

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

BETWEEN:

**ATTORNEY GENERAL OF ONTARIO**

Appellant

- and -

**JAMIE CLARK, DONALD BELANGER and STEVEN WATTS**

Respondents

- and -

**ATTORNEY GENERAL OF NEW BRUNSWICK  
ATTORNEY GENERAL OF MANITOBA  
ATTORNEY GENERAL OF BRITISH COLUMBIA  
ATTORNEY GENERAL OF ALBERTA  
ATTORNEY GENERAL OF SASKATCHEWAN  
MARK SAUNDERS  
CANADIAN ASSOCIATIONS OF CHIEFS OF POLICE  
CANADIAN ASSOCIATION OF CROWN COUNSEL and  
ONTARIO CROWN ATTORNEYS' ASSOCIATION**

Interveners

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**FACTUM OF THE INTERVENER**  
**ATTORNEY GENERAL OF ALBERTA**  
**RULES 37 AND 42 OF THE *RULES OF THE SUPREME COURT OF CANADA***

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# **FACTUM OF THE INTERVENER**

## **PART I – OVERVIEW AND FACTS**

### **Overview**

1. To date, this Honourable Court has recognized two exceptions to prosecutorial immunity from civil liability – malicious prosecution and *Charter* damages for wrongful non-disclosure. Both exceptions are restricted to the accused. Each establishes a high threshold to succeed. Gross negligence or recklessness will not be sufficient. This Court has carefully circumscribed these two exceptions to account for the good governance concerns arising when prosecutorial liability is expanded.

2. The Ontario Court of Appeal’s decision in the case at bar virtually eradicates these carefully crafted exceptions. It opens the door to any number of claimants seeking damages, and approves a cause of action, misfeasance in public office, with a liability threshold lower than that previously available. It also illustrates the lack of effectiveness of the striking remedy for barred negligence claims simply recast as misfeasance claims.

3. This Court must now determine whether to create further exceptions to prosecutorial immunity in the form of third party and misfeasance claims. It is the position of the Attorney General of Alberta that the implications of doing so would be far-reaching and ultimately threaten the administration of justice. The proposed expansion of prosecutorial liability raises compelling good governance concerns, undermines prosecutorial independence by pressuring prosecutors to act contrary to their unique role and duties, and jeopardizes the liberty, security, and fair trial interests of the accused.

### **Statement of Facts**

4. The Alberta Attorney General will briefly review the factual background to frame the analysis of the issues, and assumes the facts in the claim to be true.

5. The Respondents arrested and charged two accused in connection with a robbery. At his bail hearing, the accused Maharaj advised that he had sustained injuries during his arrest. At the

preliminary hearing, two of the Respondents denied assaulting him. Prior to trial, Maharaj filed a *Charter* application. He gave the prosecutor his bail hearing transcript and rib X-ray. A hospital physician advised her that it was possible the injury was sustained on the arrest date. The detention facility medical records obtained by the prosecutor showed no rib injury complaints. After consulting with a senior prosecutor, she stayed the charges. She did not believe she could prove the voluntariness of Maharaj's confession given the assault allegations.<sup>1</sup>

6. After he was found guilty, the co-accused Singh also brought a *Charter* application alleging a police assault. At the hearing, the prosecutor cross-examined both accused. The prosecutor called no evidence, conceded that the accused met his evidentiary burden, and argued that a sentence reduction was an appropriate remedy. The trial judge found that the Respondents assaulted both accused and reduced Singh's sentence.<sup>2</sup> The Ontario Court of Appeal ("ONCA") granted Singh's appeal and stayed his convictions based on the excessive force.<sup>3</sup>

7. Prior to the appeal hearing, the Special Investigations Unit commenced then terminated an investigation. Neither accused cooperated. In its review, the Professional Standards Unit ("PSU") concluded that the allegations could not be substantiated. It did not interview the Respondents or the two accused. Instead, it gave Maharaj's videotaped statement to the hospital physician. Based on Maharaj's arm movements, he opined that the rib injury could have occurred on the arrest date but he believed it pre-dated the arrest.<sup>4</sup>

8. The Respondents – seeking \$1.25 million in damages and a declaration that they did not assault the accused – sued the Appellant for the alleged misconduct of the trial, senior, and appellate prosecutors. The motion judge struck the negligence claim but allowed the misfeasance to continue.<sup>5</sup> The ONCA dismissed the resultant appeals. It held that Crown attorneys are not immune from civil liability in misfeasance. It found that the deliberate abuse of

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<sup>1</sup> Appellant Factum ("AF") at paras 13-19

<sup>2</sup> AF at paras 20-22; *R v Singh*, 2012 ONSC 2028 at para 43; *R v Singh*, 2012 ONSC 4429

<sup>3</sup> *R v Singh*, 2013 ONCA 750

<sup>4</sup> AF at paras 23-24

<sup>5</sup> AF at paras 27-30, 38-39; *Clark v Ontario (Attorney General)*, 2017 ONSC 3683

authority provided the functional equivalent of the high liability threshold required to address good governance concerns, and could be satisfied by bad faith or improper purposes.<sup>6</sup>

9. This Court granted the Appellant’s application for leave to appeal. The Alberta Attorney General restricts its submissions to the first two questions in issue.

## **PART II – ISSUES**

**Question in 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?

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

**Intervener’s Position with regard to Questions in Issue 1 and 2** Prosecutorial immunity should not be displaced to permit third party or misfeasance claims.

## **PART III – STATEMENT OF ARGUMENT**

### **Questions in Issue 1 and 2 – Prosecutorial Immunity, Third Parties, and Misfeasance**

10. The proposed expansion of prosecutorial liability to third party or misfeasance claims raises compelling good governance concerns, threatens prosecutorial independence, and jeopardizes the liberty, security, and fair trial rights of the accused.

#### **Prosecutorial Immunity**

11. In *Nelles v Ontario*, this Court first recognized an exception to prosecutorial immunity from civil liability – malicious prosecution. To succeed, the accused plaintiff must prove, *inter alia*, that the proceedings were terminated in his or her favour, that they were instituted without reasonable and probable cause, and that the prosecutor acted with malice. This high threshold addresses the policy concerns arising from expanding prosecutorial liability.<sup>7</sup>

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<sup>6</sup> *Clark v Ontario (Attorney General)*, 2019 ONCA 311 at paras 99, 107-114

<sup>7</sup> *Nelles v Ontario*, [1989] 2 SCR 170 at 192-200. See also *Proulx v Quebec (Attorney General)*, 2001 SCC 6; *Miazga v Kvello Estate*, 2009 SCC 51



12. In *Henry v British Columbia (Attorney General)*, this Court extended prosecutorial liability to include *Charter* damages for wrongful non-disclosure. To succeed, an accused must prove that a prosecutor intentionally withheld information where he or she knew (or reasonably ought to have known) that it was material to the defence and that the failure to disclose would likely impinge on the accused's ability to make full answer and defence. This Court adopted the high threshold to address two compelling good governance concerns.<sup>8</sup>

13. The first good governance concern identified in *Henry* was the diversion of prosecutors from their duties. This Court confirmed that the collective interest of Canadians is best served when prosecutors are able to focus on their primary responsibility – the fair and effective prosecution of crime. The second good governance concern identified was the chilling effect expanding liability would have on prosecutors. This Court confirmed that the public interest is undermined when prosecutorial decision-making is influenced by considerations extraneous to a prosecutor's role as a quasi-judicial officer.<sup>9</sup>

### **Good Governance Concerns**

14. The two compelling good governance concerns identified in *Henry* strongly militate against expanding prosecutorial liability to third party and misfeasance claims. The potentially endless number of third party claimants will result in prosecutors spending undue amounts of time and energy defending their conduct rather than performing their duties. This will be exacerbated by the lower liability threshold for misfeasance and the demonstrated challenges in striking such actions.

15. There are two types of misfeasance. The first involves conduct specifically intended to injure a person or class of persons. The second involves a public officer who acts with knowledge that he or she has no power to do the act complained of and that the act is likely to injure the plaintiff. The common elements to both types are: (1) deliberate unlawful conduct in the exercise of public functions; and (2) an awareness that the conduct is unlawful and likely to injure the plaintiff. Malice is not required.<sup>10</sup>

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<sup>8</sup> *Henry v British Columbia (Attorney General)*, 2015 SCC 24 at paras 31-32, 39-41, 66-82

<sup>9</sup> *Ibid* at paras 72-73

<sup>10</sup> *Odhavji Estate v Woodhouse*, 2003 SCC 69 at paras 22-32

16. If claimants (third parties or an accused) are able to avoid having claims struck by simply pleading the necessary elements for misfeasance, prosecutors will be required to respond. Where there is an insufficient evidentiary basis for the claim, dismissal on a summary basis may be possible. To succeed, however, prosecutors will need to swear affidavits justifying decisions made in the course of the prosecution in the exercise of their core prosecutorial discretion. They will then be subject to cross-examination. Diverted from their duties, prosecutors will expend additional time and resources assisting with the dismissal of claims. The impact, including the financial cost of defending such claims, would be significant.

17. The determination of misfeasance claims on a summary basis, or at trial, will also require an evaluation of a prosecutor's exercise of discretion. This would unquestionably have an adverse impact on prosecutions and the administration of justice. If misfeasance claims are permitted to proceed, prosecutors would be required to defend the exercise of prosecutorial discretion well after the fact to a different court. The reviewing court would have to second-guess the prosecutor's judgment to ascertain his or her motives for every impugned decision. In *R v Power*, this Court confirmed that the judicial review of prosecutorial discretion is "improper and technically impracticable", leading to "a very inefficient administration of justice".<sup>11</sup>

18. The two good governance concerns canvassed in *Henry* are evident in the case of *Polsom v Couston*. The plaintiff's stepfather was charged with sexually assaulting her. The charges were stayed for delay. The plaintiff sued the prosecutor for misfeasance. The master declined to strike the claim on the basis that it disclosed no cause of action. She noted courts often allow novel claims to proceed past a striking application as long as it is not "plain and obvious" the claim will fail. She found that the prosecutor's alleged failure to honour the accused's right to disclosure and a timely trial was an omission constituting the unlawful act required by the tort. She granted the plaintiff leave to seek to amend her claim to meet the other requirements for pleading the tort.<sup>12</sup>

19. The plaintiff applied to amend her claim, the third in a series of applications with corresponding hearings related to the proceedings. She claimed prosecutorial misfeasance based

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<sup>11</sup> *R v Power*, [1994] 1 SCR 601 at 626-627

<sup>12</sup> *Polsom v Couston*, 2014 ABQB 43 at paras 1-6, 31-32, 45-59

on two types of wrongful acts *related to the accused*: (1) the breach of the accused's *Charter* rights; and (2) four abuses of prosecutorial discretion (failing to stay the charges forthwith, failing to oppose the adjournment request, failing to require a waiver of the accused's section 11(b) rights, and failing to oppose the stay). The master declined to consider whether a breach of an accused's *Charter* rights could meet the requirement of an unlawful act when advanced by a third party. She ultimately concluded that there was an insufficient factual matrix pled to link the plaintiff's claim to the breach of the accused's *Charter* rights, and that the pleadings were not sufficient to support a claim of deliberate abuse of prosecutorial discretion coupled with a reckless disregard for the harm of the plaintiff. The claim was struck on that basis.<sup>13</sup>

20. The third party's misfeasance claim in *Polsom* represented an after-the-fact attack on the prosecutor's decision-making, including on issues of core prosecutorial discretion.<sup>14</sup> The impugned decisions were the type that prosecutors are called upon to make on a regular basis. Exposing prosecutors to misfeasance claims by dissatisfied third parties will divert them from their duties and have a chilling effect on their decision-making. It will also encourage prosecutors to conduct proceedings for the sole benefit of third parties such as witnesses and complainants. Such conduct undermines prosecutorial independence, and is contrary to the role and duties of prosecutors.

### **Role and Duties of Crown Prosecutors**

21. Both the *Polsom* and ONCA decisions illustrate the threat to prosecutorial independence if civil liability is expanded to third party misfeasance claims. A prosecutor acts as a minister of justice. He or she does not act as counsel for investigating officers, witnesses, or complainants. The focus of a prosecutor is not, and must never be, on obtaining a conviction. The prosecutor's aim is always to achieve a just result.

No lawyer is indifferent to the outcome of the case, but for prosecutors the focus cannot be on getting to conviction, or competing with defence counsel, *or carrying out the wishes of the investigative agency or victims*. Prosecutors must focus on achieving a just outcome, and a just outcome, whether conviction or

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<sup>13</sup> *Polsom v Couston*, 2014 ABQB 713 at footnote 1 and paras 1, 29, 31-49

<sup>14</sup> *Krieger v Law Society of Alberta*, 2002 SCC 65 at paras 43-47; *R v Anderson*, 2014 SCC 41 at paras 44-45

acquittal, will be one that follows a trial that was fair to all the participants.<sup>15</sup>  
[italics added]

22. In *Boucher v R*, this Court confirmed the role and duties of prosecutors. Rand J. held that:

It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts presented: it should be done firmly and pressed to its legitimate strength but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility.<sup>16</sup>

23. In a separate judgment, Locke J. confirmed that the Crown’s function is to be an assistant to the court in the furtherance of justice and not to act as counsel for any particular person or party.<sup>17</sup>

24. In the more than 60 years since *Boucher*, this Court has continued to emphasize the prosecutor’s unique role and duties in the administration of justice. In *Proulx v Quebec (Attorney General)*, it confirmed the importance of a prosecutor’s duty not to allow individuals involved in the prosecution to use the process for their own purposes. It also held that a prosecutor acting with “mixed motives” (conducting prosecutions for the benefit of third parties) was inconsistent with his or her status as a “minister of justice”.<sup>18</sup>

25. Ironically, if the expansion of liability sought is permitted, one can easily envision scenarios where prosecutors are simultaneously sued by an accused and third parties. An accused alleging that the prosecutor acted with mixed motives by conducting a prosecution to defend third party reputations could sue in malicious prosecution if the proceedings were terminated in his or her favour, or in misfeasance regardless of the outcome. At the same time, third parties (such as police officers, civilian witnesses, expert witnesses, complainants, family

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<sup>15</sup> Robert J. Frater Q.C., *Prosecutorial Misconduct*, 2<sup>nd</sup> ed (Toronto: Thomson Reuters, 2017) at 3 [Tab 1]

<sup>16</sup> *Boucher v R*, [1955] SCR 16 at 23-24

<sup>17</sup> *Ibid* at 25

<sup>18</sup> *Proulx*, *supra* note 7 at paras 4, 43-45. See also *R v Regan*, 2002 SCC 12 at paras 66, 69, 89; *R v Quesnelle*, 2014 SCC 46 at para 18; *R v Cawthorne*, 2016 SCC 32 at para 24

members, and members of the community) alleging that the prosecutor failed to adequately defend their reputations could sue in misfeasance whether or not the prosecution was successful.

26. Appellate courts have also expressed concern where the role of the prosecutor has been compromised by third party interests. In *R v GPJ*, for example, the Manitoba Court of Appeal noted that the appellate prosecutor's previous role as complainant's counsel ignored the unique role of the prosecutor in the criminal justice system and raised serious conflict of interest concerns. It found that this former role resulted in a likely perception, in the eyes of the accused and those of an informed and reasonable person, that the prosecutor and the complainant shared a common purpose in seeking the accused's conviction. It confirmed that this was no part of a prosecutor's public duty exercising his or her quasi-judicial functions.<sup>19</sup>

27. It is not the position of the Alberta Attorney General that prosecutors must ignore justice system participants or members of the community when conducting prosecutions. This would also be contrary to the prosecutor's duty to seek a just result while ensuring the fair treatment of all participants. This does not mean, however, that third parties are entitled to dictate when a prosecution is initiated or terminated, or how it is to be conducted.

28. Fortunately, legislation has been enacted to allow for the participation of third parties where appropriate, without compromising prosecutorial independence. In sentencing, for example, victim impact statements can be filed and restitution requests may be made.<sup>20</sup> In Alberta, the *Victims of Crime and Public Safety Act* provides victims the right to receive information on the criminal justice system, and the status of an investigation and prosecution.<sup>21</sup> Significantly, Parliament continues to address the systemic concerns of sexual assault complainants.<sup>22</sup> Certain applications by an accused will now trigger witness notifications and the opportunity to participate at hearings.<sup>23</sup> This Court has also confirmed the importance of

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<sup>19</sup> *R v GPJ*, 2001 MBCA 18 at paras 51-58. See also *R v Tran*, 2010 ONCA 471 at para 99

<sup>20</sup> *Criminal Code*, RSC 1985, c C-46, ss 722, 737.1, 738

<sup>21</sup> *Victims of Crime and Public Safety Act*, RSA 2000, c V-3, ss 2-4

<sup>22</sup> *R v Regan*, *supra* note 18 at paras 85, 115

<sup>23</sup> See, for example, *Criminal Code*, RSC 1985, c C-46, ss 278.3(5), 278.4(2), 278.94(2), 278.94(3)

judges acting as gatekeepers with respect to certain evidence in sexual assault prosecutions regardless of the positions of counsel.<sup>24</sup>

### **Liberty, Security, and Fair Trial Interests of the Accused**

29. The expansion of prosecutorial liability to third party misfeasance claims will have other deleterious effects. By compromising prosecutorial independence and encouraging defensive lawyering, the liberty, security, and fair trial interests of the accused will be jeopardized.

30. The key issue in almost every trial is the credibility and reliability of evidence. An accused will routinely seek to undermine the Crown's case through the cross-examination of Crown witnesses and the calling of defence evidence. The proposition that a prosecutor must halt the proceedings whenever a third party's reputation is impugned, to conduct investigations and call rebuttal evidence, or risk civil liability, will inevitably lead to delay jeopardizing an accused's right to be tried within a reasonable period of time. As this Court has noted, unreasonable delay denies justice not only to the accused, but to the victims, their families, and the public as a whole.<sup>25</sup>

31. Expanding prosecutorial liability to third party misfeasance claims will also result in prosecutors constantly conducting risk assessments of their decision-making. Such concerns are not without foundation. Not surprisingly, witnesses, complainants, and members of the community are vested in prosecutions. They often seek to hold someone responsible when an accused is acquitted, convicted of an included offence, or receives what they perceive to be a low sentence. A review of the jurisprudence confirms that third parties have previously attempted to challenge or advance claims for, *inter alia*, the failure to prosecute,<sup>26</sup> the staying of private prosecutions,<sup>27</sup> and the presentation of sentencing submissions.<sup>28</sup>

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<sup>24</sup> See, for example, *R v Barton*, 2019 SCC 33 at para 68

<sup>25</sup> *R v Jordan*, 2016 SCC 27 at paras 1-3, 19-28

<sup>26</sup> *Griffith v Crown Counsel*, 2000 BCSC 1395 at paras 17 and 32, aff'd 2003 BCCA 211, leave to appeal to SCC refused; *Paquette v Desrochers*, 2000 CanLII 22729 (ONSC), rev'd in part, 2001 CanLII 8617 (ONCA), leave to appeal to SCC refused; *Leung v Kilgour*, 2004 ABQB 408 at para 17 aff'd 2006 ABCA 17

<sup>27</sup> *Kostuch v Alberta (Attorney General)*, 1995 CanLII 6244 (ABCA), leave to appeal to SCC refused

<sup>28</sup> *Piercey v Newfoundland (Attorney General)*, 1999 CanLII 19734 at para 5 (NLSC)

32. Faced with the prospect of third party claimants and a low liability threshold, prosecutors may feel pressured to oppose an accused's otherwise meritorious applications such as requests to adjourn or requests to extend time to call expert witnesses or file *Charter* arguments. Expanding prosecutorial liability could also discourage prosecutors from making the difficult and unpopular decisions they routinely face.<sup>29</sup> These decisions often involve high-profile cases and serious crimes of violence. The decisions to be made may include conceding that an accused has satisfied the NCR designation for an offence involving extreme violence, discontinuing such a prosecution where there is no longer a reasonable likelihood of conviction, or entering into a plea bargain for an included offence. Providing an incentive to avoid making such decisions operates to the detriment of the accused and the administration of justice.

### **Conclusion**

33. The above examples demonstrate the dangers of expanding prosecutorial liability to third party claimants. It will divert prosecutors from their duties and threaten their independence by creating incentives to avoid civil liability. This pressure on prosecutors to act contrary to their role and duties will correspondingly threaten the liberty, security, and fair trial interests of the accused. Extending prosecutorial liability to misfeasance claims will also allow both accused and third parties to advance barred negligence claims disguised as claims in misfeasance given the demonstrated challenges in striking such actions. Ultimately, expanding prosecutorial liability in the manner sought will undermine the administration of justice.

## **PART V – REQUEST TO PRESENT ORAL ARGUMENT**

34. The request was previously granted by Order dated June 19, 2020.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Calgary, Alberta, this 31<sup>st</sup> of July, 2020.

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COUNSEL FOR THE INTERVENER

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<sup>29</sup> See, for example, *British Columbia (Attorney General) v Davies*, 2009 BCCA 337 at para 38

## **PART VII – TABLE OF AUTHORITIES AND LEGISLATION**

<b><u>Authorities</u></b>	<b>Cited at Paragraph No.</b>	<b>Tab No. (if applicable)</b>
<i>British Columbia (Attorney General) v Davies</i> , <a href="#">2009 BCCA 337</a> at para 38	32	
<i>Boucher v R</i> , <a href="#">[1955] SCR 16</a> at 23-25	22, 24	
<i>Clark v Ontario (Attorney General)</i> , <a href="#">2017 ONSC 3683</a>	8	
<i>Clark v Ontario (Attorney General)</i> , <a href="#">2019 ONCA 311</a> at paras 99, 107-114	8	
<i>Griffith v Crown Counsel</i> , <a href="#">2000 BCSC 1395</a> at paras 17 and 32, aff'd <a href="#">2003 BCCA 211</a> , leave to appeal to SCC refused	31	
<i>Henry v British Columbia (Attorney General)</i> , <a href="#">2015 SCC 24</a> at paras 31-32, 39-41, 66-82	12, 13, 14, 18	
<i>Kostuch v Alberta (Attorney General)</i> , <a href="#">1995 CanLII 6244</a> (ABCA), leave to appeal to SCC refused	31	
<i>Krieger v Law Society of Alberta</i> , <a href="#">2002 SCC 65</a> at paras 43-47	20	
<i>Leung v Kilgour</i> , <a href="#">2004 ABQB 408</a> at para 17, aff'd <a href="#">2006 ABCA 17</a>	31	
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<i>Nelles v Ontario</i> , <a href="#">[1989] 2 SCR 170</a> at 192-200	11	
<i>Odhavji Estate v Woodhouse</i> , <a href="#">2003 SCC 69</a> at paras 22-32	15	
<i>Paquette v Desrochers</i> , <a href="#">2000 CanLII 22729 (ONSC)</a> , rev'd in part <a href="#">2001 CanLII 8617</a> at para 4 (ONCA), leave to appeal to SCC refused	31	
<i>Piercey v Newfoundland (Attorney General)</i> , <a href="#">1999 CanLII 19734</a> at para 5 (NLSC)	31	
<i>Polsom v Couston</i> , <a href="#">2014 ABQB 43</a> at paras 1-6, 31-32, 45-59	18, 20, 21	
<i>Polsom v Couston</i> , <a href="#">2014 ABQB 713</a> at paras 1, 29, 31-49	19, 20, 21	
<i>Proulx v Quebec (Attorney General)</i> , <a href="#">2001 SCC 6</a> at paras 4, 43-45	11, 24	
<i>R v Anderson</i> , <a href="#">2014 SCC 41</a> at paras 44-45	20	
<i>R v Barton</i> , <a href="#">2019 SCC 33</a> at para 68	28	
<i>R v Cawthorne</i> , <a href="#">2016 SCC 32</a> at para 24	24	
<i>R v GPJ</i> , <a href="#">2001 MBCA 18</a> at paras 51-58	26	



<b><u>Authorities</u></b>	<b>Cited at Paragraph No.</b>	<b>Tab No. (if applicable)</b>
<i>R v Jordan</i> , <a href="#">2016 SCC 27</a> at paras 1-3, 19-28	30	
<i>R v Power</i> , <a href="#">[1994] 1 SCR 601</a> at 626-627	17	
<i>R v Quesnelle</i> , <a href="#">2014 SCC 46</a> at para 18	24	
<i>R v Regan</i> , <a href="#">2002 SCC 12</a> at paras 66, 69, 89, 85, 115	24, 28	
<i>R v Singh</i> , <a href="#">2012 ONSC 2028</a>	6	
<i>R v Singh</i> , <a href="#">2012 ONSC 4429</a>	6	
<i>R v Singh</i> , <a href="#">2013 ONCA 750</a>	6	
<i>R v Tran</i> , <a href="#">2010 ONCA 471</a> at para 99	26	
<b><u>Legislation</u></b>	<b>Cited at Paragraph No.</b>	<b>Tab No. (if applicable)</b>
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">278.3(5)</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">278.3(5)</a>	28	
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">278.4(2)</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">278.4(2)</a>	28	
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">278.94(2) and (3)</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">278.94(2) and (3)</a>	28	
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">722</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">722</a>	28	
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">737.1</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">737.1</a>	28	
<i>Criminal Code</i> , RSC 1985, c C-46, s <a href="#">738</a> <i>Code criminel</i> , LRC (1985), ch C-46, s <a href="#">738</a>	28	
<a href="#">Victims of Crime and Public Safety Act, RSA 2000, c V-3, ss 2-4</a>	28	
<b><u>Secondary Sources</u></b>	<b>Cited at Paragraph No.</b>	<b>Tab No. (if applicable)</b>
Robert J. Frater Q.C., <i>Prosecutorial Misconduct</i> , 2 <sup>nd</sup> ed (Toronto: Thomson Reuters, 2017) at 3	21	1