Court File No.: 35745

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

B E T W E E N :

IVAN WILLIAM MERVIN HENRY

APPELLANT
(Respondent)

– and –

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, AS REPRESENTED BY THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

– and –

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondents)

FACTUM OF THE INTERVENER, CANADIAN ASSOCIATION OF CROWN COUNSEL

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

CAVALLUZZO SHILTON McINTYRE CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Paul J.J. Cavalluzzo
Adrienne Telford
Tel: (416) 964-1115
Fax: (416) 964-5895
Email: pcavalluzzo@cavalluzzo.com
atelford@cavalluzzo.com

Counsel for the Intervener, Canadian Association of Crown Counsel

SUPREME ADVOCACY LLP
340 Gilmour Street, Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Ottawa Agent for Counsel for the Intervener, Canadian Association of Crown Counsel

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ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondents)

– and –

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NOVA SCOTIA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF NEWFOUNDLAND AND LABRADOR, CANADIAN ASSOCIATION OF CROWN COUNSEL, CRIMINAL LAWYERS' ASSOCIATION, CANADIAN CIVIL LIBERTIES ASSOCIATION, ASSOCIATION IN DEFENCE OF THE WRONGLY CONVICTED and DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS AND BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENERS

Publication Ban

Interdiction de publication

FARRIS, VAUGHAN, WILLS & MURPHY LLP
PO Box 10026, Pacific Centre South
25th Floor, 700 West Georgia Street
Vancouver BC V7Y 1B3

Joseph J. Arvay, Q.C.
A. Cameron Ward
Marilyn Sandford
Alison M. Latimer
Tel: 604.684.9151
Fax: 604.661.9349
Email: jarvay@farris.com

Counsel for the Appellant, William Ivan Henry

SACK GOLDBLATT MITCHELL LLP
500 - 30 Metcalfe Street
Ottawa, Ontario, K1P 5L4

Colleen Bauman
Tel: 613.235.5327
Fax: 613.235.3041
Email: cbauman@sgmlaw.com

Ottawa Agent for Counsel for the Appellant, William Ivan Henry

MINISTRY OF JUSTICE
Legal Services Branch
#1301 – 865 Hornby Street
Vancouver BC V6Z 2G3

Karen Horsman
Peter Juk, Q.C.
Tel: 604.660.3093
Fax: 604.660.2636
Email: karen.horsman@gov.bc.ca
peter.juk@gov.bc.ca

Counsel for the Respondent, Her Majesty the Queen in Right of the Province of British Columbia as Represented by the Attorney General of British Columbia

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin Street
Ottawa, ON K1P 1C3

Brian A. Crane, Q.C.
Tel.: (613) 233-1781
Fax: (613) 563-9869
Email: brian.crane@gowlings.com

Ottawa Agent for Counsel for the Respondent, Her Majesty the Queen in Right of the Province of British Columbia as Represented by the Attorney General of British Columbia

Publication Ban

Interdiction de publication

DEPARTMENT OF JUSTICE CANADA
#900 – 841 Howe Street
Vancouver BC V6Z 2S9

Mitchell R. Taylor, Q.C.
Susanne G. Pereira
Tel: 604.666.2061
Fax: 604.666.2760
Email: mitch.taylor@justice.gc.ca
susanne.pereira@justice.gc.ca

Counsel for the Respondent, Attorney General of Canada

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
50 0'Connor Street, Suite 500, Room 556
Ottawa, ON K2P 6L2

Christopher M. Rupar
Tel.: (613) 941-2351
Fax: (613) 954-1920
Email: Christopher.rupar@justice.gc.ca

Ottawa Agent for Counsel for the Respondent, Attorney General of Canada

PROCUREUR GÉNÉRAL DU QUÉBEC
1200, route de l'Église, 2e étage
Québec QC G1V 4M1

Robert Desroches
Carole Soucy
Sagal Bachir Osman
Tel: 418.643.1477
Fax: 418.644.7030
Email: Robert.desroches@justice.gouv.qc.ca

Counsel for the Intervener, Attorney General of Quebec

NOËL & ASSOCIÉS
111, rue Champlain
Gatineau, Quebec J8X 3R1

Pierre Landry
Tel.: (819) 771-7393
Fax: (819) 771-5397
Email: p.landry@noelassocies.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Quebec

DEPARTMENT OF JUSTICE (NS)
5151 Terminal Road, 4th Floor, PO Box 7
Halifax NS B3J 2L6

Edward A. Gores, Q.C.
Tel: 902.424.4024
Fax: 902.424.1730
Email: goresea@gov.ns.ca

-and-

NOVA SCOTIA PUBLIC PROSECUTION SERVICE
1505 Barrington Street, Suite 1225
Halifax NS B3J 3K5

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax (613) 563-9869
Email: lynne.watt@gowlings.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Nova Scotia

James A. Gumpert, Q.C.
Tel: 902.424.8995
Fax: 902.424.0653
Email: gumperja@gov.ns.ca

Counsel for the Intervener, Attorney General of Nova Scotia

ATTORNEY GENERAL OF SASKATCHEWAN
Constitutional Law Branch
820 – 1874 Scarth Street
Regina SK S4P 4B3

Graeme G. Mitchell, Q.C.
Tel: 306.787.8385
Fax: 306.787.9111
Email: graeme.mitchell@gov.sk.ca

Counsel for the Intervener, Attorney General of Saskatchewan

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax (613) 563-9869
Email: lynne.watt@gowlings.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Saskatchewan

ATTORNEY GENERAL OF NEW BRUNSWICK
Legal Services Branch
PO Box 6000, Stn A
Fredericton NB E3B 5H1

Gaétan Migneault
Tel: 506.453.2222
Fax: 506.453.3275
Email: gaetan.migneault@gnb.ca

Counsel for the Intervener, Attorney General of New Brunswick

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax (613) 563-9869
Email: lynne.watt@gowlings.com

Ottawa Agent for Counsel for the Intervener, Attorney General of New Brunswick

DEPARTMENT OF JUSTICE
Constitutional Law Branch
1205 - 405 Broadway
Winnipeg MB R3C 3L6

Michael Conner
Denis Guénette
Tel: 204.945.6723
Fax: 204.945.0053
Email: Michael.Conner@gov.mb.ca

Counsel for the Intervener, Attorney General of Manitoba

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

Guy Régimbald
Tel: 613.786.0197
Fax: 613.788.3559
Email: guy.regimbald@gowlings.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Manitoba

ATTORNEY GENERAL OF ALBERTA
Appeals and Prosecution Policy Branch
Alberta Justice, Criminal Justice Division
3rd Floor, Centrium Place
300, 332-6 Avenue SW
Calgary AB T2P 0B2

Jolaine Antonio
Tel: 403.297.6005
Fax: 403.297.3453
Email: jolaine.antonio@gov.ab.ca

Counsel for the Intervener, Attorney General of Alberta

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax (613) 563-9869
Email: lynne.watt@gowlings.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Alberta

MINISTRY OF THE ATTORNEY GENERAL OF NEWFOUNDLAND & LABRADOR
Civil Division, Dept. of Justice
Confederation Bldg, 4th Floor, East Block
PO Box 8700, Stn. A
St. John's NL A1B 4J6

Barbara Barrowman
Philip Osborne
Tel: 709.729.0448
Fax: 709.729.2129
Email: barbarabarrowman@gov.nl.ca

Counsel for the Intervener, Attorney General of Newfoundland and Labrador

BURKE-ROBERTSON
441 MacLaren Street, Suite 200
Ottawa, ON K2P 2H3

Robert E. Houston, Q.C.
Tel.: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Newfoundland and Labrador

Publication Ban

Interdiction de publication

ATTORNEY GENERAL OF ONTARIO
720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Hart Schwartz
Matthew Horner
Tel: 416.326.4456
Fax: 416.326.4015
Email: Hart.Schwartz@ontario.ca

Counsel for the Intervener, Attorney General of Ontario

BURKE-ROBERTSON
441 MacLaren Street, Suite 200
Ottawa, ON K2P 2H3

Robert E. Houston, Q.C.
Tel.: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Ottawa Agent for Counsel for the Intervener, Attorney General of Ontario

STEVENSONS LLP / BREES DAVIES LAW
15 Toronto Street, Suite 202
Toronto, ON M5C 2E3

Richard Macklin
Breese Davise
Neil Wilson
Tel: 416.599.7900
Fax: 416.559.7910
Email: rmacklin@stevensonlaw.net
bdavies@bdlaw.ca
nwilson@stevensonlaw.net

Counsel for the Intervener the Criminal Lawyers' Association

GOWLING LAFLEUR HENDERSON LLP
2600 - 160 Elgin St
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax (613) 563-9869
Email: lynne.watt@gowlings.com

Ottawa Agent for Counsel for the Intervener the Criminal Lawyers' Association

BLAKE CASSELS & GRAYDON LLP
Barristers and Solicitors
Suite 400, Commerce Court
199 Bay Street
Toronto, ON M5L 1A9

Bradley E. Berg
Erin Hoult
Nickolas Tzoulas
Tel: 416.863.4316
Fax: 416.863.2653
Email: brad.berg@blakes.com
erin.hoult@blakes.com
nickolas.tzoulas@blakes.com

Counsel for the Intervener the Canadian Civil Liberties Association

BLAKE, CASSELS & GRAYDON LLP
45 O'Connor Street
Suite 2000, World Exchange Plaza
Ottawa, ON K1P 1A4

Nancy Brooks
Tel.: (613) 788-2218
Fax: (613) 788-2247
Email: nancy.brooks@blakes.com

Ottawa Agent for Counsel for the Intervener the Canadian Civil Liberties Association

DEWART GLEASON LLP
102 – 366 Adelaide Street West
Toronto, ON M5V 1R9

Sean Dewart
Tim Gleason
Tel: 416.971.8000
Fax: 416-971.8001
Email: sdewart@dgllp.ca
tgleason@dgllp.ca

Counsel for the Intervener the Association in Defense of the Wrongly Convicted

SUPREME LAW GROUP
900 - 275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel..: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Ottawa Agent for Counsel for the Intervener the Association in Defense of the Wrongly Convicted

SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8
Marlys A. Edwardh
Frances Mahon
Tel: 416-979.4380
Fax: 416.979.4430
Email: medwardh@sgmlaw.com

Counsel for the Intervener David Asper Centre for Constitutional Rights and British Columbia Civil Liberties Association

NORTON ROSE FULBRIGHT CANADA LLP
1500-45 O'Connor Street
Ottawa, ON K1P 1A4

Martha A. Healey
Tel: 613.780.8638
Fax: 613.230.5459
Email: Martha.healey@nortonrose.com

Ottawa Agent for Counsel for the Intervener David Asper Centre for Constitutional Rights and British Columbia Civil Liberties Association

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PARTS I and II - OVERVIEW AND CACC'S POSITION ON QUESTION IN ISSUE

1. The Canadian Association of Crown Counsel ("CACC"), a national organization representing approximately 6,400 Crown attorneys across Canada, agrees with the Respondents and Attorneys General that the appeal ought to be dismissed.[1] In *Ward*, this Court emphasized that for certain government functions, the threat of liability will directly interfere with the effective exercise of government discretion in the public interest, and consequently *Charter* damages should not be awarded unless the state conduct meets a minimum threshold of gravity.[2] The CACC submits that the quasi-judicial role of Crown prosecutors is one such government function and that the public law immunity relating to Crown prosecutors precludes an award of *Charter* damages absent malice or an improper purpose. The CACC further submits: (1) the public law prosecutorial immunity is founded on the constitutional principle of Crown independence; (2) the constitutional and effective governance principles underpinning immunity would be undermined if a trial in every case were required to determine if damages were "appropriate and just" under s. 24(1) of the *Charter*; and (3) the limited immunity does not immunize Crown prosecutors from *Charter* review.

PART III - STATEMENT OF ARGUMENT

A. Immunity Based On Constitutional Principles Of Crown Independence

2. Contrary to the Appellant's submission, prosecutorial immunity is not merely a private law rule relating to malicious prosecution that has no application under the *Charter*. Rather, the immunity is a public law principle with constitutional foundations that are directly relevant to the availability of damages under s. 24(1) the *Charter*.[3] As stated by L'Heureux-Dubé J. in *Proulx*:

> "… **what was decided in *Nelles* was not so much the nature of the tort of malicious prosecution, but rather the scope of the immunity of the**

[1] By order of this Court dated 24 September 2014, the CACC was granted leave to intervene in the appeal.

[2] *Vancouver (City) v. Ward*, [2010] 2 SCR 28 [*Ward*], para. 33, 39, 42 [Book of Authorities of CACC ("BA") Tab 21].

[3] *Miazga v. Kvello Estate*, [2009] 3 SCR 339, para. 5-6, 46-47 [*Miazga*] [BA Tab 7]. *Ward*, para. 43 [BA Tab 21].

> **Crown and its agents as recognized in public law**; this is a purely public law concept."[4]

3. The public law immunity afforded to Crown prosecutors is founded on the constitutional principles of Crown independence and respect for the separation of powers and the rule of law.[5] In this regard, prosecutorial immunity is akin to, and of similar constitutional import as, the *Mackin* immunity (founded on constitutional respect for the rule of law)[6] and judicial immunity (founded on the constitutional principle of judicial independence).[7] Significantly, the constitutional principles and effective governance rationales underpinning these public law immunities apply with equal force to a cause of action against the state framed in private law or as a breach of the *Charter*.[8]

4. This Court has consistently recognized that the independence of the Attorneys General and their office is integral to the administration of justice and the maintenance of the

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[4] *Proulx v. Quebec (Attorney General)*, [2001] 3 SCR 9, para. 115, per L'Heureux-Dubé (dissenting, but not on this point) [*Proulx*] [BA Tab 10]. [Emph. added.]

[5] *Miazga*, para. 5-6, 46-47 [BA Tab 7]; *Krieger v. Law Society of Alberta*, [2002] 3 SCR 372 para. 29-32 [*Krieger*] [BA Tab 5].

[6] The *Mackin* immunity protects public officials and legislative bodies from liability for actions taken under prevailing law absent a finding of state conduct which is "clearly wrong, in bad faith or an abuse of power". *Mackin v. New Brunswick (Minister of Finance)*, [2002] 1 SCR 405 para. 78-79 [*Mackin*] [BA Tab 6]; *Ward*, para. 39 [BA Tab 21].

[7] Similar to Crown independence, judicial independence requires that judges be free to perform their judicial functions in accordance with their conscience and without fear of liability in proceedings brought by disappointed litigants: *Taylor v. Canada (A.G.)*, [2000] 3 FC 298, para. 25-39 (CA), leave to appeal to SCC denied 12 October 2000 [BA Tab 20]; *Morier v. Rivard*, 1985 2 SCR 716 para. 85-110 [BA Tab 8]; *Shaw v. Trudel*, [1988] M.J. No. 537 (CA) [BA Tab 18]. Indeed, prosecutorial immunity shares the same common law origins as judicial immunity: *Nelles v. Ontario*, [1989] 2 SCR 170, para. 16 (per Lamer J.), para. 64-67 (per McIntyre J.), para. 92-94 (per L'Heureux-Dubé J.) [BA Tab 9]; *Proulx*, para. 125, per L'Heureux-Dubé (dissenting but not on this point) [BA Tab 10].

[8] This Court in *Ward* emphasized on three different occasions the following: "Different situations may call for different thresholds, as is the case at private law. … When appropriate, private law thresholds and defences may offer guidance in determining whether s. 24(1) damages would be "appropriate and just"." (para. 42); "…the underlying policy considerations that are engaged when awarding private law damages against state actors may be relevant when awarding public law damages directly against the state. Such considerations may be appropriately kept in mind." (para. 22); "Section 24(1) operates concurrently with, and does not replace, these [existent remedial] areas of law." (para. 34) [BA Tab 21].

constitutional separation of powers and the rule of law.[9] The role of the office of the Attorney General as guardian of the public interest in the administration of justice is rooted in the Constitution:[10]

> In Canada, **the office of the Attorney General is one with constitutional dimensions recognized in the *Constitution Act, 1867*.** Although the specific duties conventionally exercised by the Attorney General are not enumerated, **s. 135 of that *Act* provides for the extension of the authority and duties of that office as existing prior to Confederation**. … .[11]

5. Among its many distinct duties, the office of the Attorney General is entrusted with the high public duty of carrying out public prosecutions on behalf of the executive branch of government.[12] In fulfilling this important public role, Crown attorneys perform quasi-judicial functions of a highly discretionary nature, including the initiation, management and termination of criminal proceedings.[13] On behalf of the Attorney General's office, Crown attorneys must exercise significant executive powers independently, objectively, and in the public interest, including the following powers:

> … the power to detain in custody, the power to prosecute, the power to negotiate a plea, the power to charge multiple offences, **the power of disclosure/non-disclosure of evidence before trial**, the power to prefer an

---

[9] *Krieger*, para. 29-32 [BA Tab 5]; *Miazga*, para. 5-6, 46-47 [BA Tab 7]; *R. v. Power*, [1994] 1 SCR 601, para. 28-43 [BA Tab 14]; *Nelles*, para. 17, 38-39, 51-52 [BA Tab 9].

[10] *Proulx*, para. 122, per L'Heureux-Dubé (dissenting, but not on this point), quoting LeBel JA in the court below [BA Tab 10]. See also *Cosgrove v. Canadian Judicial Council*, 2007 FCA 103, para. 51 [*Cosgrove*] [BA Tab 2].

[11] *Krieger*, para. 26. [Emph. added.] [BA Tab 5].

[12] In addition to being the legal advisor and officer to the Crown, the Attorney General is responsible for the supervision of administrative tribunals and for ensuring that statutory bodies act in accordance with the rule of law and the administration of justice. In fulfilling this role, the Attorney General acts to "safeguard the rights of the individual and give guidance to tribunals in the exercise of the powers conferred on them." *Cosgrove*, para. 35-36, 51 [BA Tab 2]; *Sutcliffe v. Minister of the Environment (Ontario)* (2004), 69 O.R. (3d) 257 para. 17-18, citing Ontario, Royal Commission Inquiry into Civil Rights, Report Number One, v. 1 (Toronto, 1968) at p. 329 [BA Tab 19].

[13] *Miazga*, para. 47 [BA Tab 7]; *Proulx*, para. 4 [BA Tab 10]; *Krieger*, para. 29-32 [BA Tab 5]; *Nelles*, para. 75-76, per McIntyre J [BA Tab 9].

> indictment, the power to proceed summarily or by indictment, the power to withdraw charges, and the power to appeal.…[14]

6. In light of the quasi-judicial role of Crown prosecutors, it is a fundamental constitutional principle that they must act independently of political pressures from government and the interests of private individuals and, moreover, that their exercise of prosecutorial discretion must be free from undue interference by the courts.[15] As stated by this Court in *Miazga*:

> **The independence of the Attorney General is so fundamental to the integrity and efficiency of the criminal justice system that it is constitutionally entrenched. The principle of independence requires that the Attorney General act independently of political pressures from government and sets the Crown's exercise of prosecutorial discretion beyond the reach of judicial review**, subject only to the doctrine of abuse of process.[16]

7. The protection of Crown independence and prosecutorial discretion is grounded in respect for the separation of powers, the rule of law and ultimately the integrity of the justice system. As stated by this Court in *Krieger*:

> This side of the Attorney General's independence finds further form in the principle that **courts will not interfere with his exercise of executive authority, as reflected in the prosecutorial decision-making process**. In *R. v. Power*, … L'Heureux-Dubé J. said…:
>
> > It is manifest that, **as a matter of principle and policy, courts should not interfere with prosecutorial discretion. This appears clearly to stem from the respect of separation of powers and the rule of law. Under the doctrine of separation of powers, criminal law is in the domain of the executive** . . . .

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[14] *Nelles*, para. 40. [Emph. added.] [BA Tab 9]. As noted by this Court in *Krieger*, para. 29: "The gravity of the power to bring, manage and terminate prosecutions which lies at the heart of the Attorney General's role has given rise to an expectation that he or she will be in this respect fully independent from the political pressures of the government." [BA Tab 5]

[15] *Miazga*, para. 46-47 [BA Tab 7]; *Krieger*, para. 3, 29-32 [BA Tab 5]; *R. v. Power*, para. 28-43 [BA Tab 14]; *R. v. Regan*, [2002] 1 S.C.R. 297, para. 156 per Binnie (dissenting, but not on this point) [BA Tab 15]: Crown independence includes "independence from **other interests** that may have a bearing on the prosecution, including the police and the defence".

[16] *Miazga*, para. 46 [BA Tab 7].

> The court's acknowledgment of **the Attorney General's independence from judicial review in the sphere of prosecutorial discretion has its strongest source in the fundamental principle of the rule of law under our Constitution.** Subject to the abuse of process doctrine, supervising one litigant's decision-making process – rather than the conduct of litigants before the court – is beyond the legitimate reach of the court. … **The quasi-judicial function of the Attorney General cannot be subjected to interference from parties who are not as competent to consider the various factors involved in making a decision to prosecute. To subject such decisions to political interference, or to judicial supervision, could erode the integrity of our system of prosecution**.[17]

8. In *Miazga*, this Court stated that the "fundamental importance" of the principle of Crown independence "lies, not in protecting the interests of individual Crown attorneys, but in advancing the public interest by enabling prosecutors to make discretionary decisions in fulfilment of their professional obligations without fear of judicial or political interference, thus fulfilling their *quasi*-judicial role as "ministers of justice". [18]

9. It is precisely these constitutional principles of Crown independence, separation of powers and the rule of law which are safeguarded through the operation of a qualified immunity. Civil suits in tort against Crown prosecutors thus only lie where the prosecutor's conduct reaches a minimal threshold of gravity (malice or improper purpose).[19] Similarly, a court's scope of review of prosecutorial discretion in the course of a criminal proceeding is limited to remediating Crown conduct that clearly amounts to an abuse of process (improper motive, bad faith, or an act so wrong that it violates the conscience of the community).[20] As stated in *Miazga*:

> 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**

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[17] *Krieger*, para. 31-32 [Emph. added; citations omitted.] [BA Tab 5]; *Miazga*, para. 6 [BA Tab 7].

[18] *Miazga*, para. 47 [BA Tab 7].

[19] *Nelles*, p. 183, 199 [BA Tab 9]; *Proulx*, para. 4 [BA Tab 10]; *Miazga*, para. 8, 56, 81 [BA Tab 7].

[20] *Miazga*, para. 48, 51 [BA Tab 7].

> **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**.[21]

10. Significantly, in *R. v. O'Connor* this Court ruled that the stringent standard developed under the common law abuse of process doctrine applies equally in determining if a stay remedy is "appropriate and just" under s. 24(1) of the *Charter*.[22] The Court emphasized that "there is no utility in maintaining two distinct approaches to abusive [prosecutorial] conduct" under the common law and the *Charter* and that "[w]e should not invite schizophrenia into the law".[23]

11. Similarly, the CACC submits that the common law governing prosecutorial immunity applies equally under s. 24(1) of the *Charter*. Such an approach is consistent with this Court's jurisprudence on the *Mackin* principle, which found that the immunity applies regardless of whether the claim is framed as a private law tort or breach of the *Charter*.[24]The integrity of the administration of justice depends upon the independent exercise of prosecutorial decision-making in the public interest. These prosecutorial functions are to be performed free from the undue interference and chilling effect of after-the-fact civil proceedings brought in tort law or under the *Charter* or in tort.

12. Moreover, contrary to the Appellant's assertion, the scope of prosecutorial immunity extends to Crown decisions relating to disclosure.[25] This Court in *Nelles* rejected as "arbitrary" and "unprincipled" an approach to prosecutorial immunity which distinguishes between core and

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[21] *Miazga*, para. 51. [Emph. added.] [BA Tab 7].

[22] *R. v. O'Connor*, [1995] 4 SCR 411, para. 68-71 [BA Tab 13]. Furthermore, this stringent standard for abuse of process applies to a court's review of a prosecutor's exercise of discretion with respect to disclosure.

[23] *Ibid.* para. 70 & 71 [BA Tab 13].

[24] *Mackin*, para. 78-79 ("… the reasons that inform the general principle of public law are also relevant in a *Charter* context.") [BA Tab 6]; *Guimond v. Quebec (Attorney General)*, [1996] 3 SCR 347 para. 14-15 [*Guimond*] ("Academic commentators have generally been of the view that the "claim of right" doctrine applies with equal force under s. 24(1)") [BA Tab 3]; *Ward*, para. 40-43 [BA Tab 21].

[25] Appellant's factum, para. 94.

non-core prosecutorial functions.[26] Even in the context of professional discipline, this Court in *Krieger* implicitly applied a qualified immunity to so-called non-core prosecutorial decision-making around disclosure (i.e. minimum threshold of dishonesty or bad faith).[27]

B. Public Policy Rationales For Qualified Immunity Apply Under *Charter*

13. The CACC submits that the public policy rationales for a qualified prosecutorial immunity reviewed by this Court in *Nelles* in the context of the tort of malicious prosecution are animated by the constitutional principle of Crown independence and concerns for effective governance. Consequently, they are directly applicable under s. 24(1) of the *Charter*. Without the protection of a limited immunity, Crown prosecutors could be exposed to an onslaught of after-the-fact litigation by persons prosecuted and subsequently acquitted. This would undermine Crown independence and the effectiveness of prosecutorial action in the following respects: [28]

- **Prosecutorial independence and exercise of discretion:** If every decision made by the Crown attorney in the course of instituting and executing criminal prosecutions was constrained by the possible threat of liability for damages, the Crown attorney's ability to act courageously and independently in the public interest would be undermined.

- **Diversion from public duties:** If the Crown attorney is made to answer in court each time a person they prosecuted was acquitted, his or her energy and attention would be diverted from the important public duty of enforcing the criminal law.

- **Separation of powers and rule of law:** The exercise of prosecutorial discretion is part of the prerogative powers of the executive branch of government and is owed significant deference by the judiciary. It is not the proper role of courts to

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[26] *Nelles*, para. 19-26, 31 [BA Tab 9]; *R. v. Stinchcombe*, [1991] 3 SCR 326 p. 339 [BA Tab 17]. On this point, the CACC adopts the submissions in the BC AG's factum, para. 57-62.

[27] *Krieger*, para. 55-56 [BA Tab 5]. A threshold of dishonesty or bad faith is analogous to malice or improper purpose.

[28] *Nelles*, para. 17, 49-56 [BA Tab 9]; *Miazga*, para. 47-50 [BA Tab 7]; *Proulx*, para. 4 [BA Tab 10]; *Krieger*, para. 31-32 [BA Tab 5]; *R. v. Power*, para. 28-43 [BA Tab 14].

subject the decisions made pursuant to a Crown's prosecutorial discretion to after-the-fact second-guessing.

- **Public confidence in administration of justice:** All of the above factors in turn would erode public trust and confidence in the independence and effectiveness of Crown prosecutors and the administration of justice.

14. Significantly, the above public policy rationales and their constitutional underpinnings apply with equal force to all after-the-fact litigation, regardless of whether the cause of action is framed as a private law tort or breach of the *Charter*. It is the process of subjecting Crown prosecutors to after-the-fact proceedings – involving judicial second-guessing of prosecutorial decision-making – which undermines the independence of Crown attorneys, the separation of powers and the rule of law, and which ultimately inhibits the independent and effective exercise of Crown discretion in the public interest. The qualified immunity serves to limit after-the-fact civil proceedings to those cases where Crown prosecutors were actuated by malice or an improper purpose.

15. Significantly, the very purpose of the immunity – and the constitutional principles it serves to foster – would be undermined and defeated if a trial were required in every case to determine if damages were an "appropriate and just remedy" under s. 24(1). The case-by-case weighing under s. 24(1) that the Appellant aserts must occur in all cases could only happen at the conclusion of the civil proceedings. Such an approach would defeat the immunity and lead to uncertainty.[29] The CACC submits that this weighing ought to be reserved for those cases where the immunity does not apply when Crown conduct is actuated by malice or an improper purpose.

C. Limited Prosecutorial Immunity Does Not Immunize State From *Charter* Review

16. The CACC submits that upholding the constitutional principle of Crown independence through the application of a limited prosecutorial immunity does not immunize the conduct of

[29] Appellant's factum, para. 42. The pitfalls of such an approach is demonstrated by an analogy to judicial immunity. A weighing of the functional justifications for damages under the *Ward* test does not displace the effect of the immunity protecting the judiciary from liability in suit.

Crown prosecutors from *Charter* review. First, an accused is free to allege *Charter* breaches on the part of the Crown prosecutor in the course of the criminal trial process, including on appeal. This is the appropriate forum for addressing an alleged breach of the accused's *Charter* rights, not through after-the-fact civil proceedings. In the criminal process, a broad spectrum of remedies are available to a court of competent jurisdiction to remedy a *Charter* breach, including an order for disclosure, the exclusion of evidence, costs, and a stay of proceedings. For the unrepresented accused, it is also open to a court to order a stay of proceedings subject to the appointment of a public defender to ensure a fair trial and the proper raising of *Charter* issues.[30]

17. Second, the scope of prosecutorial immunity is limited; the immunity ends where the Crown attorney acts maliciously or with an improper purpose. Thus, where the Crown prosecutor's breach of the *Charter* is actuated by malice or an improper purpose, the Crown will be liable for damages under s. 24(1) of the *Charter*, assuming all elements of the *Ward* test are satisfied.

18. Contrary to the Appellant's assertion, this Court's jurisprudence makes clear that it takes more than a simple breach of a *Charter* right to entitle a claimant to a particular remedy under s. 24 of the *Charter*.[31] A court's remedial authority under s. 24 is discretionary; under s. 24(1), the claimant must "apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances".[32] Not all *Charter* breaches result in personal remedies.[33] Under s. 24(2) of the *Charter*, societal interests in a trial on the merits may militate against the exclusion of evidence, even where the accused's *Charter* rights have been

[30] *R. v. Rowbotham*, [1988] OJ No 271 [BA Tab 16].

[31] Appellant's factum, para. 8 , 96.

[32] *R. v. O'Connor*, para. 68 [BA Tab 13]. Section 24(1) of the *Charter.*

[33] *Guimond*, para. 3-4, 13-20 [BA Tab 3]. Statutes of limitations can prevent the availability of a personal remedy under s. 24(1) of the *Charter*: *Ravndahl v. Saskatchewan*, [2009] 1 SCR 181, para. 16-17 [BA Tab 11]. See also *Canada (AG) v. Hislop*, [2007] 1 SCR429, para. 100-103 [BA Tab 1], regarding limits on retroactive remedies.

breached.[34] A critical factor in the remedial inquiry under both ss. 24(1) and 24(2) is the seriousness of the state misconduct.[35]

19. Ultimately the remedial authority under s. 24 requires a court to achieve the appropriate balance between individual interests, societal interests and the integrity of the justice system.[36] The CACC submits that this necessarily involves taking into account a public law immunity that is designed to safeguard the effectiveness of governance, particularly where, as in the case of prosecutorial immunity, it has constitutional underpinnings.[37] Where prosecutorial conduct cannot be said to be abusive or the result of *mala fides*, and consequently is protected by prosecutorial immunity, a *Charter* remedy of damages will not be appropriate or just.

PARTS IV and V - COSTS AND ORDERS SOUGHT

20. The CACC requests no order of costs be made for or against it, and that it be granted leave to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF OCTOBER 2014.

Paul Cavalluzzo / Adrienne Telford
Lawyers for the Intervener CACC

[34] *R. v. Grant*, [2009] 2 SCR 353, para. 79 [BA Tab 12].

[35] *Ibid.*, para. 71, 72-75 [BA Tab 12]. As stated in *R. v. O'Connor*: "Among the most relevant considerations [in determining whether a stay of proceedings should be ordered under s. 24(1) of the *Charter* for abuse of process] are the conduct and intention of the Crown." (para. 79) [BA Tab 13].

[36] *R. v. O'Connor*, para. 61, 69 [BA Tab 13].

[37] *Mackin*, para. 79 [BA Tab 6]. It is, of course, open to a claimant to constitutionally challenge a common law immunity: *Hill v. Church of Scientology*, [1995] 2 SCR 1130 para. 63-67, 79-98 [BA Tab 4]. In the case at bar the Appellant has not constitutionally challenged the common law prosecutorial immunity. Such a challenge would require a very different record.

PART VI - TABLE OF AUTHORITIES

Cases

TAB	Description	Paragraph in Memorandum of Argument
1.	*Canada (AG) v. Hislop*, [2007] 1 SCR429	18
2.	*Cosgrove v. Canadian Judicial Council*, 2007 FCA 103	4, 5
3.	*Guimond v. Quebec (Attorney General)*, [1996] 3 SCR 347	11, 18
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6.	*Mackin v. New Brunswick (Minister of Finance)*, [2002] 1 SCR 405	3, 11, 19
7.	*Miazga v. Kvello Estate*, [2009] 3 SCR 339	2, 3, 4, 5, 6, 7, 8, 9, 13
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9.	*Nelles v. Ontario*, [1989] 2 SCR 170	3, 4, 5, 9, 12, 13
10.	*Proulx v. Quebec (Attorney General)*, [2001] 3 SCR 9	2, 3, 4, 5, 9, 13
11.	*Ravndahl v. Saskatchewan*, [2009] 1 SCR 181	18
12.	*R. v. Grant*, [2009] 2 SCR 353	18
13.	*R. v. O'Connor*, [1995] 4 SCR 411	10, 18, 19
14.	*R. v. Power*, [1994] 1 SCR 601	4, 6, 13
15.	*R. v. Regan*, [2002] 1 S.C.R. 297	6
16.	*R. v. Rowbotham*, [1988] OJ No 271	16
17.	*R. v. Stinchcombe*, [1991] 3 SCR 326	12

18.	*Shaw v. Trudel*, [1988] M.J. No. 537 (CA)	3
19.	*Sutcliffe v. Minister of the Environment (Ontario)* (2004), 69 O.R. (3d) 257	5
20.	*Taylor v. Canada (A.G.)*, [2000] 3 FC 298	3
21.	*Vancouver (City) v. Ward*, [2010] 2 SCR 28	1, 3, 11, 15

PART II: STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms, Sections 24(1) and 24(2)

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Recours en cas d'atteinte aux droits et libertés

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

Irrecevabilité d'éléments de preuve qui risqueraient de déconsidérer l'administration de la justice

(2) Lorsque, dans une instance visée au paragraphe (1), le tribunal a conclu que des éléments de preuve ont été obtenus dans des conditions qui portent atteinte aux droits ou libertés garantis par la présente charte, ces éléments de preuve sont écartés s'il est établi, eu égard aux circonstances, que leur utilisation est susceptible de déconsidérer l'administration de la justice.