provisions of a statute which authorize, prohibit or sanction a particular course of conduct, it is of acute importance that the legislative intention expressed in the defined term be adhered to. Again, the conjoining of legislative

[21] *Ibid.*, at p. 62.

definitions with conduct-regulating provisions of a statute is an issue of national importance which has not been previously addressed by this Court.

28. Recent case law from the Court stresses the need for deference to a tribunal's interpretation of its "home" statute (see: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47). The proposed appeal provides this Court with its first opportunity to clarify the application of principles of deference to defined terms in a tribunal's home statute.

B. <u>Issue 1</u>: Are the introductory words of the statutory provision authorizing the making of regulations to further the purposes of the *Act* sufficient to authorize the promulgation of regulations which are inconsistent with specific conduct-regulating provisions of the legislation that are conjoined with specific defined terms?

29. This Court has recently reviewed the approach to be taken to the judicial review of regulations. In *Katz Group Canada Inc. v. Ontario (Health and Long Term Care)*[22] (**"*Katz*"**), the Court held:

- a successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (at para. 24).

- regulations benefit from a presumption of validity which places a burden on challengers to the validity of regulations to demonstrate their invalidity and favours an interpretive approach that reconciles the regulation with the enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* (at para. 25, italicized emphasis that of this Court).

- both the challenged regulation and the enabling statute should be construed in a broad and purposive manner (at para. 26).

---

[22] 2013 SCC 64, [2013] 3 S.C.R. 810.

- the inquiry does not involve assessing the policy merits of the regulations, which must be found to be "irrelevant", "extraneous" or "completely unrelated" to the statutory purpose to be found to be *ultra vires* (at para. 28).

30. While the approach set out in *Katz* posits a presumption of regulatory validity, there are limits to that presumption. The limits are inherent in the use of the italicized phrase "where possible" in paragraph 25 of the judgment in *Katz*. The fundamental question remains whether the regulation in question is consistent with the intention of the Legislature and is justifiable in the context of the enabling statute as a whole, including any legislatively-defined terms.

31. Workers' compensation legislation in Canada often confers regulation-making authority in broad terms related to achieving the purposes of the legislation (see, for example: *Workers' Compensation Act*, C.C.S.M. - c. W200, s. 68(1)(s); *Workers' Compensation Act*, R.S.A. 2000, c. W-15, s. 153(1)(m); *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, s. 184(1)(b); *Workers' Compensation Act*, R.S.N.B. 1973, c. W-13, s. 81(f)). However, in *Katz*, the Court accepted that the test of whether regulations conform with their authorizing statute is not satisfied merely by showing that a delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.[23]

32. The granting of regulation-making authority in broad terms referencing the purposes and objects of legislation is not confined to the area of workers' compensation legislation. Respectfully, it cannot be the case that a grant of regulation-making authority in broad terms provides a limitless jurisdiction to a delegate to pass any regulations which, using the case at bar as an example, fall broadly within the purposes and objects of the legislation. Such an approach would render the requirement that subordinate legislation conform with the parent legislation meaningless. The parent legislation must be read as a whole, including the definition sections and conduct-regulating provisions under the parent legislation which are

[23] *Katz*, *ibid.*, para. 24.

conjoined with the definitions. The proposed appeal provides the Court with an opportunity to provide a more detailed analysis of the relationship between regulation-making authority and the language of the parent statute authorizing the making of regulations, particularly as those regulations may reference or include defined terms in the parent legislation.

C. Issue 2: Is the application of a deferential standard of review sufficient to permit an administrative tribunal to act inconsistently with the legislative intention expressed in defined terms in legislation?

33. Section 196 of the *Act* allows an administrative penalty to be issued against a person who is an "employer" under the *Act*.

34. The Applicant argues that, given the exhaustive definitions of the term "employer" in the *Act*, especially when considered in light of their being conjoined with the duties of employers under s. 115 of the *Act*, it was absurd, and therefore patently unreasonable, to conclude that s. 196 of the *Act* evinces a legislative intention to permit the imposition of an administrative penalty on an owner of land where a contravention has occurred simply because the "owner" is otherwise an employer. This issue raises the same issue of national importance adverted to earlier related to the need for administrative tribunals to be responsive to the clear legislative intention expressed in a defined term. The existence of an exhaustively-defined term indicates that the Legislature did not intend for a tribunal to have the authority to expand the potential for a penalty to other defined roles in the statute.

35. The BCCA decision is at odds with decisions of other Courts of Appeal.

36. In *Blue Mountain Resorts Ltd. v. Bok*[24] (**"*Blue Mountain*"**) the Ontario Court of Appeal (**"ONCA"**) considered the issue of the interpretation of Section 51(1) of the *Occupational Health and Safety Act*[25] which required an "employer" to notify a representative from the Ministry of Labour where a person is killed or critically injured from any cause at a workplace. A guest of Blue Mountain Resorts Ltd. (**"BMR"**) died while swimming in an indoor pool at the resort. The pool was unsupervised and intended for use by resort guests. No BMR

---

[24] 2013 ONCA 75, 359 D.L.R. (4th) 276.
[25] R.S.O. 1990, c. O.1.

employees were working at the pool. An inspector from the Ministry of Labour concluded that BMR was obliged to report the fatality because the swimming pool was otherwise a "workplace" of the employees of BMR who would be present at the pool from time to time in order to check and maintain it. The ONCA summarized its findings as follows (italicized emphasis that of the ONCA):

> [4] For the reasons that follow, I would set aside the decisions of the Divisional Court and the board. The interpretation they gave to s. 51(1) of the Act would make virtually *every place* in the Province of Ontario (commercial, industrial, private or domestic) a "workplace" because a worker may, at some time, be at that place. This leads to the absurd conclusion that every death or critical injury to anyone anywhere, *whatever the cause*, must be reported. Such an interpretation goes well beyond the proper reach of the Act and the reviewing role of the ministry reasonably necessary to advance the admittedly important objective of protecting the health and safety of workers in the workplace. It is therefore unreasonable and cannot stand.
>
> [5] In my view, a proper interpretation of the Act requires that there be some reasonable nexus between the hazard giving rise to the death or critical injury and a realistic risk to worker safety at that site. There is no such nexus here.[26]

37. In *Campbell v. Workers' Compensation Board*[27] (**"*Campbell*"**) the Saskatchewan Court of Appeal (**"SKCA"**) dismissed an application for an order by way of *certiorari* quashing a decision by the Workers' Compensation Board (**"Saskatchewan Board"**) which had held that a lawsuit filed by Mr. Campbell against certain actors was statute-barred by ss. 44 and 167 of the *Workers' Compensation Act, 1979*[28] (**"*Saskatchewan Act*"**). Mr. Campbell contended that those provisions did not bar his right of action as he fell within a regulation passed by the Lieutenant Governor in Council which excluded "sports professionals, sports instructors, players and coaches" from coverage under the legislation (Exclusion Regulation). The Saskatchewan Board, which had exclusive jurisdiction to hear and determine all matters arising under the *Saskatchewan Act*, had passed a policy which confined the exclusion of "sports instructors" to sports instructors working for professional sports organizations. In passing the policy, the Saskatchewan Board relied upon its authority to determine whether

[26] *Blue Mountain, supra* note 24, paras. 4-5.
[27] 2012 SKCA 56, 393 Sask. R. 246.
[28] S.S. 1979, c. W-17.1.

any "worker" was within the authority of the *Saskatchewan Act*. The SKCA held that, notwithstanding the Saskatchewan Board's exclusive authority over the concept of "worker", it could not create a requirement that sports instructors be employed by a professional organization before they fell within the exception to the application of the *Saskatchewan Act*. It held (italicized emphasis that of the SKCA):

> [65] ..... To limit the exclusion of "sports instructors and coaches" provided by the regulation to those sports instructors and coaches employed by an organization established with the intent of making a profit from the playing of a sport is a significant departure from the plain grammatical meaning of the exclusion as enacted. In so limiting the interpretation of the exclusion, the Board has in effect substituted its own policy for that of the Lieutenant Governor in Council. In fact, the Board's confusion of its role as interpreter of the regulation with that of the policy maker is evident in its conclusions. *All* sports players are deemed to exempt from the Act, whether or not they play for a "professional sports organization" within the limited definition of the policy. Coaches and sports instructors not employed by such an organization are not exempt from the Act *unless* they are injured while participating as a player/competitor in a sporting event. These fine distinctions and refinements are ultimately far removed from the relatively straight-forward meaning of the regulation.[29]

38. The effect of the ONCA and SKCA decisions is to recognize that, regardless of the broad language often contained in public welfare legislation, an administrative tribunal cannot substitute its own policy preferences for those expressed by the Legislature in clear terms either in the legislation or in regulations.

39. The ONCA and SKCA decisions in *Blue Mountain* and *Campbell*, respectively, conflict with the BCCA's decision in the case at bar. The BCCA deferred to the approach and decision of the administrative tribunal, WCAT, to substitute its own policy preferences for that of the Legislature. This is contrary to the principles and approach applied by the Ontario and Saskatchewan appellate courts in *Blue Mountain* and *Campbell*.

40. In the case at bar, the Legislature has indicated through the use of the exhaustively-defined term "employer" that the ability to be sanctioned depends upon a contravention having a nexus to the employment relationship. The WCAT interpretation replaces that policy decision of

---

[29] *Campbell, supra* note 27, para. 65.

the Legislature with the perspective of WCAT that if an "owner" of land is otherwise an employer it may be sanctioned under s. 196(1) of the *Act* for a contravention where there is no employment relationship with the injured worker simply because the contravention occurred on its land. To be clear, an owner who is not an employer would not be captured by s. 196(1) of the *Act*, which thereby permits for inconsistent application of the provision by the Board. The BCCA's upholding of this approach is inconsistent with the decisions of the ONCA and the SKCA and requires this Court's clarification.

Conclusion

41. The proposed appeal raises issues which have not been previously considered by this Honourable Court. The issues involve consideration of the impact of the Legislature providing defined terms in a statute, as applied to regulation-making powers granted under that statute, as well as with regards to the ability of, and deference owed to, an administrative tribunal substituting its policy preference for the Legislature's policy when interpreting and applying the legislation. While the instant matter arises in the specific context of workers' compensation, the underlying issues transcend that area of law. The issues are of importance to Legislatures, administrative tribunals and the courts, and persons seeking to manage their affairs.

42. Moreover, with regard to the workers' compensation context in which the present application arises, decisions in the appellate courts of Ontario and Saskatchewan are inconsistent with the decision of the BCCA. The BCCA's decision permits the imposition of liability upon an owner of land simply on the basis that the owner is *an* employer, where "employer" is exhaustively defined under the *Act* and where, on the facts, there is no nexus to the employment relationship as between the owner of the land and the injured worker.

43. The Applicant seeks this Court's intervention to provide guidance and clarification as to these matters, and submits that leave to appeal should be granted.

PART IV – SUBMISSIONS IN SUPPORT OF ORDER FOR COSTS

44. The Applicant does not seek costs against the Respondents.

PART V – ORDERS SOUGHT

45. The Applicant asks for an order granting leave to appeal from the Judgment of the British Columbia Court of Appeal pronounced November 28, 2016.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Vancouver, British Columbia, this 25th day of January, 2017.

as agent for

Donald J. Jordan, Q.C.,
Paul Fairweather
Counsel for the Applicant

PART VI – TABLE OF AUTHORITIES

Cases	**Paragraphs**
Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61, [2011] 3 S.C.R. 654.	28
Blue Mountain Resorts Ltd. v. Bok, 2013 ONCA 75, 359 D.L.R. (4th) 276.	36, 39
Campbell v. Workers' Compensation Board, 2012 SKCA 56, 393 Sask. R. 246.	37, 39
CUPE v. Ontario (Minister of Labour), 2003 SCC 29, [2003] 1 S.C.R. 539, para. 149.	23
Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd., 2016 SCC 47.	28
Katz Group Canada Inc. v. Ontario (Health and Long Term Care), 2013 SCC 64, [2013] 3 S.C.R. 810.	29-31
Wilson v. Atomic Energy of Canada Ltd., 2016 SCC 29.	28
Texts	
Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 5th ed. (Ontario: LexisNexis Canada Inc., 2008).	23

PART VII – STATUTORY PROVISIONS