

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**BRADLEY W. BLAIR, DANIELLE BLAIR, NATHANIEL BLAIR,
and ASHLEY BLAIR**

Applicants

- and -

**THE HON. PREMIER DOUGLAS ROBERT FORD, DEAN
FRENCH, DEPUTY SOLICITOR GENERAL (COMMUNITY
SAFETY) MARIO DI TOMMASO, DEPUTY ATTORNEY
GENERAL PAUL BONIFERRO, STEVE ORSINI, JANE
DOE(S), and JOHN DOE(S), and HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO**

Respondents

NOTICE OF CONSTITUTIONAL QUESTION
(Re *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17., sections 11 & 17)

The Applicants intend to question the constitutional validity of sections 11 & 17 of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17.

The question is to be argued on a date and time to be determined by the Registrar of the Superior Court at 393 University Avenue, Toronto, Ontario M5G 1E6.

The following are the material facts giving rise to the constitutional question:

1. On July 1, 2019, the *Crown Liability and Proceedings Act*, S.O. 2019, c. 7, Sched. 17 (the “*CLPA*”) came into force in Ontario;
2. The *CLPA* replaced the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, and introduced new limitations and barriers to plaintiffs seeking to bring civil claims against the Crown, its officers, employees or agents that did not exist in the *Proceedings Against the Crown Act*;
3. These amendments include sections 11 & 17 of the *CLPA*;

4. Section 11 extinguishes any cause of action respecting negligent actions taken in good faith by Crown officers, employees or agents in the performance of their governmental functions;
5. Section 17 creates a new and distinct procedure for claims brought against the Crown in respect of the tort of misfeasance in public office, or any tort based on bad faith. This section requires parties to seek leave of the Superior Court as a precondition for bringing a claim against the Crown for such torts. It further requires that parties bear the costs of the leave procedure, which includes the production of an affidavit and all relevant documents, as well as potentially undergoing cross-examination on the affidavit;
6. On March 4, 2019, twenty days shy of his 33rd anniversary of service, Mr. Blair was terminated from his position as a Deputy Commissioner with the Ontario Provincial Police (“OPP”);
7. Mr. Blair was fired as a reprisal for his efforts to shed light on suspected political interference in the functioning of the OPP, particularly by trying to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process;
8. Mr. Blair seeks to bring a claim of negligence and misfeasance in public office against his employers, the Respondents, all of whom are Crown officers and employees;
9. Mr. Blair seeks a declaration that ss. 11 & 17 are unconstitutional, and an order rendering them of no force and effect.

The following is the legal basis for the constitutional question:

10. Sections 11 & 17 of the *CLPA* fail to strike a proportionate balance between the goals of the legislature and the constitutional rights of individuals such as Mr. Blair, who suffer injury due to the negligence, misfeasance or bad faith of government officials and who seek redress for those wrongs before the Superior Court;
11. While the provincial government has the power to control procedure in civil matters under s. 92(14) of the *Constitution Act, 1867*, that power is not absolute;
12. The exercise of the s. 92(14) powers must be harmonious with the Constitution as a whole, and in particular, with s. 96 of the *Constitution Act, 1867*, which protects the core jurisdiction of the Superior Courts, and the *Canadian Charter of Rights and Freedoms*;
13. Section 11 fundamentally infringes upon s. 96, by directly and overtly extinguishing a cause of action that previously existed under the core jurisdiction of the Superior Courts. Not simply creating a barrier, s. 11 strips individuals of any right to seek redress for negligent acts taken by government officials in the conduct of their governmental function, so long as that act is taken in good faith;
14. Additionally, s. 11 violates s. 7 of the *Canadian Charter of Rights and Freedoms*, due to the state-imposed mental distress it will cause to plaintiffs who are stripped of any right to

bring forward a cause of action to right the wrongs committed against them by negligent government actors;

15. Section 17 violates s. 96 of the *Constitution Act, 1867*, by creating a barrier to access to the Superior Courts in the form of inevitably high costs and lengthier proceedings that will effectively bar individuals from bringing claims for bad faith conduct against the Crown;
16. Further, s. 17 violates s. 7 of the *Canadian Charter of Rights and Freedoms*, due to the state-imposed mental distress it will cause to plaintiffs who will be rendered incapable of seeking redress for such torts due to their inability to pay the costs associated with the leave procedure;
17. The right to life, liberty, and security of the person requires that individuals who have suffered injury intentionally caused by state actors have meaningful and accessible means of seeking redress for that conduct through the Superior Court. Section 17 fundamentally infringes upon that right;
18. Finally, in enacting s. 17 the provincial government has covertly undertaken to effectively eliminate the common law tort of misfeasance in public office by establishing procedural boundaries that will limit any but the wealthiest individuals from bringing forth claims in this tort;
19. Any further and other grounds that counsel may advise, and this Honourable Court may permit.

DATE: November 18, 2019



Julian N. Falconer (LSO #29465R)
Asha James (LSO #56817K)

FALCONERS LLP
Barristers-at-Law
10 Alcorn Avenue, Suite 204
Toronto, Ontario M4V 3A9
Tel.: (416) 964-0495
Fax: (416) 929-8179

Counsel for the Plaintiffs

TO: The Attorney General of Ontario
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M5G 2K1
Fax: (416) 326-4015

AND TO: The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, ON M5X 1K6
Fax: (416) 952-0298

AND TO: The Honourable Premier Douglas Robert Ford (via Legal Counsel)
Legislative Building, Queens Park
Toronto, ON M7A 1A1

c/o the Ministry of the Attorney General for Ontario
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Dean French
Personal Address Unknown
c/o Ministry of the Attorney General
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Deputy Solicitor General (Community Safety) Mario Di Tommaso
(Ministry of the Solicitor General)
18th Floor, 25 Grosvenor Street
Toronto, ON M7A 1Y6

AND TO: Deputy Attorney General Paul Boniferro
(Ministry of the Attorney General)
McMurtry-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

AND TO: Steve Orsini
Personal Address Unknown
c/o Ministry of the Attorney General
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Jane and John Doe(s)

AND TO: Her Majesty the Queen in Right of Ontario
(Ministry of the Attorney General)
c/o Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: THIS HONOURABLE COURT