S.C.C. File No. 38521

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR)

B E T W E E N :

ATLANTIC LOTTERY CORPORATION INC.

Appellant

- and -

DOUGLAS BABSTOCK and FRED SMALL

Respondents

- and -

BALLY GAMING CANADA LTD. and BALLY GAMING INC.

Interveners

[Style of cause continued on next page.]

FACTUM OF THE INTERVENER, THE CANADIAN GAMING ASSOCIATION

(Pursuant to Rules 37 and 42 of the *Rules of the Supreme Court of Canada,* S.O.R./2002-156)

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VLC, INC., IGT-CANADA INC., INTERNATIONAL GAME TECHNOLOGY, SPIELO INTERNATIONAL CANADA ULC, and TECH LINK INTERNATIONAL ENTERTAINMENT LIMITED

Appellants

- and -

DOUGLAS BABSTOCK and FRED SMALL

Respondents

- and -

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PART I—OVERVIEW

1. This appeal turns on legislative intent. Whether video lottery terminals ("**VLTs**") fall within the prohibitions on "three-card monte" in the *Criminal Code*, and whether a common law disgorgement remedy should exist for profits earned from *Criminal Code* breaches that do not give rise to a civil cause of action, each depend on the choices that Parliament has made over time. The Canadian Gaming Association (the "**CGA**") intervenes to propose a principled approach for interpreting the statutory framework that governs these issues.

2. To this end, the CGA makes two submissions.

3. ***First***, the legislative and social evolution that led to Part VII of the *Criminal Code* is critical to its interpretation. When Parliament modernized Part VII in 1969 and 1985, it did so by giving the provinces authority to "conduct and manage" or license lottery schemes. It did ***not*** do so by overhauling the gambling prohibitions themselves, as was recommended. Instead, it left those as a series of highly specific offences framed in the language of the 19th and early 20th centuries.

4. As such, Parliament has decided that the gambling prohibitions should not be extended. Courts must be wary of applying these prohibitions to forms of gambling that do not clearly fall within them, because this could result in the creation of common law criminal offences which Parliament did not intend. Conversely, courts should give a broad interpretation to the provincial regulation exemptions in s. 207, because this promotes Parliament's chosen decriminalization regime and the principle of co-operative federalism.

5. ***Second***, the Court should not recognize a common law disgorgement remedy for crimes *simpliciter*. This would not be an incremental change in the law, but rather would undermine the numerous provisions for forfeiture, restitution and fines in the *Criminal Code* itself. This Court has recognized that changes to the common law should only be made where the existing law is "wanting". The intricate legislative provisions that Parliament has enacted to provide monetary remedies for breaches of the *Criminal Code* demonstrate that no gap in the law exists here.

PART II—STATEMENT OF ARGUMENT

6. Few sectors of the economy are as closely regulated as the gaming industry. This has been true for nearly Canada's entire existence. Parliament's fingerprints — and its policy judgments — are ubiquitous; federal legislation not only prescribes the limitations on lawful gambling, but it also defines the consequences for criminal conduct. This appeal is about how some

of those statutory provisions should be interpreted. It is also about the role of private enforcement. The Court cannot properly address either issue without discerning, and giving due regard to, legislative intent. The CGA offers the following, context-specific framework for doing so.

1. The Historical Context is Crucial to Part VII of the *Criminal Code*

7. Part VII of the *Criminal Code* creates various offences and exemptions relating to gaming, betting and lotteries, including the prohibition on three-card monte in s. 206(1)(g). While some of these provisions have been considered in isolation before, "few cases… examine the overall statutory regime".[1] This case should be one of them. As this Court held in *Rizzo Shoes*, "the words of an Act are to be read in their entire context".[2] Unlike the Court of Appeal, the Court should heed that injunction in deciding this appeal.

8. Here, the statutory context includes the legislative and social history of the current gambling provisions in the *Criminal Code*. Commentators have observed that, "[i]n order to comprehend the import of the present state of the law pertaining to gaming, it is necessary to understand how it evolved".[3] This is consistent with the principles that "[t]he legislative evolution and history of a provision may often be important parts of the context to be examined as part of the modern approach to statutory interpretation",[4] and that the social, political and economic events surrounding its enactment may be considered as well.[5] As explained below, this context demands that the gambling offences in Part VII be interpreted narrowly, and that the provincial governments' "conduct and manage" exemption in s. 207(1) be interpreted broadly.

9. The gambling provisions in Part VII were derived from old English legislation, reduced to a series of general statutes concerning lotteries and gaming shortly after Confederation, and substantially re-enacted in the first *Criminal Code* in 1892.[6] For the next 80 years, the provisions

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[1] D.J. Bourgeois & S.B. Campbell, *The Law of Charitable and Casino Gaming*, 2nd ed. (Toronto: LexisNexis Canada Inc., 2018) at 42 [**Bourgeois**], Book of Authorities of the Intervener [**CGA BOA**] Tab 5.
[2] *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 SCR 27, ¶21.
[3] J.A. Osborne and C.S. Campbell, "Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power Between Federal and Provincial Governments " (1988) 26 Osgoode Hall L.J. 19 at 21 [**Osborne**].
[4] *Canada (Canadian Human Rights Commission) v. Canada (A.G.)*, 2011 SCC 53, ¶43.
[5] *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, ¶20-24.
[6] *R. v. Jones*, 1994 CarswellOnt 123 (C.A.), ¶15-20, aff'd, [1996] 2 S.C.R. 821, CGA BOA Tab 3. **See also:** Canada, *Reports of the Joint Committee of the Senate and House of Commons on Capital*

were "dealt with piecemeal and… never had a thorough overall revision".[7]

10. An important development occurred in 1956, when a Joint Committee of the Senate and House of Commons released its Report on whether the gaming laws were in need of reform. The Committee recommended that, due to "the lack of clarity in the present lotteries provisions", the "existing lottery provisions in the *Criminal Code* ***should be repealed in their entirety and re-enacted to eliminate ambiguities and inconsistencies***".[8]

11. Contrary to the Committee's Report, the eventual legislative response was ***not*** to modernize and streamline the offence provisions themselves. Rather, Parliament enacted ***exemptions*** to the offence provisions in the case of lotteries ***conducted and managed by governments***, or licensed by them. Parliament chose this route even though the Committee recommended it ***not*** give governments gambling authority beyond licensing.[9] Thus, "[t]he relaxation proposed in 1956 was achieved, but in a rather unusual way".[10]

12. The change was effected through two sets of amendments to the *Criminal Code* that fundamentally transformed Canada's gambling regime. ***First***, in 1969, the federal and provincial governments were given the authority to conduct and manage lottery schemes, and licence them, through an exception to the offences in Part VII. ***Second***, in 1985, this power was broadened and transferred exclusively to the provinces by what is now s. 207 under a federal-provincial agreement.[11]

13. By virtue of these amendments, "[t]he pre-1969 approach, which sought to ***prohibit*** most forms of gaming and lottery schemes, was ***replaced***… by a system that provides for certain forms

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Punishment, Corporal Punishment, and Lotteries (Ottawa: Queen's Printer, 1956) at 63-64 [**Committee Report**]; Osborne, at 21-22; P.J. Monahan and A.G. Goldlist, "Roll Again: New Developments Concerning Gaming " (1999) 42 Crim. L.Q. 182 at 185-187 [**Monahan**]; T.I.W. Patrick, "No Dice: Violations of the Criminal Code's Gaming Exemptions by Provincial Governments " (2000), 44 Crim. L.Q. 108 at 109-110 [**Patrick**], CGA BOA Tabs 7 & 8.

[7] Committee Report, at 63.

[8] Committee Report, at 65, 68-69, 75, *emphasis added*.

[9] *Ibid*, at 68-69, 76; Osborne, at 22-23.

[10] Osborne, at 23.

[11] *Ibid*, at 23-26; C.S. Campbell *et al*, *The Legalization of Gambling in Canada* (2005), at 1, 6, 14-18, online at: <http://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-64-2005E.pdf [**Campbell**]; Monahan, at 187-189, CGA BOA Tab 7; I. Wilenius, "A Safe Bet: Regulating Online Gambling and Lotteries Through the Criminal Code " (2018) 27 Dal. J. Leg. Stud. 1 at 5-6 [**Wilenius**].

of ***permissible gambling***".[12] This was a "material change " from "[t]he historical development of gambling law… [which] was primarily focused on ***prohibitions*** with some minor exemptions to reflect societal attitudes and public policy".[13] Today, "[w]hile the *Code* has a number of stark prohibitions against all sorts of organized gambling, there are an equally large number of ***exceptions*** permitting the very same activities so long as they are sanctioned or operated by a provincial government".[14]

14. The amendments coincided with a growing shift in public attitudes towards gambling. While it was "not difficult to imagine that the Victorian authors of the 1892 legislation felt that gambling was morally wrong and destructive of the social fabric of England and Canada",[15] by 1956, the Commissioner of the RCMP informed the Committee that "there is a lack of support for the present prohibitory laws and… they cannot be enforced in the face of adverse public opinion".[16] Tellingly, the 1969 amendments that followed "came with the same *Criminal Code* reforms that legalized abortion and same-sex activity, diminishing the influence of moral regulation on criminal law".[17] Thus, as the Court of Appeal for Ontario has since observed, "the morality of gambling as a part of our social fibre is very different from other offences in the *Criminal Code*":[18]

> For more than 20 years since the 1970 amendments to the *Criminal Code*, there has been a significant increase in various forms of legitimate gambling in this province and everywhere in Canada. Governments not only have condoned gambling activities, but also have actively promoted and derived substantial revenue from them. Charities and public-spirited social clubs have also benefited. Since the amendment to the *Criminal Code*, gambling has been decriminalized to a large extent and legalized gambling has become, on the basis of provincial statistics, a multi-billion dollar industry… This court takes judicial notice of the fact that a large number of Canadians participate in games of chance, even though other Canadians disapprove of such activities.[19]

15. Two conclusions may be drawn from this "unique" approach to the gambling provisions in

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[12] Monahan, at 189, *emphasis added*, CGA BOA Tab 7.
[13] Bourgeois, at 10, *emphasis added*, CGA BOA Tab 5.
[14] M. Manning & P. Sankoff, *Manning, Mewett & Sankoff, Criminal Law*, 5th ed. (Markham, Ont.: LexisNexis Canada Inc., 2015) at 839-840 [**Manning**], *emphasis added*, CGA BOA Tab 6.
[15] Patrick, at 113, CGA BOA Tab 8.
[16] Committee Report, p. 65.
[17] Wilenius, at 5. **See also** Campbell, at p. 14-15.
[18] *Boardwalk Regency Corp. v. Maalouf*, 1992 CarswellOnt 3368 (C.A.), ¶12 (and ¶17, 28) [***Boardwalk***]. ***cf.*** *R. v. J.B.L. Amusements Ltd.*, 1998 CarswellNfld 64 (C.A.), ¶8-10, CGA BOA, Tabs 1 & 2.
[19] *Ibid*, ¶25, per Lacourciere J.A. **See also** Bourgeois, at 2, CGA BOA Tab 5; Campbell, at 20-21.

the *Criminal Code*.[20]

16. ***First***, Parliament has decided not to expand the range of gambling offences in Part VII. In contrast to the significant changes it introduced in s. 207 to permit the provincial oversight and regulation of gambling, it has paid scant attention to ss. 201-203 and 206 themselves, making only "a series of *ad hoc* seemingly minor amendments" that leave "the current criminal legislation dealing with gambling… a 'patchwork of fossilized law'".[21] Even today, many of the prohibitions contain "language dat[ing] to the late-19th century and the first complete codification of criminal law in Canada".[22] In the case of s. 206, for instance, ss. 206(1)(a)-(j) contain a series of highly specific offences that have not been amended since 1954, and nearly all had close antecedents reaching back decades earlier.[23] As such:

> ***…[M]odern criminal law in Canada has not been deployed for the purpose of controlling or preventing either the operation of or participation in gambling activities***. Rather, existing provisions have facilitated a widespread expansion of a variety of gambling activities provided they are conducted and managed under provincial jurisdiction.[24]

17. Given this, courts should not apply the *Criminal Code* offences to forms of gambling that do not clearly fall within them. While it is always the case that "enactments which take away the liberty of the subject should be clear and any ambiguity resolved in favour of the subject",[25] there is a particular danger in the case of Part VII that courts may create new offences which were not intended by Parliament. Parliament chose not to adopt the Committee's recommendation that it repeal and modernize the offence provisions entirely. Parliament's decision indicates that it did not intend to increase the scope of the offence provisions.[26] Rather, Parliament elected to relax the offence provisions by treating gambling "as a regulatory rather than criminal problem"[27] through a "gradual but sustained shift toward greater liberalization".[28] This Court's comments in *D.L.W.* are pertinent here:

> ***In Canada, there can be no liability for common law crimes*** apart from criminal contempt

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[20] *Boardwalk*, ¶11 (and ¶17, 28), CGA BOA Tab 1.
[21] Campbell, at 13.
[22] Bourgeois, at 2, CGA BOA Tab 5.
[23] *Crankshaw's Criminal Code of Canada*, §206 – History, CGA BOA Tab 4.
[24] Campbell, at 7, *emphasis added*.
[25] *R. v. D.L.W.*, 2016 SCC 22, ¶55 [***D.L.W.***].
[26] *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, ¶73.
[27] Wilenius, at 2.
[28] Campbell, at 1.

> of court: *Criminal Code*, R.S.C. 1985, c. C-46, s. 9. As a result, changes to the scope of criminal liability must be made by Parliament; ***judges are not to change the elements of crimes in ways that seem to them to better suit the circumstances of a particular case***…
> …
> … Stability and certainty are particularly important values in the criminal law and significant changes to it must be clearly intended. … "[I]t is open to Parliament to change the law in whatever way it sees fit, [but] the legislation in which it chooses to make these alterations known must be drafted in such a way that its intention is in no way in doubt...
> …
> ...[T]he ***courts have refrained from developing the common law meanings of legal terms used in the Code so as to extend the scope of criminal liability.*** …[29]

18. The majority of the Court of Appeal disregarded this principle. It held that, by virtue of s. 206(2), a game could qualify as three-card monte under s. 206(1)(g) if similar "to the 'essence' of the game", which it suggested is "the giving of the illusion of a straight-forward gambling game played by fair and known rules that depends in part on the exercise of judgment and mental acuity and which gives it an air of legitimacy in order to encourage continued playing, whereas in reality it is actually played in a deceptive way without following rules so as to cheat participants".[30] This definition is not found in Part VII. It amounts to the creation of a common law criminal offence.

19. ***Second***, the exemptions in s. 207 should be interpreted broadly. The above history "reveal[s] a consistent pattern of lesser federal responsibility over gambling and a greater provincial authority over an activity that now has considerable economic significance".[31] It is clear that "[t]he policy of the Government of Canada, as reflected in Part VII of the *Criminal Code*, is to prohibit the operation of common gaming or common betting houses and other unlawful forms of wagering, while providing a ***broad*** category of exemptions from and exceptions to the provisions creating criminal liability".[32] As a result, "most of the serious questions concerning the legality of a given gambling operation or lottery will involve provincial regulation",[33] and "[i]t is under section 207 that the transformation and expansion of gambling in Canada over the last thirty-five years has occurred".[34] Indeed, s. 207(1)(g) permits a person "to do anything in the province" for the purpose of a lottery scheme that is lawful under one of ss. 207(1)(a)-(f).

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[29] *D.L.W.*, ¶3, 54, 59 (and ¶18-19, 56-58, 60-67), *underlining in original, other emphasis added*.
[30] Appeal Decision, ¶208, 211.
[31] Campbell, at 1.
[32] *Boardwalk*, ¶24, per Lacourciere J.A. (concurring), *emphasis added*, CGA BOA Tab 1.
[33] Manning, at 840, CGA BOA Tab 6.
[34] Campbell, at 18-19.

20. A broad approach to s. 207 also furthers the principle of co-operative federalism, which "mean[s] that courts should avoid an expansive interpretation of the purpose of federal legislation which will bring it into conflict with provincial legislation",[35] and "[w]here possible… allow both levels of government to jointly regulate areas that fall within their jurisdiction".[36] Where an "interlocking federal and provincial legislative schem[e]" is at issue, "the purpose of federal legislation should not be artificially broadened beyond its intended scope".[37]

21. The federal-provincial agreement at the heart of s. 207 engages this principle directly, allowing the provinces to adopt different operational approaches to the conduct and management of gaming based on their own public policy priorities. Indeed, "courts have explicitly recognized, and perhaps supported, the 'co-operative federalism' that is part of the amendments in 1985 and earlier on what is or is not permitted (within the federal 'envelope' of exemptions from the criminal law prohibitions)".[38] In *Siemens*, this Court held:

> … The governments, in the absence of jurisdiction, cannot by simple agreement lend legitimacy to a claim that the *VLT Act* is *intra vires*. However, ***given that both federal and provincial governments guard their legislative powers carefully, when they do agree to shared jurisdiction, that fact should be given careful consideration by the courts***…
>
> This principle is further bolstered in the present case by the explicit interaction of the *Criminal Code* and provincial gaming legislation. ***Section 207(1)(a) of the Criminal Code specifically creates an exception to the gaming and betting offences where a lottery scheme has been established by a province.*** … ***Parliament has intentionally designed a structure for gaming offences that affirms the double aspect of gaming and promotes federal-provincial cooperation in this area***. …[39]

22. A broad interpretation is particularly appropriate to s. 207(1)(a), which is unique among the other exemptions in s. 207(1) in that it: (a) only applies to lottery schemes conducted and managed in accordance with provincial ***legislation***, as opposed to simple ***licences***; (b) allows such lotteries to include those operated on or through a "***computer, video device, slot machine or a dice game***" pursuant to s. 207(4)(c), which are prohibited for the other exemptions; and (c) permits provinces to use the ***proceeds*** from the lottery scheme ***for any purpose***, whereas the proceeds derived under,

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[35] *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, ¶66.
[36] *Canada (A.G.) v. PHS Community Services Society*, 2011 SCC 44, ¶63
[37] *Saskatchewan (A.G.) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, ¶23.
[38] Bourgeois, at 13, CGA BOA Tab 5.
[39] *Siemens v. Manitoba (A.G.)*, 2003 SCC 3, ¶34-35, *emphasis added*. **See also** *R. v. Furtney*, [1991] 3 S.C.R. 89 at 103, 106-107.

e.g., s. 207(1)(b), must be used solely for charitable purposes.[40] Given these differences, "courts in the past have tended to take a somewhat more relaxed approach… under s. 207(1)(a)".[41]

23. In this case, based on s. 206(2), the majority held that games "***similar***" to three-card monte may be excluded from the province's s. 207(1)(a) power by s. 207(4)(a), even though s. 207(4)(a) only excludes "three-card monte" ***itself*** from s. 207(1)(a). Section 207(4)(a) makes no reference to s. 206(2), which only extends the three-card monte offence in s. 206(1)(g) to "similar" games "***[i]n this section***", *i.e.*, ***s. 206 and not s. 207***. A broad interpretation of s. 207 would prevent s. 206(2) from excluding games from s. 207(1)(a) that are not three-card monte, but only "similar" to it.

2. Disgorgement for *Criminal Code* Breaches Undermines Parliament's Intent

24. The majority below also held that disgorgement may be available for profits earned from *Criminal Code* breaches that do not support a tort or other civil cause of action, despite noting the Canadian law on this issue is "very sparse", consisting of a handful of "*sub silentio* precedents".[42] Whether the majority was correct to do so should turn on the broader statutory context, on the policy judgments it reflects, and on the limits of the judicial role. Just as "the nominate tort of statutory breach does not exist",[43] and "criminal offences and breaches of statute [are] not … *per se* actionable … [in] tort",[44] neither should crimes *simpliciter* support disgorgement at common law. To conclude otherwise would disregard Parliament's legislative choices and this Court's jurisprudence about when and how private litigants may enforce the criminal law.

25. As the majority of the Court of Appeal acknowledged, Parliament has ***already*** enacted "statutory mechanisms for forfeiture of proceeds of crime… in Part XII.2 of the *Criminal Code*… [and] the restitution-order provisions of the *Code*".[45] These provisions enable a court to order that: **(a)** property obtained from the commission of an indictable offence, such as the three-card monte

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[40] Monahan, at 189-191, 221, CGA BOA Tab 7.
[41] *Ibid*, at 184 (and 191, 196, 201-202, 215). **See also** Bourgeois, at 87, 94, CGA BOA Tab 5. This distinguishes *Reference re Earth Future Lottery*, 2002 PESCAD 8, 12 aff'd, 2003 SCC 10, involving s. 207(1)(b).
[42] Appeal Decision, ¶223.
[43] *Odhavji Estate v. Woodhouse*, 2003 SCC 69, ¶31 [***Odhavji Estate***], citing *R. v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205 at 225-26.
[44] *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, ¶45 [***A.I. Enterprises***].
[45] *Ibid*, ¶229.

prohibition in s. 206(1)(g), be forfeited to the Crown on conviction or discharge (ss. 462.3(1), 462.37(1)); **(b)** the offender pay a fine equal to the value of such property where it cannot be made subject to a forfeiture order (s. 462.37(3)); **(c)** such property be returned to another, innocent person who is its lawful owner or possessor (s. 462.41(3)); **(d)** property obtained by commission of an offence that is before the court or that has been detained be returned to its lawful owner or, if the lawful owner is not known, forfeited to the Crown, even if no conviction or discharge is entered (ss. 491.1(1), 491.1(2)); and **(e)** an offender convicted or discharged of an offence make restitution of the replacement value of property to a person whose loss of that property was caused by the commission of the offence (s. 738(1)(a)).[46] These remedies are in addition to the court's general power to impose fines in ss. 734-735. Parliament has assigned specific priorities between them, requiring restitution be made to victims first (ss. 462.49(2), 740).

26. These *Criminal Code* provisions are important in assessing whether the Court should recognize a new common law remedy of "criminal disgorgement". The existing law is not "wanting",[47] but already contains numerous monetary remedies for breaches of the *Criminal Code* enacted by Parliament itself. There is thus no reason for this Court to change the common law. This would not be an incremental change consistent with the judicial function, but would amount to second-guessing Parliament's own disgorgement regime.[48]

27. In *Godfrey*, this Court recently considered whether the private enforcement mechanism in s. 36(1) of the *Competition Act* ousted the common law right of action for "civil conspiracy based on the breach of a statute", which had existed "long before Parliament legislated a civil right of action in 1975".[49] The Court held that it did not. As Brown J. observed for the majority, the *Competition Act* itself provides that it does not "depriv[e] any person of any civil right of action", while "the tort of civil conspiracy allows for a broader range of remedies than is available under

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[46] While s. 741.2 provides that a civil remedy is not affected only because a restitution order under s. 738 has been made, it does not apply to forfeiture or restitution orders under the other provisions cited above, nor does it prevent courts from deciding if a civil remedy should first exist in law.

[47] *Bhasin v. Hrynew*, 2014 SCC 71, ¶66.

[48] *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, ¶51-52. ***cf.*** *Chatterjee v. Ontario (A.G.)*, 2009 SCC 19, ¶42-52.

[49] *Pioneer Corp. v. Godfrey*, 2019 SCC 42, ¶83 [***Godfrey***]

s. 36(1)".[50] Here, by contrast, recognizing a novel private right of action for "criminal disgorgement" would use the common law effectively to amend and extend the *Criminal Code*'s forfeiture and restitution provisions. *Godfrey* addresses the question of whether ***subsequent*** legislation has displaced an ***existing*** common law remedy. Its reasoning cannot support what the Court of Appeal majority did in this case: create a ***new*** common law remedy to do judicially what Parliament has ***already*** declined to do legislatively.

28. In the final analysis, Parliament has enacted provisions of the *Criminal Code* that dictate when and how criminal offences may support orders for disgorgement, forfeiture, and restitution. The Court of Appeal majority purported to use the common law to supplement those statutory provisions, and to recognize a new, private cause of action by which litigants may personally recover the proceeds of a crime. This was insufficiently respectful of the legislative scheme, and of the limits of the judicial function.

PART III—SUBMISSIONS CONCERNING COSTS

29. The CGA requests that no costs be awarded either for or against it.

PART IV—ORDER SOUGHT

30. The CGA takes no position on the outcome of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2019.

Brandon Kain / Gillian P. Kerr / Adam Goldenberg

[50] *Godfrey*, ¶¶87-88, quoting *Competition Act*, R.S.C., 1985, c. C-34, s. 62.

PART V—TABLE OF AUTHORITIES

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