SCC File No. 38687

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO

APPELLANT
(Appellant)

- and –

JAMIE CLARK, DONALD BELANGER and STEVEN WATTS

RESPONDENTS
(Respondents)

FACTUM OF THE RESPONDENTS
(JAMIE CLARK, DONALD BELANGER and STEVEN WATTS)

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

BRAUTI THORNING LLP
161 Bay Street, Suite 2900,
Toronto, ON M5J 2S1

Lorne Honickman
Michael Lacy
Tel.: 416.360.2786
Fax: 416.362.8410
Email: lhonickman@btlegal.ca
mlacy@btlegal.ca

Counsel for the Respondents,
Jamie Clark, Donald Belanger and
Steven Watts

SUPREME ADVOCACY LLP
340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613.695.8855
Fax: 613.695.8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for the Respondents,
Jamie Clark, Donald Belanger and
Steven Watts

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office - Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Sunil S. Mathai
Ananthan Sinnadurai
Tel: 416.326.4181
Fax: 416.326.4656
Email: sunil.mathai@ontario.ca
ananthan.sinnadurai@ontario.ca

Counsel for the Appellant, Attorney General of Ontario

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
1300 –100 Queen Street
Ottawa, ON K1P 1J9

Nadia Effendi
Tel: 613.787.3562
Fax: 613.230.8842
Email: neffendi@blg.com

Ottawa Agent for the Appellant, Attorney General of Ontario

TABLE OF CONTENTS

PAGE

PART I – OVERVIEW AND STATEMENT OF FACTS 1

PART II – RESPONDENT'S POSITION WITH RESPECT TO THE ISSUES RAISED 5

PART III – STATEMENT OF ARGUMENT 5

The importance of prosecutorial integrity in addition to prosecutorial independence 5

The oft-argued "chilling effect" has not had any affect on prosecutor independence or prosecutors who act in good faith and with integrity 7

Issue 1: Crown prosecutors should not be immune from claims brought by third parties for misfeasance in a public office 8

Issue 2: Crown prosecutors should not be immune from civil liability for misfeasance ... 13

A claim that a Crown prosecutor has committed misfeasance in a public office requires bad faith to wit: malice 13

Issue 3: The Claim adequately pleads misfeasance and alleges malice against both the trial Crown and the appellate Crown 17

PART IV – COSTS 22

PART V – ORDER REQUESTED 22

PART VI – CASE SENSITIVITY 22

PART VI – TABLE OF AUTHORITIES 23

STATUTES, LEGISLATION, RULES ETC 24

PART I - OVERVIEW & STATEMENT AS TO FACTS

> In its current form, misfeasance in a public office is designed to balance the need to compensate those who have been harmed by public officers against the need to protect those officers from liability when they exercise their powers in good faith. This balancing his achieved primarily by two main elements of the tort: malice and a deliberately unlawful act.[1]

1. This case concerns a claim that Crown prosecutors acted abusively and injured the Respondent police officers. The prosecutors were not acting in good faith. They were acting maliciously for reasons unconnected to the public office they held. The Appellant's position is that even if this is true, the Crown is not accountable for such conduct through a civil tort. Instead, they urge this Court to adopt a rule of absolute immunity for Crown prosecutors when they maliciously injure third parties notwithstanding that other public officials are liable in tort in analogous circumstances. Precedent, policy and common sense support the conclusion reached by the Court of Appeal for Ontario – there is not, and should not be, civil immunity for Crown prosecutors in such circumstances.

2. Crown prosecutors acting within the scope of their quasi-judicial role are generally but not absolutely immune from civil liability. Immunity gives way when the Crown has acted maliciously and for an improper purpose. But liability should not be limited to claims made by an aggrieved accused. If a Crown acts outside the bounds of his or her office by abusing that very position and causes injury to third parties, immunity is properly lifted for the same policy reason. The tort for the malicious conduct is properly framed as misfeasance in public office as opposed to malicious prosecution.[2] The Appellant's appeal in the context of this pleadings motion should therefore be dismissed.

3. The Respondents generally accept the summary of the facts outlined by the Appellant save and except where that summary includes unnecessary and impermissible argument.

---

[1] E. Chamberlain, "Misfeasance in a Public Office" (2016 – Thomson Reuters) – Introduction, p.4 [Book of Authorities ("*BOA*"), Tab 1].

[2] *Report on the Liability of the Crown*, Ontario Law Reform Commission, 1989, p.13 "Misfeasance in a Public Office"

4. The Court of Appeal for Ontario accurately summarized the key facts pleaded in the statement of claim[3] in the judgment below as follows[4]:

> [21] The trial against Mr. Singh proceeded on November 28, 2011. Counsel for Mr. Singh brought an application to stay the proceedings. Mr. Singh testified that Sgt. Clark assaulted him while Det. Sgt. Watts stood by. Mr. Maharaj testified that he was assaulted by Det. Sgt. Belanger and Sgt. Clark. Ms. Crossman did not call any evidence to challenge the assault allegations.
>
> [22] The officers expected to testify and would have testified in a manner consistent with the evidence they gave at the preliminary hearing. Although Ms. Cressman had assured the officers that they would be called as witnesses, at the end of the first day of the hearing she advised Det. Sgt. Watts that their evidence would not be required. Det. Sgt. Watts expressed concern about the impact this decision would have on the officers, but Ms. Cressman did not change her position.
>
> [23] A jury convicted Mr. Singh of armed robbery and forcible confinement. Justice Thorburn ultimately dismissed his stay application, but nonetheless reduced his sentence in light of the uncontradicted evidence of assault: *R. v. Singh*, 2012 ONSC 4429 (CanLII), rev'd 2013 ONCA 750(CanLII), 118 O.R. (3d) 253. She described the officers' conduct as "reprehensible" and characterized the case as one of "police brutality". Her decision and findings were widely reported in the mainstream media and on the Internet, and discussed in internal communications among Crown attorneys, criminal defence lawyers and the judiciary.
>
> [24] Mr. Singh appealed both his conviction and sentence. Before the appeal hearing, the Crown Law Office - Criminal advised the Toronto Chief of Police of its concern about the officers' conduct. The Special Investigations Unit was notified and invoked its mandate. On July 4, 2012, however, the Special Investigations Unit withdrew its mandate after Mr. Maharaj declined to participate in the investigation.
>
> [25] After the Special Investigations Unit withdrew its mandate, the Toronto Police Service Professional Standards Unit reviewed the misconduct allegations and conducted an extensive investigation. On October 31, 2012, the TPS Unit completed its investigation, concluding that the allegations of use of excessive force could not be substantiated.
>
> [26] On October 18, 2013, this court heard Mr. Singh's appeal. Before the hearing, the Crown Attorney handling the appeal, Amy Alyea, met with Det. Sgt. Watts, who advised her of what the officers had learned about Ms. Cressman's conduct. Ms. Alyea took no further steps to investigate, did nothing to repair the damage to the officers' reputation, and did not file a fresh evidence application on appeal. During the appeal hearing, Doherty J.A. asked Ms. Alyea about what had occurred, but she did not inform him or this court about

---

[3] Which are presumed to be true at this stage of the proceedings (*Hunt v. Carey Canada Inc.,* 1990 CanLII 90 (SCC)

[4] Appellant's Record, Volume 1, Tab 11, Reasons of the Ontario Court of Appeal dated April 18, 2019, p.74-75

Ms. Cressman's conduct and the supposed "exculpatory findings" regarding the officers' conduct.

[27] On December 12, 2013, the Court of Appeal set aside Mr. Singh's convictions and entered a stay: *R. v. Singh*, 2013 ONCA 750 (CanLII), 118 O.R. (3d) 253. Blair J.A. described the officers' conduct as "egregious", writing at para. 43 that:

> What occurred here was the administration of a calculated, prolonged and skillfully choreographed investigative technique developed by these officers to secure evidence. This technique involved the deliberate and repeated use of intimidation, threats and violence, coupled with what can only be described as a systematic breach of the constitutional rights of detained persons…

[28] Following the appeal, the Toronto Special Investigations Unit re-opened its investigation, interviewed Mr. Maharaj, and reviewed all records. It ultimately determined that the rib injury post-dated the arrest and concluded that the allegations were not substantiated by the evidence.

[29] On May 26, 2014, the Toronto Chief of Police asked the Ontario Provincial Police to conduct an independent review of the TPS Professional Standards Unit's work. The Ontario Provincial Police investigator concluded in a final report dated April 9, 2015 that the Unit's investigation was thorough and there was no reason to refute its conclusion that the allegations could not be substantiated.

5. In the pleadings (para 47),[5] the Respondents noted that the Crown "committed the tort of misfeasance in public office by engaging in deliberate and unlawful conduct in their capacity as Crown attorneys, clearly in contravention of their sworn duty" and that it was "deliberate and unlawful conduct" in that the Crown deliberately suppressed the exonerating information. The Ontario Court of Appeal in substituting a stay of proceedings in *Singh*[6] expressly noted the absence of any evidence from the Respondents and the absence of any meaningful investigation.[7] The Crown prosecutors suppressed this information both at the trial and on appeal.

6. At its core, the Respondents plead in their statement of claim that the two Ontario Crowns acted in bad faith/malice in the conduct of a *Charter* application brought by two criminals whom the officers had investigated and charged. For the purpose of trying to extricate themselves from criminal liability, those accused alleged that the Respondent officers assaulted them during the

---

[5] Appellant's Record, Vol. II, Statement of Claim, p.131
[6] 2013 ONCA 750
[7] Appellant's Record, Vol. III, Exhibit H to affidavit of M. Howe, Reasons for Judgment in *R. v. Singh, supra* at paras 43 to 46.

course of interrogations and then attempted to obstruct justice and/or commit perjury in the court proceeding that followed. The Ontario Court of Appeal described the allegations of the criminals as tantamount to "torture"[8] and, if true, the Respondents as having engaged in "thuggery".[9] Rather than properly investigating and responding to those claims, as required by statutory and common law duties, the trial Crown deliberately conceded that the alleged unlawful conduct had occurred knowing the harm it would bring to the Respondents. When it was later discovered that there was additional objective evidence that the accused had concocted their story, the appeal Crown failed to correct the record even when given the explicit opportunity to do so.[10] Instead, the appeal Crown allowed the Court of Appeal for Ontario to believe that the allegations, which the Crown had conceded at trial, were in fact true for the purposes of the appeal.

7. The Respondents do not agree with the Appellant's contention that the appeal Crown could not have brought the information to the attention of the Court. Section 683(1)(d) of the *Criminal Code* permits the introduction of new information on appeal where it is "in the interests of justice". Even in the absence of due diligence, fresh evidence can be received.[11] The Ontario Court of Appeal has noted that if evidence is "so cogent" that it should be admitted on appeal even in the absence of a good explanation for not doing so at trial, it can be received in the interests of justice.[12] In the context of considering the abuse of process doctrine in an analogous context of relitigation, this Court noted in *Ontario v. O.P.S.E.U.*[13], that among the situations that may arise where relitigating is appropriate is where the original proceedings are "tainted by fraud or dishonesty" and "when fresh, new evidence, previously unavailable, conclusive impeaches the original results." On the facts of this case, the fresh evidence was admissible as the accused was seeking a stay of proceedings on appeal. The fact that there was information in the possession of the Crown that the accused's allegation of having been seriously injured was a fabrication would have been admissible

---

[8] Appellant's Record, Vol. I, Tab 11, Reasons of the Ontario Court of Appeal dated April 8, 2019, p.102, para 102

[9] Appellant's Record, Vol. III, Exhibit G to affidavit of M. Howe, Transcript of appeal hearing in *R. v. Singh*

[10] Appellant's Record, Volume III, Exhibit G to affidavit of M. Howe, Transcript of oral hearing in *R. v. Singh* at p.449 to 451.

[11] *R. v. Levesque* [2000] 2 S.C.R. 487; *Palmer v. The Queen* [1980] 1 S.C.R. 759

[12] *R. v. Abbey (No. 2)* 2017 ONCA 640 at paras 134 and 139. See also *R. v. Ahuwalia* [2000] O.J. No. 4544 (C.A.).

[13] 2003 SCC 64 at para 12

on the appeal given the court was being asked to reconsider the appropriateness of the original remedy granted by the trial judge for the *Charter* breach. The accused was not entitled to seek redress from the Court of Appeal if his original *Charter* claim was founded upon a fraud that he had perpetrated upon the Court. Additionally, and dispositive, the Court of Appeal panel that heard the appeal expressly asked for updated information from the Crown and counsel for the accused on the appeal did not object to the Crown advising the court of the same.

PART II – RESPONDENT'S POSITION WITH RESPECT TO THE ISSUES RAISED

Issue 1: Did the courts below err in holding that prosecutorial immunity can be displaced to permit claims by third parties to a criminal prosecution?

No. The courts below properly concluded that third parties whom the defendant knew would be damaged by bad faith prosecutorial decisions can pursue a claim for those damages.

Issue 2: Did the courts below err in holding that prosecutorial immunity can be displaced to permit claims of misfeasance in public office?

No. The courts below properly recognized that the tort of misfeasance in a public office to wit: acting in bad faith/malice, was an exception to Crown immunity.

Issue 3: Was the tort of a misfeasance in public office adequately pleaded?

Yes. The claim should be allowed to proceed at this stage.

PART III – STATEMENT OF ARGUMENT

The importance of prosecutorial integrity in addition to prosecutorial independence

8. It is not disputed that prosecutorial independence is essential to the administration of criminal justice and is firmly entrenched in Canada's constitutional democracy. When acting as a prosecutor, discretionary decisions of the Crown through its agents must be free from second-guessing, threat of civil or criminal proceedings, or, judicial or political interference. As a community we do not want prosecutors to deflect or second-guess their exercise of discretion because of improper considerations.[14] When acting within their role as prosecutors, discretionary

[14] *Krieger v. Law Society of Alberta* 2002 SCC 65 at para 32 agreeing with *Re Home and Law Society of British Columbia* 1985 Canlii 447 (BCCA) at p.254; *R. v. Anderseon* [2014] S.C.J. No.

decision making is sacrosanct. But prosecutors in Canada do not enjoy absolute immunity.[15] Instead, the immunity is qualified. It is only good faith decisions undertaken by a prosecutor in the course of fulfilling his or her office that warrant protection. This is so in the criminal and civil context.

9. In the criminal context, prosecutorial conduct or misconduct which rises to the level of an abuse of process is reviewable under s.7 of the *Charter* and was long recognized as reviewable at common law on the same basis. In *R. v. Nixon*[16] this Court recognized that abuse of process can arise from prosecutorial conduct that affects the fairness of a particular trial or from conduct that "contravenes fundamental notions of justice and thus undermines the integrity of the judicial process." There is no absolute deference to prosecutorial decisions in the criminal context.

10. Crown prosecutors acting within the scope of their quasi-judicial role are immune from civil liability subject to one important and recognized caveat: immunity will give way where the Crown has acted maliciously. The tort of malicious prosecution allows an aggrieved criminal defendant to claim that the Crown prosecuted him or her in bad faith.[17] The rationale for removing the cloak of immunity for a Crown in that circumstance is that the individual has "misused and abused" his or her position and the Office of the Crown. In effect, when acting with *mala fides*, the prosecutor is no longer acting *qua* Crown. Therefore, the immunity that attaches to acting in the capacity of a Crown should not, as a matter of policy, apply.

11. In *Nelles,* this Court explained the important policy rationale for recognizing liability when Crown prosecutors act in bad faith:[18]

> It is said by those in favour of absolute immunity that the rule encourages public trust and confidence in the impartiality of prosecutors. However, it seems to me that public confidence in the office of a public prosecutor suffers greatly when the person who is in a position of knowledge in respect of the constitutional and legal impact of his conduct is shielded from civil liability when he abuses the process through a malicious prosecution. The existence of an

---

41. M. Rosenberg, "The Attorney General and the Prosecution Function on the Twenty-First Century" 43(2) Queen's Law Journal p.813-862

[15] See for example *Imbler v. Pachtman* 424 U.S. 409 (1976) SCOTUS

[16] 2011 SCC 34 at para 36.

[17] *Nelles v. Ontario* [1989] 2.S.C.R. 170 [hereinafter *Nelles*]; *Miazga v. Kvello Estate*, 2009 SCC 51

[18] *Ibid* citations omitted.

> absolute immunity strikes at the very principle of equality under the law and is especially alarming when the wrong has been committed by a person who should be held to the highest standards of conduct in exercising a public trust.

On that basis this Court adopted a qualified immunity requiring a "high liability" threshold as an element of the tort – malice or bad faith on the part of the prosecutor.

12. The fact that Crown prosecutors are accountable in criminal law through the abuse of process doctrine and also in tort for abusive conduct is a recognition that prosecutorial integrity is equally as important as prosecutorial independence.

The oft-argued "chilling effect" has not had any affect on prosecutor independence or prosecutors who act in good faith and with integrity

13. The Appellant Attorney General made the argument in *Nelles* that failing to grant absolute immunity would have a "chilling effect" and paralyze Crowns making day-to-day decisions on the conduct of a prosecution. They claimed floodgates were going to collapse under the litigation that prosecutors were going to be exposed to. But like Henny Penny's misguided prediction,[19] the sky did not fall and prosecutorial independence remains vibrant and well. These types of *interrorem* arguments are as "unpersuasive" now as when they were mounted in *Nelles*.

14. Similarly, the suggestion that prosecutors will be diverted from their task at hand and the vital functions they perform if this Court allows claims for a misfeasance in public office is misguided.[20] Not every decision made by a Crown prosecutor will give rise to a claim of misfeasance in a public office. Only claims where bad faith or malice is pleaded will be viable and be allowed to proceed.[21] Those claims have been and will be rare,[22] just as they have been in the

---

[19] Also known as "Chicken Little".

[20] In Ontario, individual Crown agents are personally immune from liability. Section 8 of the *Ministry of the Attorney General Act,* R.S.O. 1990 provides absolute immunity to Crowns in their personal capacities for acts done or the "purported performance" of their duties.

[21] See argument below regarding elements of the tort. The Respondents do not agree that malice or bad faith is not a necessary element of the tort. Alternatively, if it is not currently, this Court can require misfeasance claims against Crown prosecutors to require bad faith.

[22] *Driskell v. Dangerfield et al.* 2007 MBQB 14 and *Polsom v. Couston* 2014 ABQB 713.

malicious prosecution or deliberate non-disclosure context. There is no risk of an "avalanche of interlocutory civil proceedings and civil trials."[23]

15. If there is a legitimate concern about diverting Crown prosecutor's duties while non-viable and misconceived claims are dealt with on pleadings or summary judgment motions, it is open to the provincial governments to develop statutory screening mechanisms for such claims. For example, on May 29, 2019 the Ontario legislature passed the *Crown Liability and Proceedings Act* S.O. 2019, c 7, Sch 17 thereby repealing the *Proceedings Against the Crown Act* that was in place at the time of the action here. The intention of the legislature was to restrict and weed out civil claims that can be brought against the Crown. Notably, that *Act* only exempts Crown actions undertaken in "good faith" from civil liability[24] and expressly preserves claims for misfeasance in public office and other "bad faith" torts but requires that any claimant in such actions seek leave of the Court before proceeding. Section 17(1) of the *Act* provides:

> **17** (1) No proceeding may, without leave of the court, be brought against the Crown or an officer or employee of the Crown in respect of a tort of misfeasance in public office or a tort based on bad faith respecting anything done in the exercise or intended exercise of the officer or employee's powers or the performance or intended performance of the officer or employee's duties or functions.
>
> **…**
>
> **Requirements for leave**
>
> (6) The court shall not grant leave unless it is satisfied that,
>
> (a) the proceeding is being brought in good faith; and
>
> (b) there is a reasonable possibility that the proceeding would be resolved in the plaintiff's favour.

Issue 1: Crown prosecutors should not be immune from claims brought by third parties for a misfeasance in a public office

16. Third parties who are affected by malicious actions undertaken from Crown prosecutors are not able to proceed with a claim in malicious prosecution – only a criminal defendant who is

[23] *Henry,* at para 72.
[24] Section 9(2).

prosecuted can make such a claim. But the malicious conduct of a rogue prosecutor should not be beyond the reach of civil liability. If a third party is injured by the conduct of the prosecutor and the elements of the tort are otherwise established, there are no reasons to preclude third parties from bringing a claim as the Appellant argues.

17. The tort of a misfeasance in a public office is governed by this Court's decision in *Odhavji Estate v. Woodhouse.*[25] The relevant elements of the tort of misfeasance in a public office are[26]:

i. The public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer; and

ii. The public officer was aware that his or her conduct was unlawful and that it was likely to harm the plaintiff(s).

The following legal principles apply to the tort of a misfeasance in a public office[27]:

i. if there is a legal duty on the public officer to act, and the public officer decides not to act or fails to act in breach of the duty, that omission can amount to misfeasance;

ii. reckless indifference or wilful blindness to the illegality of his or her act satisfies the "deliberate and unlawful" conduct of the first element of the tort;

iii. reckless indifference or wilful blindness as to the probable consequences of the unlawful act satisfies the second element of the tort; and,

iv. the tort requires an element of bad faith or dishonesty, such that the public officer exercised his or her powers for an improper or ulterior purpose, or engaged in conduct that he or she knew to be inconsistent with the obligations of the office.

18. Importantly, unlike malicious prosecution, the tort of misfeasance in a public office is not defined or only available to a particular class of claimant. Anyone who is harmed by the bad faith conduct of a public officer is entitled to seek damages provided the claimant can otherwise satisfy the elements of the tort. There are no compelling policy reasons to limit liability for malicious conduct of the prosecutor, in the context of a criminal prosecutions, to the subject of the prosecution.

---

[25] [2003] 3 S.C.R. 263 [hereinafter *Odhavji Estate*]
[26] *Ibid* at para 23
[27] *Ibid* at paras 24, 28 and 38

19. The tort of a misfeasance in public office alleges an abuse of that office. In the context of a Crown prosecutor, a misfeasance claim alleges that rather than acting in the good faith discharge of statutory or common law duties, the prosecutor acted deliberately in bad faith to abuse that office to injure another person. As Iacobucci J. noted for the Court in *Odhavji Estate*[28] at p.278, the tort is "broadly based on unlawful conduct in the exercise of public functions generally" and is grounded in "a broad range of misconduct."[29] The tort of a misfeasance in a public office does not have a proximity requirement like the tort of negligence. Instead, it requires only a cause/effect nexus between the public official's tortious conduct and the injury sustained. As Iacobucci J. further explained[30]:

> Liability does not attach to each officer who blatantly disregards his or her official duty, but only to a public officer who, in addition, demonstrates a conscious disregard for the interests of those who will be affected by the misconduct in question. This requirement establishes the required nexus between the parties.

20. The Applicant's claim that Crown prosecutors should be exempted from tortious liability for acting abusively in a way that harms anyone other than the criminal defendants is unpersuasive. First, why would there be prosecutorial immunity for acting abusively towards witnesses, complainants or other persons who a prosecutor interacts with during the course of their employment? If the prosecutor acts in a manner that would trigger the application of the tort, they are not acting in a manner consistent with the public office that they hold. This will not interfere with good faith exercise of prosecutorial discretion. Rather, it will promote the same and serve to remind the Crown that bad faith decisions undertaken by prosecutors which cause injuries to others (not only a criminal defendant) may be subject to civil liability. Holding prosecutors accountable for abusive conduct promotes the repute of the administration of justice rather than tarnish it.

21. Take for example a Crown Attorney who deliberately 'throws' a criminal trial involving a sexual assault allegation for malicious reasons. The prosecutor improperly invites an acquittal or withdraws a criminal charge because he or she holds the view that all racialized victims are not credible, or that because the victim was married to the accused there could be no sexual assault or because he owes the accused a favour. It is clear that the decision was made in bad faith without

---

[28] *Ibid*
[29] *Ibid at* 280, 282, 285-6
[30] *Ibid* at para 29

regard to the role and duties of the prosecutor (at common law or otherwise). The decision was deliberate; it is a decision made in a manner that is inconsistent with the role of the Crown and the victim is consequently harmed by the Crown's conduct. The Appellant would have it that that the Crown would be immune from civil liability for the prosecutor's conduct whereas, if he or she abused the same office to obtain a conviction, there would be liability to the accused for damages. There is no good policy reason for favouring such a result. As Lord Bingham in *Watkins v. Home Office*[31] noted:

> There is great force in the respondent's submission that if a public officer knowingly and deliberately acts in breach of his lawful duty he should be amenable to civil action at the suit of anyone who suffers at his hands. There is an obvious public interest in bringing public servants guilty of outrageous conduct to book. Those who act in such a way should not be free to do so with impunity.

22. Not extending prosecutorial immunity in these circumstances will not inevitably lead to Crown prosecutors being influenced by extraneous or irrelevant considerations. Prosecutors always face the prospect that the misguided or misinformed accused who is successful in their criminal case may file a civil claim for malicious prosecution. What *Nelles* recognized was that such claims will routinely fail and properly be struck out unless there is evidence of bad faith or malice on the part of the prosecutor. Costs consequences as well as sound legal advice deter such claims. As the majority of this Court noted "this burden on the plaintiff amounts to a requirement that the Attorney General or Crown Attorney perpetrated a fraud on the process of criminal justice and in doing so has perverted or abused his office and the process of criminal justice."[32] A misfeasance in public office claim requires nothing less.

23. When prosecutors behave in a manner that would amount to misfeasance in a public office, they are no longer acting in accordance with the terms of their office. Further, they are no longer exercising discretion in a manner that needs to be protected by the Courts. Instead, they are acting maliciously and harming others, and accordingly, they should be held accountable for the same.

24. The conclusion of the Ontario Court of Appeal in *Smith v. Ontario*[33] (relied upon by the Appellant) which precluded police officers from suing Crown prosecutors for negligent legal advice

---

[31] [2006] UK HL 17 at para 8.
[32] *Nelles v. Ontario, supra*
[33] *Smith v. Ontario (Attorney General)* 2019 ONCA 651.

is completely consistent with allowing this claim to proceed. The Court of Appeal in the case at bar acknowledged that prosecutors are absolutely immune from claims in negligence in dismissing the Respondents' appeal to that court from the motion judge's finding that the claim of negligence brought by the Respondents should be struck[34]. The panel in *Smith* found no difficulty with the reasoning of the panel in *Clark* and implicitly acknowledged that the chilling effect concerns that arose with respect to negligence claims did not apply *mutatis mutandi* to a claim brought in misfeasance because of the requirement of "bad faith" for misfeasance.

25. Although claims brought by third parties for a misfeasance in public office against Crown prosecutors are rare, Courts have acknowledged that such claims can proceed. In *Driskell v. Dangerfield et al.*[35], it was accepted that the mother of an accused person who was wrongfully convicted could pursue a claim against the Crown for misfeasance in a public office. As the motion judge concluded "there is no reason why [the mother] cannot claim damages for conspiracy and misfeasance in public office if she is a direct victim of the torts"[36] although the ultimate ability to prove the tort might be difficult. Similarly, in *Polsom v. Couston*[37] the victim of a sexual assault brought a claim of a misfeasance in public office alleging that the Crown prosecutor had deliberately abused his office which led the stay of criminal proceedings against her abuser. The Master, in an unreported decision, concluded that the claim could proceed if properly pleaded:

> The underlying purpose of the tort of misfeasance in public office is to protect the citizens' reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of his or her public functions.[38]

Ultimately, the claim was quashed as the facts pleaded could not support the claim.

26. When Crown prosecutors abuse their position of trust or authority by acting for a purpose other than the public good, they may be criminally culpable and guilty of the offence of breach of

---

[34] The Respondents did not seek leave to appeal that decision.
[35] 2007 MBQB 142
[36] At para 25.
[37] 2014 ABQB 713 (Master in Chambers)
[38] Paragraph 8, which continues "At the same time the Courts have recognized the potential for the abuse of this tort and the need to keep its ambit limited."

trust contrary to s.122 of the *Criminal Code of Canada.*[39] According to the Appellant, the same prosecutorial conduct could never attract civil liability. But the Appellant does not address the incongruent nature of holding the Crown criminally accountable but not permitting a civil claim for damages. There is no principled or other reason to exempt civil liability in these circumstances.

27. Permitting an injured party to proceed with a claim of a misfeasance in a public office against prosecutors also serves an ombudsman function for tort law. It serves to chastise the Crown prosecutor who acts abusively in the open and to publicly condemn the actions of the public official[40] in addition to remedying actual damages. The community can have confidence that abusive Crown conduct can be remedied through a civil claim.

Issue 2: Crown prosecutors should not be immune from civil liability for misfeasance

28. The Appellant argues that the tort of a misfeasance in a public office does not "have a sufficiently high liability threshold or any elements which safeguard the integrity of the criminal justice system and render marginal claims amendable to adjudication in preliminary motions" (Appellant's Factum, paragraph 90). Although four arguments are advanced by the Appellant to support that claim, what is central to the Appellant's argument is the suggestion that a misfeasance claim against a Crown prosecutor does not require bad faith or malice in the same way as the tort of malicious prosecution. Accordingly, it is argued, that these actions are not amenable to screening by way of preliminary motions. The Appellant's concern is misplaced and based on a misapprehension of the elements of the tort. The Respondents' claim is based on a malice allegation. Alternatively, it is open to this Court make it clear, if there is any ambiguity, that an element of the tort of a misfeasance in public office against crown prosecutors has the same high liability threshold as malicious prosecution.

A claim that a Crown prosecutor has committed misfeasance in a public office requires bad faith to wit: malice

29. The tort of misfeasance in a public office is over 300 years old. It was recognized in England, to hold public officer holders accountable for acting in bad faith in the exercise of their

---

[39] *R. v. Boulanger*, 2006 SCC 32. The Appellant makes this concession at paragraph 89.
[40] E. Chamberlain "What is the Role of Misfeasance in a Public Office," (2008) 88 Canadian Bar Review 579 at p.581 citing A. Linden, "Tort Law as Ombudsman (1973) 51 Can. Bar Rev. 155).

public duty. In *Roncarelli v. Duplessis*[41] this Court recognized that when a public official acted with malice to improperly use his public position to harm the plaintiff, the plaintiff could sue in tort for damages. The tort has since evolved to capture not only targeted malice but also acting in non-targeted but intentional bad faith actions on the part of the public officer[42]. As this Court described it, there are now two recognized branches of the tort[43]:

> Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff.

30. In either category, the tort requires intentional conduct on the part of the public officer – negligence or inadvertence will not be sufficient to support a claim. Category B claims require subjective recklessness or wilful blindness, which "requires an element of knowledge which is recklessly disregarded or ignored."[44] Subjective recklessness or wilful blindness in this context is deliberate, intentional misconduct. Accordingly, both Category A and Category B claims require that there be intentional malice on the part of the public official and deliberate misconduct. Targeted malice – a flagrant abuse of power with intent to cause harm (Category A) and acting in excess of a public office in bad faith with knowledge that harm will be caused (Category B) are both aimed at holding public officials accountable for intentional, bad faith conduct. Negligence, honest but mistaken belief, cavalier behaviour, poor judgment or simply bad practice will not be sufficient to amount to misfeasance.[45]

31. Notwithstanding arguably confusing language from the House of Lords[46], nothing less than deliberate bad faith conduct can give rise to the tort in Canada. Wilful blindness and subjective recklessness in the misfeasance context involves "bad faith in that the officer does not have an honest belief in the lawfulness of her actions."[47] More importantly, this Court made it clear in *Odhavji Estate* that "misfeasance in a public office is not directed at a public officer who

---

[41] [1959] 1 S.C.R. 121
[42] *Three Rivers, supra*.
[43] *Odhavji Estate, supra* at para 22
[44] *Odhavji Estate, supra* at para 38; *McMaster v. Canada* 2009 FC 937 at para 47
[45] E. Chamberlain, *Misfeasance in a Public Office (Toronto: Carswell, 2016) – Primary Elements of the Tort*, p.113-114 [BOA, Tab 1].
[46] *Three Rivers, supra*
[47] E. Chamberlain, "What is the role of misfeasance in a public office in modern Canadian tort law" [2009] 88 Can. Bar Rev. 579 at 584

inadvertently or negligently fails adequate to discharge the obligations of his or her office."[48] And that:

> The requirement that the defendant ***must have been aware that his or her conduct was unlawful*** reflects the well-established principle that misfeasance in a public office ***requires an element of "bad faith" or "dishonesty"***. In a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interests of certain citizens. Knowledge of harm is thus an insufficient basis on which to conclude that the defendant has acted in bad faith or dishonestly. A public officer may in good faith make a decision that she or he knows to be adverse to interests of certain members of the public. ***In order for the conduct to fall within the scope of the tort, the officer must deliberately engage in conduct that he or she knows to be inconsistent with the obligations of the office***.[49]
>
> [emphasis added]

32. The suggestion of the Appellant (Appellant's factum, paragraph 105), that for Category B "misfeasance, the plaintiff only needs to establish that the Crown prosecutor deliberately engaged in unlawful conduct" and that "[d]eliberate unlawful conduct is a lower liability threshold than malice" is completely inconsistent with this Court's holding in *Odhajvi Estate* quoted above. In the context of the tort of misfeasance in a public office, "deliberately unlawful" conduct and "bad faith" are synonymous[50] and bad faith requires a showing of malice.[51]

33. Even if the absence of malice can support a claim for misfeasance in other contexts, where the underlying act or acts in support of the tort of misfeasance in a public office involve discretionary decisions, the tort can only be made out where the discretion was exercised in bad faith, which in this context, is synonymous with malice. Accordingly, where it is alleged that a prosecutor has committed the tort of misfeasance in a public office in relation to a discretionary

---

[48] At para 26.

[49] *Ibid* at para 28. See also *Rain Coast Water Corp. v. British Columbia* [2019] B.C.J. No. 1011 (C.A.)

[50] This is completely consistent with Arbour J.'s requirement of "improper purpose" to support a malicious prosecution claim in *Miazga, supra.*

[51] *Alberta v. Elder Advocates of Alberta Society* [2011] S.C.J. No. 24 at para 78; *Castrillo v. Workplace Safety and Insurance Board* 2017 ONCA 121 at para 19; *RVB Management Ltd. v. Rocky Mountain House (Town)* 2014 A.J. No. 102 (Q.B.) at 94-96; *Al Omani v. Canada* [2017] F.C.J. No. 1050

decision (such as withdrawing a charge, making a concession etc.) the claim can only succeed in the presence of bad faith[52] to wit malice.[53]

34. Although the Appellant suggests that "recent conceptions of bad faith by this Court do not require a finding of malice" relying on *Finney v. Barreau du Quebec*[54], bad faith and malice in the misfeasance tort context are interchangeable. The issue in *Finney* was the proper interpretation of bad faith in the context of the "law of civil liability in Quebec" which appeared not to "take such a narrow view of the concept of bad faith" but instead equated it with serious carelessness or objective recklessness. Additionally, the Court was required to interpret "bad faith" in the context of provincial legislation relating to immunity under s.193 of the Quebec *Professional Code*. The case does not stand for the proposition that bad faith is a lesser standard than malice in the context of the tort of misfeasance in a public office.

35. The Appellant also relies on *R. v. Hinse*[55] to support their argument. However, the analysis is similarly misplaced. In that case, this Court recognized that the only type of bad faith that could support a malicious prosecution claim against a prosecutor is malice but that there were other types of bad faith claims that could be brought against other government actors that did not require a showing of malice. In other words, in some contexts, malice and bad faith were not synonymous or interchangeable and bad faith can be something less than malice although malice subsumes bad faith.

36. If there is any ambiguity on this issue, this Court can make it clear that deliberate and unlawful conduct and bad faith and malice are interchangeable and require the same high liability threshold as required in the malicious prosecution context when the tort is alleged against a Crown prosecutor. In other words, it is in the same class of tort recognized in *Nelles* and *Henry*. In that regard, the judgment from the Court of Appeal below is of assistance[56]:

> [109] We conclude that Crown attorneys are not immune from claims of liability for misfeasance in public office. The trigger for liability provides the functional Page: 39

---

[52] *Polsom v. Couston, supra*.
[53] E. Chamberlain, Misfeasance in a Public office (2016), p.212-3 [BOA, Tab 1].
[54] 2004 SCC 36
[55] [1995] 4 S.C.R. 597
[56] Appellant's Record, Volume 1, Tab 11, Reasons of the Ontario Court of Appeal for Ontario dated April 18, 2019, pp.105 to 106.

equivalent of the "high liability threshold" Moldaver J. set in Henry for liability for Charter damages for wrongful disclosure.

> [110] The nerve of the Supreme Court's decisions in the trilogy and in *Henry* is the deliberate abuse of authority by Crown attorneys. See *Nelles*, at paras. 55-56, per Lamer J.; and Proulx, at para. 35, per Iacobucci and Binnie JJ. In *Miazga*, Charron J. said, at para. 51: Thus, the public law doctrine of abuse of process and the tort of malicious prosecution may be seen as two sides of the same coin: both provide remedies when a Crown prosecutor's actions are so egregious that they take the prosecutor outside his or her proper role as minister of justice, such that the general rule of judicial non intervention with Crown discretion is no longer justified. Both abuse of process and malicious prosecution have been narrowly crafted, employing stringent tests, to ensure that liability will attach in only the most exceptional circumstances, so that Crown discretion remains intact.
> …
>
> [113] Drawing on *Henry,* there are "compelling good governance" concerns that require a "high liability threshold" in order for the tort of misfeasance in public office to be a tenable cause of action against Crown attorneys. That "high liability threshold" is satisfied by the requirement of the tort of misfeasance in public office set out in *Odhavji* that the claimants show the presence of bad faith or improper motives. We also note Moldaver J.'s qualification, at para. 83 of *Henry*, that "there may be case-specific policy concerns that militate against an award, even if the appellant has made out the heightened per se threshold." This qualification applies equally to the tort of misfeasance in public office, but requires cogent evidence to substantiate it.

37. Bad faith/malice in this context can be satisfied by establishing deliberate abuse of the office of the Crown prosecutor in the same way it is a required in malicious prosecution. As Moldaver J. noted in *Henry* at para 49:

> It is a bedrock principle that the exercise of core prosecutorial discretion is immune from judicial review, subject only to the doctrine of abuse of process. The presence of bad faith and improper motives may indicate this type of conduct.
>
> [Citations omitted.]

Issue 3: The Claim adequately pleads misfeasance in public office and alleges malice against both the trial Crown and the appeal Crown

38. This Court has stated that the test applicable to a motion to strike is that[57],

> [I]t is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action.

[57] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 ("Imperial Tobacco") at para. 17

A motion to strike is designed to weed out only those claims that are "hopeless," "certain to fail," or "could not possibly succeed."[58]

39. The motion to strike is a tool that must be used with care. This is especially the case where the court considers novel claims, including recognized causes of action that are brought for the first time by a particular class of claimant or in a new context. In these cases, courts must be generous and err on the side of permitting the novel but arguable claim to proceed to trial.[59]

40. The Respondents pleaded necessary facts to establish bad faith/malice on the part of the trial Crown and the appeal Crown to support the claim of misfeasance in a public office.

41. As it related to the trial Crown (Ms. Cressman), the Respondents pleaded the following facts to support their allegations of misfeasance,[60] she:

(a) never asked Dr. Moss to review the videotaped statement, in which Maharaj is seen making various movements with his arms that were incompatible with having a fresh rib injury;

(b) never asked Dr. Moss further questions regarding other potential time periods in which the injury could have occurred;

(c) never made inquiries of staff at Maplehurst Detention Centre where Maharaj was incarcerated during his trial, about Maharaj, even though she was in possession of Maharaj's medical records from the facility that showed no complaints about a rib injury any time after his arrest;

(d) did not properly review the transcripts of the bail hearing to understand the inconsistent injuries reported then as opposed to those reported at the time of the stay application; and

(e) did not seek further advice or comment from the Officers who had testified at the preliminary hearing and adamantly denied assaulting Maharaj.

42. As it related to the appeal Crown (Ms. Alyea), the Respondents pleaded the following facts to support their allegations of misfeasance,[61] she:

---

[58] *Imperial Tobacco* at para. 19; *Paton Estate v. Ontario Lottery and Gaming Commission*, 2016 ONCA 458 ("*Paton Estate*") at paras. 2 and 48; *Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd.*, 2016 ONCA 324 at para. 23

[59] *Imperial Tobacco* at para. 21; *Paton Estate* at paras. 11-12

[60] Appellant's Record, Volume II, Tab 1, Statement of Claim, paragraphs 16 to 22, 28, pp.115-117, 120-121

(a) purposefully took no steps to investigate further,

(b) deliberately did not take any steps to rectify and repair the damage that had been done to the Officers' reputations,

(c) did not take any steps to prepare and file an application to introduce fresh evidence before the Court of Appeal, and

(d) during oral arguments in the appeal, the Court asked several questions about the Officers' behaviour, never adequately advised the Court of the new material facts the Crown had learned or of the exculpatory findings regarding the Officers' conduct. The Crown "never advised" the Court of these developments and that in doing so the Crown either negligently "or deliberately attempted to protect its own agents conduct, rather than respecting their duty of care and responsibility to the officers and the administration of justice."[62]

43. The Respondents pleaded the "unlawful acts" in their Claim: by failing to properly investigate the serious and unfounded allegations made against the officers, by failing to challenge those allegations in court with evidence that was readily available and by failing to conduct the prosecution to the best of their skills and abilities. The facts pleaded also demonstrated the conduct was deliberate. The trial Crown was fully aware of the Officer's testimony from the preliminary hearing. She was made aware of the officer's concerns if they were not called to challenge the allegations of police misconduct on the trial motion. The appeal Crown was aware of the findings that exonerated the Respondents and that the allegations by the accused were unsubstantiated and unfounded. The conceding of the *Charter* breach and the failure to alert the Court of Appeal to the fact that the accused had perpetrated a fraud on the trial court, demonstrated the requisite deliberate conduct to support the claim.

44. Importantly, the pleadings also establish that the conduct was for an improper purpose so as to support a finding of bad faith/malice. The conduct was undertaken to protect their own agents' conduct rather than pursue the administration of justice. These actions were taken in bad faith and inconsistent with their oath as Crown Attorneys. Both Crowns were also aware that the Respondents would be irreparably harmed by their bad faith conduct and would suffer damages as a consequence. The claim pleads damage to reputation and severe emotional distress arising from the Crown conduct. The nexus between the tortfeasor and the victim is created by the former's "conscious disregard for the interests of those who will be affected by the misconduct in question."

---

[61] Appellant's Record, Volume II, Tab 1, Statement of Claim, paragraphs 31 to 35, pp.125-126
[62] See paragraph 7 above.

45. As both the motion judge and the Court of Appeal concluded, the tort was sufficiently pleaded so as to not defeat the claim at this point in the proceedings. The Court of Appeal analysis of the issue was as follows[63]:

> [100] The motion judge set out the allegations made by the officers and stated, at para 149:
>
> > [T]he officers have pleaded that the Crown Attorneys acted unlawfully by acting in breach of their statutory duties under the *Crown Attorneys Act* and by breaching their oath of office. In my view, they have pleaded the essential elements of the tort of misfeasance in public office by asserting knowing, deliberate, and unlawful disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiffs.
>
> [101] The motion judge added, at para. 150:
>
> > The dispute between the parties largely relates to the proper construction of the statutory duties of Crown Attorneys and whether they were in fact breached in this case. At this stage, a motion to strike, I am not called upon to decide that the plaintiffs can prove their allegations; instead, I am required to assume they can.
>
> [102] We agree with the motion judge's conclusion that the pleading of misfeasance in public office was adequate, as a careful review of the statement of claim reveals. The pleading of this tort focuses in particular on the Crown's conduct of the appeal. This court's reasons were especially hard on the officers, noting that their "conduct in this case might well be characterized as 'torture'". The court noted, at para 43, to repeat:
>
> > What occurred here was the administration of a calculated, prolonged and skilfully choreographed investigative technique developed by these officers to secure evidence. This technique involved the deliberate and repeated use of intimidation, threats and violence, coupled with what can only be described as a systematic breach of the constitutional rights of detained persons - including the denial of their rights to counsel. It would be naïve to suppose that this type of egregious conduct, on the part of these officers, would be confined to an isolated incident.

---

[63] Appellant's Record, Volume I, Tab 11, Reasons of the Ontario Court of Appeal dated April 18, 2019, pp.102-104.

[103] The statement of claim asserts, in paras. 33 and 34:

> During oral argument at the appeal, Justice Doherty, asked Ms. Alyea many questions about what had occurred. She never advised him, or the court, about the new material facts that the Crown had learned about the conduct of Ms. Cressman, and more importantly, the exculpatory findings with respect to the conduct of the police officers which she had come to know.
>
> As such, the Crown, either negligently or deliberately, attempted to protect its own agents conduct, rather than respecting their duty of care and responsibility to the officers and the administration of justice. [Emphasis added.]

[104] The statement of claim states plainly, at para. 47, that Crown counsel "committed the tort of misfeasance in public office by engaging in deliberate and unlawful conduct in their capacity as Crown attorneys, clearly in contravention of their sworn statutory duty." It was "deliberate and unlawful conduct." Further:

> The new material facts Ms. Alyea and her superiors became aware of which clearly exonerated the police officers and implicated Ms. Cressman's conduct, were supressed by senior Crown Law Officers and were kept from the judges of the Court of Appeal. [Emphasis added.]

[105] Other critical elements of the tort were also pleaded, at para. 48:

> Crown attorneys involved in this case deliberately engaged in conduct that they knew to be inconsistent with the obligations of the Crown attorney and they did so in bad faith, with the knowledge that this misconduct was likely to injure the officers. [Emphasis added.]

[106] The pleading of misfeasance in public office is adequate, properly particularized, and carefully tracks the elements of the *Odhavji Estate* test. The motion judge did not err in so finding.

46. If Crown prosecutors are liable to third parties in tort for a misfeasance in public office, the Respondents have sufficiently pleaded their claim to survive the motion that was brought by the Appellant here.

PART IV – COSTS

47. The Respondents request costs for this appeal and the application for leave to appeal.

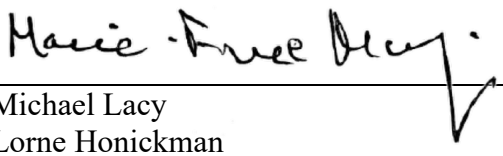
PART V – ORDER REQUESTED

48. The Respondents request that the appeal be dismissed, with costs.

PART VI – CASE SENSITIVITY

49. There is no publication ban or other restrictions on the publication of any information in relation to this matter. The Respondents factum does not contain any information that raises concerns about confidentiality or sensitivity.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 3rd day of April, 2020.



Michael Lacy
Lorne Honickman

PART VII – TABLE OF AUTHORITIES

Case **at para.**

Addison Chevrolet Buick GMC Ltd. v. General Motors of Canada Ltd., 2016 ONCA 324 ...38
Al Omani v. Canada [2017] F.C.J. No. 1050.....32
Alberta v. Elder Advocates of Alberta Society [2011] S.C.J. No. 24.....32
Castrillo v. Workplace Safety and Insurance Board 2017 ONCA 121 32
Driskell v. Dangerfield et al. 2007 MBQB 142.....14, 25
Finney v. Barreau du Quebec 2004 SCC 36.....34
Hoem v. Law Society of British Columbia 1985 CanLII 447 (BC CA).....8, 21
Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC) 4
Imbler v. Pachtman 424 U.S. 409 (1976) SCOTUS.....8
Krieger v. Law Society of Alberta 2002 SCC 65 8
McMaster v. Canada 2009 FC 937.....30
Miazga v. Kvello Estate, 2009 SCC 51.....10
Nelles v. Ontario [1989] 2.S.C.R. 170.....10, 11, 13, 22, 36
Odhavji Estate v. Woodhouse [2003] 3 S.C.R. 263 .....17, 19, 31. 30, 45
Ontario v. O.P.S.E.U. 2003 SCC 64.....7
Palmer v. The Queen [1980] 1 S.C.R. 759 7
Paton Estate v. Ontario Lottery and Gaming Commission, 2016 ONCA 458.....38
Polsom v. Couston 2014 ABQB 713 .....14, 25, 33
R. v. Abbey (No. 2) 2017 ONCA 640.....7
R. v. Ahuwalia [2000] O.J. No. 4544 (C.A.).....7
R. v. Anderseon [2014] S.C.J. No. 41 8
R. v. Boulanger, 2006 SCC 32.....26
R. v. Hinse, [1995] 4 S.C.R. 597.....35
R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42 38
R. v. Levesque [2000] 2 S.C.R. 487 7
R. v. Nixon 2011 SCC 34 9
R. v. Singh 2013 ONCA 750.....4, 5, 6
Rain Coast Water Corp. v. British Columbia [2019] B.C.J. No. 1011 (C.A.).....31
Roncarelli v. Duplessis,[1959] 1 S.C.R. 121 29
RVB Management Ltd. v. Rocky Mountain House (Town) 2014 A.J. No. 102 (Q.B.).....32

Smith v. Ontario (Attorney General) 2019 ONCA 651. 24

Other

E. Chamberlain, "Misfeasance in a Public Office" (2016 – Thomson Reuters) – Introduction.....30, 33

E. Chamberlain, "What is the role of misfeasance in a public office in modern Canadian tort law" [2009] 88 Can. Bar Rev. 579.....2, 27, 31

Report on the Liability of the Crown, Ontario Law Reform Commission, 1989, p.13 "Misfeasance in a Public Office" 2

M. Rosenberg, "The Attorney General and the Prosecution Function on the Twenty-First Century" 43(2) Queen's Law Journal.....8

STATUTES, LEGISLATION, RULES ETC.

	STATUTE
	Ministry of the Attorney General Act, R.S.O. 1990, C.M.17
	Loi sur le ministère du procureur général, L.R.O 1990, chap. M. 17
	Crown Liability and Proceedings Act S.O. 2019, c 7, Sch 17
	Loi de 2019 sur la responsabilité de la Couronne et les instances l'intéressant, L.O. 2019, chap. 7, annexe 17
	Criminal Code, R.S.C., 1985, c. C-46 *ss.* 122, 683(1)(d)
	Code criminel L.R.C. (1985), ch. C-46 ss. 122, 683(1)(d)