

**ADE OLUMIDE MARCH 1 ORAL PRESENTATION TO ONTARIO STANDING COMMITTEE ON JUSTICE POLICY; Request To Change S138 Ontario Police Services Act In Order To Stop Encouraging Racial Profiling Arrest, Assault, Extortion and Obstruction of Justice Crimes.**

**MARCH 1 ORAL PRESENTATION TO STANDING COMMITTEE ON JUSTICE POLICY**

1. Without sitting Charter, Canadian Bill, Victims Bill, United Nations treaty rights to a reason for arrest and assault of anyone, any time police powers of arrest and assault are engaged, it could easily escalate to death, this reality lead to the black lives matter movement, if this legislative assembly fails to **create a mandatory procedure for charging** any court that engages police arrest and assault power without filing a reasonable justification report, this Committee could one day have blood on its hands.
2. The employment of a judge cannot be terminated without involving a Judicial Council, therefore the penalties for failure which are within the control of Ontario include s81 Police Services Act charges for inducing a police officer to commit a crime / Criminal Code charges s139 obstruction of justice, s265 assault, s140 public mischief, s423 intimidation, s346 extortion. According to judicial councils, **assault, murder, rape, kidnap committed without a court proceeding is covered by judicial immunity**, yet they have no rebuttal to Parliament of Canada exclusive constitutional jurisdiction over criminal law and procedure in criminal matters. There is nothing like Criminal code immunity for any Crown or court or council or tribunal or legislature, as long as I can prove beyond all reasonable doubt that any person or organization committed a crime, I can prosecute.
3. Ontario committed an unprovoked reprisal by lying about s6(2) Courts Justice Act jurisdiction in order to defraud s24 Charter right to an s140 Courts Justice Act constitutional question. My s12 Charter right against **criminals' revictimization of victim** precludes an s140 Application because there was no existing proceeding against Ontario AND because the Ontario AG admitted to an historical crime.
4. Due the perception that my black colour is a security risk, and the perception that black people do not equally deserve respect, I have been **threatened with arrest and assault 4 times by agents of Ontario**. I was invited to a meet with a Justice of Peace, upon arrival, at the public foyer beside the entrance of the Court, the agent of Ontario prevented me from attending the meeting because he was unable to convince his colleague to change her decision, I told him that I have an s504 Criminal Code s3 s17 (3) Justice of Peace Act right to the meeting therefore asking me to leave is a crime, so before leave, I need his name so that I can make a complaint. I had a pen, I looked down on the paper ready to write his name, he yelled at police to remove me, which is criminal code arrest, assault, extortion, obstruction of justice. According to Bill C-26 Citizen's Arrest Self-Defence Act Criminal Code 34, 35, I am entitled to arrest the JP and the police officer and hand them over to the custody of another police officer.
5. The motivation for arrest, assault, extortion and obstruction of justice is the **racial profiling** belief that the black male would react violently to his crime of extortion AND racist view that the black boy needs to know his place, AND racist view that careers of caucasians are more important than the careers of blacks. The **Ontario Human Rights Commissioners, OPP Commissioner, OIPRD Director** are violating laws they swore to uphold because they are either sympathetic to racists or concerned about their future job prospects.

6. Majority of politicians in all parties entered politics for the right reasons, so let me speak to those politicians who still remember why they entered politics, in the end I will succeed in changing Police Act 138 and **history will be very unkind to the Premier and any party leader that refuses my request**. Please don't be offended, but let me be very clear, anyone opposed to my request is unfit to lead any government or political party, she is feeding the fear of black males with reckless disregard to the fact that the arrest and assault of anyone, black or white can easily escalate to death.

7. Even if all members of this legislature pass a law that all black males are automatically a Police Act 138 security risk, therefore the Charter rights to reasons for arrest and assault do not apply; I will never accept second class citizen status. As long as God keeps me alive, I will fight Ontario until Police Act 138 is changed to include a mandatory reasonable justification report and mandatory charges for failure to comply. Thank You.

**MARCH 2, 2018**

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Thank you for the opportunity to come before your Committee, I hereby enclose a copy of my intended March 1 oral presentation to the Ontario Standing Committee on Justice and Policy, based on the questions I received, I hereby make following requests;

1) Any Committee member or MPP, who remembers their initial motivation for elected office, can request legislative library review links below for legal correctness; if any Committee member or MPP does not want to know the legal correctness of links below, which would create a reasonable apprehension of bad faith. Any Committee member or MPP can introduce a Private members bill to achieve the s138 Police Services Act changes?

[https://adeolumideonline.files.wordpress.com/2018/02/openletter\\_ontarioofficeindependentpolicereviewdirector.pdf](https://adeolumideonline.files.wordpress.com/2018/02/openletter_ontarioofficeindependentpolicereviewdirector.pdf)

<https://adeolumideonline.files.wordpress.com/2018/02/open-letter-to-justices-of-the-peace-review-council-and-ontario-judicial-council.pdf>

[https://adeolumideonline.files.wordpress.com/2018/01/openletter\\_opp\\_onmpps.pdf](https://adeolumideonline.files.wordpress.com/2018/01/openletter_opp_onmpps.pdf)

[https://adeolumideonline.files.wordpress.com/2017/12/openletter\\_lawsocietyuppercanada.pdf](https://adeolumideonline.files.wordpress.com/2017/12/openletter_lawsocietyuppercanada.pdf)

<https://adeolumideonline.files.wordpress.com/2017/12/open-letter-to-ontario-mpps1.pdf>

2) If requested changes to s138 Police Services Act are not within the mandate of the Ontario Standing Committee on Justice Policy, with respect, the Committee should send my request to the appropriate Committee or person with power to research the issue and make a recommendation that the requested s138 changes be implemented. Please confirm?

3) The Committee should send my request to the Premier of Ontario, the Premier has ultimate control over the legislative agenda of the government, and the Premier has power to direct implementation of the requested s138 Police Services Act changes. Please confirm?

### **QUESTIONS FROM COMMITTEE MEMBERS**

I would like to sincerely thank the Committee for listening to me, however, I urge the Committee not to be misled by my current Charter does not apply black african immigrant second class citizen status, ALL the lawyers in Queen's Park and the legislative library working for a life time can never defeat my request, therefore, I cannot be as stupid as these agents of Ontario think;

- 1) Ontario Premier
- 2) Ontario Solicitor General

- 3) Ontario Provincial Police Commissioner
- 4) Office of Independent Police Review Director
- 5) Ontario Justice of Peace Review Council
- 6) Ontario Judicial Council
- 7) Ontario Attorney General
- 8) Ontario Human Rights Commission
- 9) Ontario Law Society of Upper Canada

On March 1, an MPP Committee member asked if the requested s138 Police Services Act changes should be made to the Federal Parliament as a requested change to the Charter right, although I did not have time to answer the question, I hereby respond, there are two parts to the requested s138 Police Services Act changes;

**PART 1 OF THE REQUEST** is the duty to file a reasonable justification report is already within the Charter, Canadian Bill of Rights and Canada Victims Bill of Rights, that duty is already implied s21b s25.1(9)(11b) s22.2 Criminal Code, a public officer is permitted to commit a crime if there is reasonable justification, but if there is no duty to file a reasonable justification report, it allows a JP to do indirectly what he cannot do directly.

Charter of Rights “Arrest or detention 10. Everyone has the right on arrest or detention (a) to be **informed promptly of the reasons therefor;**”

Canadian Bill of Rights s2c “(c) deprive a person who has been arrested or detained (i) of the right to be informed promptly of the **reason for his arrest or detention,**”

Protection from intimidation and retaliation 10 Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to **protect the victim from intimidation and retaliation.**

Parties to offence 21 (1) Every one is a party to an offence who (a) actually commits it; (b) **does or omits to do anything** for the purpose of aiding any person to commit it; or (c) abets any person in committing it. Common intention (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Extortion 346 (1) Every one commits extortion who, **without reasonable justification or excuse** and with intent to obtain anything, by **threats**, accusations, menaces or **violence induces or attempts to induce any person**, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

22.2 In respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to **benefit the organization, one of its senior officers** (a) acting within the scope of their authority, is a **party to the offence;** (b) having the mental state required to be a party to the offence and acting within the scope of their authority,

directs the work of other representatives of the organization so that they **do the act or make the omission** specified in the offence; or (c) knowing that a representative of the organization is or is about to be a party to the offence, **does not take all reasonable measures to stop them from being a party to the offence.**

Protection of Persons Administering and Enforcing the Law 25.1 ... Principle (2) It is in the public interest to ensure that public officers may effectively carry out their law enforcement duties in accordance with the rule of law and, .... Requirements for certain acts (9) **No public officer is justified in committing an act or omission that would otherwise constitute an offence and that would be likely to result in loss of or serious damage to property**.... Limitation (11) Nothing in this section justifies... (b) **the wilful attempt in any manner to obstruct, pervert or defeat the course of justice;**

**PART 2 OF THE REQUEST** is the penalty for failure to file a reasonable justification report. Pursuant to s91 of the Constitution, the federal parliament has exclusive jurisdiction to draft criminal law, however Ontario has jurisdiction over the administration of criminal law. The evidence of this fact is that all those preventing me from obtaining the reason s139 obstruction of justice, s265 assault, s140 public mischief, s423 intimidation, s346 extortion criminal offences are the following agents of Ontario;

Obstructing justice 139 (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding,.. (2) Every one who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.(3) Without restricting the generality of subsection (2), every one shall be deemed wilfully to attempt to obstruct, pervert or defeat the course of justice who in a judicial proceeding, existing or proposed, (a) dissuades or attempts to **dissuade a person by threats**, bribes or other corrupt means from giving evidence; (b) **influences or attempts to influence by threats**, bribes or other corrupt means a person in his conduct as a juror; or

Assault 265. (1) A person commits an assault when (a) without the consent of another person, **he applies force intentionally** to that other person, directly or **indirectly**;(b) he attempts or **threatens, by an act** or a gesture, **to apply force to another person**, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or Consent (3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of (c) **fraud**; or (d) **the exercise of authority.**

Intimidation 423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, **wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do**, or to do anything that he or she has a lawful right to abstain from doing, ..(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, **violence or other injury will be done to or punishment inflicted on him** or her or a relative of his or hers, or that the property of any of them will be damaged;

Public mischief 140 (1) Every one commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by  
(a) making a **false statement** that accuses some other person of having committed an offence;

- (b) **doing anything** intended to cause some other person to be suspected of having committed an offence that the other person has not committed, or to **divert suspicion from himself**;
- (c) reporting that an offence has been committed when it has not been committed; or

All of which respectfully submitted by Ade Olumide

**JANUARY 11 ADE OLUMIDE REQUEST TO PRESENT TO ONTARIO STANDING  
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With all due respect, in my humble opinion, anyone, black or white, that does anything or omits to do anything that the person has a good faith discretionary duty to do, with intent to help judges retain power

to without a court proceeding racially profile, arrest and assault black males for fear that our skin colour is a security risk s1 Charter justification for violation of s10(a) Charter of Rights and s2(c)(i) Canadian Bill “right to be informed promptly of the reason for his arrest or detention” is a racism sympathizer.

In light of the statistical evidence that black people are more likely to be deemed a security risk by law enforcement, and the fact that this evidence lead to s6(1)(4), s7(1)(3)(4), 8, Police Services Act Ontario Regulation 58/16, I would like to present to the Ontario Standing Committee in order to seek the assistance of the Committee to achieve this legislative change to s138 Police Act;

- a) Any person acting for a court that requests Police arrest and assault of any person at a court, must file a report to the police and court registrar explaining why “there is reason to believe that the person poses a security risk”, the reason filed by the court person who requested arrest and assault must be immediately provided on request by the registrar of the court or the police to the victim, failure by the court person to file a security risk justification report would lead to mandatory criminal code charges by the police and crown prosecutors s22, s265(1a,b)(3c,d), 140(1b), s346(1.1)(b), s423.1(b) criminal code offence or 81b Police Services Act.

#### Police Act

**Inducing misconduct 81.** (1) No person shall, ..(b) induce or attempt to induce a police officer to commit misconduct. Offence (3) A person who contravenes subsection (1) or (2) is guilty of an offence

#### Criminal Code

**Person counselling offence 22** (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled. (2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling that the person who counselled knew or ought to have known was likely to be committed in consequence of the counselling.

**Public mischief 140** (1) Every one commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by

- (a) making a **false statement** that accuses some other person of having committed an offence;
- (b) **doing anything** intended to cause some other person to be suspected of having committed an offence that the other person has not committed, or to **divert suspicion from himself**;
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Extortion 346 (1) Every one commits extortion who, **without reasonable justification or excuse** and with intent to obtain anything, by **threats**, accusations, menaces or **violence induces or attempts to induce any person**, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

Intimidation 423 (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, **wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do**, or to do anything that he or she has a lawful right to abstain from doing, ..(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, **violence or other injury will be done to or punishment inflicted on him** or her or a relative of his or hers, or that the property of any of them will be damaged;

The presentation will focus on the following grounds;

- 1) Lack of jurisdiction to change s52(1) Constitution Acts 1867 to 1982 “Any law inconsistent with .. Constitution is, to extent of the inconsistency, of no force or effect”;
- 2) Lack of jurisdiction to change 22, 265(1a,b)(3c,d), 140(1b), 346(1.1)(b), 423.1(b) Criminal Code
- 3) Lack of jurisdiction to change preamble objects and s7 s9 s10 s12 s15 Charter of Rights
- 4) Lack of jurisdiction to change preamble objects and s2(b,e,c) Canada Bill of Rights
- 5) Lack of jurisdiction to change s2 objects, 6, 9, 10, 16 Canada Victims Bill of Rights
- 6) Lack of jurisdiction to change s11 s12 s13 s21 s34 Canada Interpretation Act
- 7) Rule of law that **a criminal should not be permitted to keep the proceeds of his crime**; Garland v. Consumers’ Gas Co., [2004] 1 S.C.R. 629, 2004 SCC 25, 52...Criminal Code are intra vires the level of government that enacted them...overriding public policy consideration in this case is the fact that the LPPs were collected in contravention of the Criminal Code. As a matter of public policy, **a criminal should not be permitted to keep the proceeds of his crime.**
- 8) Rule of law against absurd statutory interpretation; Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27, 1998 CanLII 837 (SCC) 27 consequences...are **incompatible with both the object of the Act**.It is a well established principle of statutory interpretation that the legislature does not intend to produce **absurd consequences**. According to Côté, supra, an interpretation can be considered absurd if it leads to **ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object** of the legislative enactment ... Sullivan echoes these comments noting that a label of **absurdity** can be attached to interpretations which **defeat the purpose of a statute** or render some aspect of it pointless or futile ...
- 9) Rule of law against arbitrary application of statutory power; Roncarelli v. Duplessis 1959 CanLII 50 (SCC), [1959] S.C.R. 121, ...**there is no such thing as absolute and untrammelled "discretion"**, that is that action can be taken on **any ground or for any reason** ...; no legislative Act can... be taken

to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. ... "Discretion" necessarily implies good faith in discharging public duty; ... **any clear departure from its lines or objects is just as objectionable as fraud or corruption.**

10) Rule of law against elevating tribunal power above the constitution; "RWDSU v. Dolphin Delivery Ltd., [1986] 2 SCR 573, 1986 CanLII 5 (SCC) The [Charter](#) will apply to any rule of the common law that ... directs an abridgement of a guaranteed right... **if an...order would infringe a [Charter](#) right, the [Charter](#) will apply to preclude the order, and, by necessary implication, to modify the common law rule**... courts are, of course, bound by the [Charter](#);"

11) Positive obligation not to ignore LSUC party to s7, s9, s10, s12 Charter violations; Gosselin v. Québec (Attorney General), [2002] 4 SCR 429, 2002 SCC 84... By enacting the Social Aid Act, the Quebec government **triggered a state obligation**...C. Negative vs. Positive Rights and the Requirement of State Action [319] ... rights include a **positive dimension**, such that they are not merely rights of non-interference but also what might be described as **rights of "performance"**, then they may be **violable by mere inaction**...

12) Rule of law against using statutory power in bad faith; Freeman v. Canada (Citizenship and Immigration), 2013-10-23, 2013 FC 1065, IMM-6304-12, ..... "good faith" means "... **carrying out the statute according to its intent and for its purpose**; ... not with an **improper intent** ... "good faith" does not mean ... **punishing a person for exercising an unchallengeable right**" and "**it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status**"... "**acts that are so ... inconsistent with ... legislative context that a court cannot ...conclude that they were performed in good faith**". ... evidence of bad faith is not required. It can... be inferred from the **surrounding circumstances**... that **absence of good faith can be deduced and bad faith presumed**":

13) Rule of law that Parliament did not intend to give LSUC power to violate the Constitution ; JTI-Macdonald Corp. v. AGBC, 2000 BCSC 312 (CanLII) THE RULE OF LAW [118] That unwritten constitutional principles form part of the fabric of the Canadian Constitution is clear. As expressed by Chief Justice Lamer, the provisions of the preamble to the [Constitution Act, 1867](#) provide "**organizing principles**" that may be used to "**fill out gaps** in the express terms of the constitutional scheme .....[136] .... The principle of the sovereignty of Parliament requires **judicial obedience to the strict terms of the statute**. In the process of applying a statute, however, **uncertainties concerning its scope or effect in particular circumstances are bound to arise**. The rule of law requires that these uncertainties be resolved, so far as possible, in a manner which would most **conform to the reasonable understanding of the subject to whom the statute is primarily addressed**. Implicit in this understanding is the exp-ectation that **Parliament will conform to the generally accepted notions of fairness and justice** -- that punishment will not be authorized for acts which were not known to be unlawful when committed, that vested rights will not be destroyed without reasonable compensation, that the **powers of officials are to be limited by proper respect for the liberty of the citizen**. "If the words are not conclusive in themselves, the reasonableness or otherwise of the construction contended for has always been recognized as a **matter fairly** to be taken in account"..147] ... one law for all" concept based on the rule of law providing the law be supreme over both the acts of government and private persons:...[228]...The process of interpreting a statutory provision that is susceptible of more

than one meaning was traditionally governed by the basic precept that the Court's function is to **discover the intention of the legislature**. In a case in which the ordinary rules of construction yield two equally plausible meanings, policy considerations are a factor in resolving the conflict. In constitutional cases before the [Charter](#) this was reflected in the practice of interpreting statutes by applying a presumption that **a legislative body does not intend to exceed its powers under the Constitution**.

14) Rule of law against unconstitutionally overbroad statutory power; Allard v. Canada, 2016-02-24, 2016 FC 236, T-2030-13....principles of fundamental justice ... overbreadth ... gross disproportionality ... a law that takes away rights in a way that generally supports the object of the law, **goes too far by denying the rights of some individuals in a way that bears no relation to the object...grossly disproportionate effect on one person is sufficient to violate the norm...** effect actually undermines the objective”

### **DOES JUDICIAL IMMUNITY PRECLUDE CHANGES TO S138 POLICE ACT?**

Thank you for your public service to our great nation of Canada AND province of Ontario. As you know, judicial independence is a constitutional doctrine, but the Parliament of Canada has exclusive constitutional jurisdiction over the criminal law and procedure in criminal matters. Judges cannot do indirectly (change the criminal code) what they lack jurisdiction to do directly.

Judges are claiming judicial immunity for criminal offences like assault, extortion, obstruction of justice, fraud etc. Although judicial immunity is not a constitutional principle, the police think they are unable to investigate and lay a charge due to the common law principle of judicial immunity, they forget that the common law principle of judicial immunity is subservient to the Charter, rule of law and criminal code.

Madadi v. B.C. (Ministry of Education), 2012 BCHRT 380 (CanLII) [71] ... The difficulty with these decisions is that ... In the words of the Supreme Court in Ocean Port, the Tribunal has elevated a common law rule to constitutional status. .. [73] It could be argued that the constitutional guarantee of independence extends to certain tribunals and may be inconsistent with the application of the human rights legislation to certain Court-like functions carried out by those tribunals ... Conclusion Respecting Judicial Immunity [74] While ..there are sound reasons for immunizing judicial and quasi-judicial decision makers from civil suit: promoting finality of decision-making and the public interest in the integrity of the justice system, a key element of which is impartial and independent decision makers, constitutional judicial immunity does not apply to the hearing process of the TRB. As expressed in Ocean Port, “While tribunals may sometimes attract Charter requirements of independence, as a general rule they do not”. Certainly it is clear that the TRB was **created for the primary purpose of implementing government policy** respecting education. It therefore does not attract constitutional guarantees of independence in my view. I am driven to the conclusion that judicial immunity does not apply to the processes of the TRB whether they be those functions that may be performed interchangeably by Courts or tribunals, such as the discipline hearing in this case or responsibilities related to the sort of policy-driven adjudicative responsibilities that could not be performed by the Courts.

<http://www.duhaime.org/LegalDictionary/J/JudicialMisconduct.aspx>

Misconduct Definition: **Conduct on the part of a judge that is prohibited** and which could lead to a form of discipline. .. generally, a prohibition against conduct prejudicial to the administration of justice

that could bring the judicial office into disrepute.... Examples of specific instances of judicial misconduct include: ...**Criminal conduct,**

Criminal Code; Protection of Persons Administering and Enforcing the Law 25.1 Principle (2) It is **in the public interest to ensure that public officers may effectively carry out their law enforcement duties in accordance with the rule of law** and, .... Requirements for certain acts (9) **No public officer is justified in committing an act or omission that would otherwise constitute an offence and that would be likely to result in loss of or serious damage to property**.... Limitation (11) Nothing in this section justifies... (b) **the wilful attempt in any manner to obstruct, pervert or defeat the course of justice;** or

R. v. Zlatic, [1993] 2 SCR 29, 1993 CanLII 135 (SCC) 1. ... the *actus reus* of fraud will be established by proof of: 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk. Correspondingly, the *mens rea* of fraud is established by proof of: 1. subjective knowledge of the prohibited act; and 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk). .... (i) **Fraud by "Other Fraudulent Means"** ...

Most frauds continue to involve either **deceit or falsehood**. .. However, the third category of "other fraudulent means" has been used to support convictions in a number of situations where deceit or falsehood cannot be shown. These situations include **..non-disclosure of important facts, exploiting the weakness** of another, .... Dishonesty is, of course, difficult to define with precision. It does, however, connote an **underhanded design** which has the effect, or which engenders the risk, of **depriving others of what is theirs**.. *Criminal Fraud* (1986), defines dishonest conduct as that "which ordinary, decent people would feel was **discreditable** as being clearly **at variance with straightforward or honourable dealings**" (p. 99). .... The dishonesty of "other fraudulent means" has, at its heart, the **wrongful use of something** in which another person has an interest, in such a manner that this **other's interest is extinguished or put at risk**. A use is "wrongful" in this context if it constitutes conduct which reasonable decent persons would consider dishonest and **unscrupulous**.... The authorities make it clear that it is **unnecessary for a defrauding party to profit from his or her fraud** in order to be convicted; it is equally **unnecessary that the victims of a fraud suffer actual pecuniary loss** in order that the offence be made out: ...

Bourbonnais v. Canada (Attorney General), [2006] 4 FCR 170, 2006 FCA 62 (CanLII) [26].... Sexton J.A., after reviewing the Canadian authorities on this point and, in particular, the decision of the Supreme Court of Canada in Morier et al. v. Rivard, 1985 CanLII 26 (SCC), [1985] 2 S.C.R. 716, and the decisions of the Quebec Court of Appeal in Royer v. Mignault (1998), 1988 CanLII 445 (QC CA), 50 D.L.R. (4th) 345 (Que. C.A.) leave to appeal to the Supreme Court refused, [1988] 1 S.C.R. xiii, and Proulx v. Quebec (Attorney General) (1997), 1997 CanLII 10286 (QC CA), 145 D.L.R. (4th) 394 (Que. C.A.), in which the Court of Appeal adopted the bad faith exception formulated by Lord Denning in Sirros, concluded as follows at paragraph 41: ... judicial immunity does not apply where it is shown that a judge **knowingly acts beyond his jurisdiction**....[28]In the case at bar, the **appellant does not contend that he is entitled to judicial immunity in regard to the criminal prosecution** that has been brought against him. In my opinion, **there would be no merit whatsoever to any such claim**. As Lord Denning stated in Sirros, at page 782: "Of course, if the judge has ...**has perverted the course of justice, he can be punished in the criminal courts**." ...[30] ....It is clear from some of the cases discussed above, however, that the **immunity of judges from criminal liability is not total**. In this

respect the law of England is the same as that of the USA. Excepting the general principles of immunity discussed above, **any judicial officer who violates the criminal law would be as liable therefore as any other private person.** According to Woodhouse J. of the New Zealand Court of Appeal, “a judge can, of course, be made to answer, and in a proper case, pay dearly, for any criminal misconduct. Like any other citizen criminal proceedings may be brought against him.” **This is because “criminal conduct is not part of the necessary functions performed by public official”... The defence of judicial immunity from indictment was rightly rejected** in both *Braatelein v. United States* and *United States v. Hastings* (above). The law on immunity from criminal liability was aptly summed up by White J. of the US Supreme Court in *O’Shea v. Littleton*, We have never held that the performance of the duties of judicial . . . officers requires or contemplates the immuni-zation of otherwise criminal deprivations of constitutional rights . . . on the contrary the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress. A principle similar to this would probably apply (with appropriate modifications) in most common-law jurisdictions.

*Taylor v. Canada (Attorney General)*, [2000] 3 FCR 298, 2000 CanLII 17120 (FCA) [60] Finally, in my view, the exception to absolute immunity established in *Sirros v. Moore* is an extremely narrow one. It will be the rare case indeed where a **plaintiff can show that a judge acted with the knowledge that he or she had no jurisdiction.** The example cited by Lord Bridge in *McC v. Mullan* demonstrates both the need for an exception to the judicial immunity principle, as well as the limited nature of the exception.. *Taylor v. Canada (Attorney General)*, [2000] 3 FCR 298, 2000 CanLII 17120 (FCA) [62]....<sup>72</sup> He added that a claim for malicious prosecution required a plaintiff to demonstrate “improper motive or purpose,”<sup>73</sup> and that “**errors in the exercise of discretion and judgment are not actionable.**”<sup>74</sup> In that sense, *Nelles* is consistent with the proposition that the “bad faith” exception to judicial immunity cannot be engaged merely **where a judge errs in the exercise of his or her discretion**, as happened in the present case. [63] In light of the constitutional importance of judicial immunity, I conclude that any “**bad faith” exception to judicial immunity that exists** is just as narrow, if not more so, than the exception to prosecutorial immunity addressed in *Nelles* .

*J.W. Abernethy Management & Consulting Ltd. v. 705589 Alberta Ltd. and Trillium Homes Ltd.*, 2005 ABCA 103 (CanLII) [24]... The only **exception is when a judge “knowingly acts outside of official capacity; without a good faith belief of jurisdiction”**: *S.G. v. Larochelle* (2004), 355 [A.R.](#) 46, 2004 [ABQB 123](#) (CanLII) at para. 10; aff’d 2005 ABCA 111 (CanLII), citing *Royer v Mignault* (1988), [1988 CanLII 445 \(QC CA\)](#), 50 D.L.R. (4th) 345 at 354 (Que. C.A.). Judicial immunity clearly extends to Queen’s Bench judicial settlement processes, including binding JDR’s. See *Condessa Z Holdings Ltd. v. Rusnak* (1993), [1993 CanLII 5526 \(SK CA\)](#), 109 Sask. R. [170](#) (C.A.).

*Royer c. Mignault*, 1988 CanLII 445 (QC CA) Immunity of Superior Court Judges .... What he does may be outside his jurisdiction - in fact or in law - but so long as he honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief, nothing else will make him liable. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will make him liable **except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it....** In *McC. c. Mullan*, (1984) 3 All E.R. 908, 816, Lord Bridge of Harwich stated: ...It is, of course, clear that the holder of any judicial office who acts in bad faith, doing what he knows he has no power to do, is liable in damages. If the Lord Chief Justice himself, on the acquittal of a

defendant charged before him with a criminal offence, were to say, "That is a perverse verdict," and thereupon proceed to pass a sentence of imprisonment, **he could be sued for trespass**. . . . I conclude, therefore, that a superior court judge is protected by absolute immunity from any civil liability for anything he does or says in the performance of his functions as a judge. He will not be liable in damages **unless he acts outside of his jurisdiction knowing that he has no power** to do what he does.

Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board), 1999 CanLII 2477 (NS CA) [113].. the Board and its members are protected from a civil action for damages arising out of any acts committed by them, provided the acts are committed in the course of judicial duties, and provided further that a member may lose his or her immunity if while acting in **bad faith** they did something which he or she knew he or she did not have the jurisdiction to do, or while not acting in the course of judicial duties **knew that he or she had no jurisdiction** to act.

Morier et al. v. Rivard et al (1985), 1985 CanLII 26 (SCC), 23 D.L.R. (4<sup>th</sup>) 1 (S.C.C.), the majority considered the extent and nature of the **immunity** conferred on superior court judges in Canada, and concluded that it is essentially absolute, allowing for potential liability only where a judge is shown to have **knowingly exceeded his jurisdiction in bad faith**.

Verge Insurance Brokers Limited et al. v Richard Sherk et al., 2015 ONSC 4044 (CanLII)  
**(b)inherent jurisdiction is not to conflict with Rule** [61] “[T]he **inherent jurisdiction of the Court of Queen’s Bench is not such as to empower a judge of that Court to make an order negating the unambiguous expression of the legislative will**”: see *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.*, 1975 CanLII 164 (SCC), [1976] 2 S.C.R. 475 at p. 480.[62] “**Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule**”: see *Montreal Trust Company et al. v. Churchill Forest Industries (Manitoba) Limited*, [1971] 4 W.W.R. 542 at p. 547, cited with approval in *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd...***(c) inherent jurisdiction limited to filling gaps** [63] “In spite of the expansive nature of this power, **inherent jurisdiction does not operate where Parliament or the legislature has acted**”: see *Stelco Inc. (Re)*, *supra*, at para. 35.

Freeman v. Canada (Citizenship and Immigration), 2013-10-23, 2013 FC 1065, IMM-6304-12, Legal Principles Relating to the Concept of Bad Faith ...[24] The Supreme Court also stated in Roncarelli that “good faith” means “... carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose...”. According to the Court, “good faith” does not mean acting “for the purposes of **punishing a person for exercising an unchallengeable right**” and “it does not mean **arbitrarily and illegally** attempting to divest a citizen of an incident of his civil status”: at para. 46....[26] While bad faith certainly includes situations where there is intentional fault on the part of a decision-maker (as was the case in Roncarelli), evidence of actual malice or intent to harm is not required in order to rebut the presumption of good faith: *Finney v. Barreau du Québec*, 2004 SCC 36, [2004] 2 S.C.R. 17, at para. 40. [27] As the Supreme Court observed in *Entreprises Sibeca*, above at para. 26, in addition to deliberate acts, the concept of bad faith can include “acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith”. [28] Direct evidence of bad faith is not required. It can, in the appropriate case, be inferred from the surrounding circumstances: *Finney*, at paras. 37-39, *Entreprises Sibeca*, above at para. 26. [29] “Bad faith” can encompass serious carelessness or recklessness. Indeed “**recklessness implies a fundamental**

**breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed”:**

Roncarelli v. Duplessis 1959 CanLII 50 (SCC), [1959] S.C.R. 121, ...there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. **"Discretion" necessarily implies good faith** in discharging public duty; there is always a perspective within which a statute is intended to operate; and **any clear departure from its lines or objects is just as objectionable as fraud or corruption.**

Alberta Provincial Courts Act 2000 Chapter P-31 Action for damages 9.51(1) No action may be brought against a judge for any act done or omitted to be done in the execution of the judge's duty or for any act done in a matter in which the judge has exceeded the judge's jurisdiction unless it is proved that the judge acted **maliciously and without reasonable and probable cause**. ... (5) The Minister of Justice and Solicitor General may make a payment for damages or costs, including lawyer's charges incurred by the judge in respect of an act, omission or matter described in subsection (1), (2) or (3).

Manitoba The Provincial Court Act C.C.S.M. C. C275 Exemption from liability 71 Except as provided in this Act, no action shall lie or be instituted against a judge or justice of the peace for any act done by him or her in the execution of a duty unless the act was **done maliciously and without reasonable and probable cause**.

Manitoba The Court of Queen's Bench Act; Exemption from liability 15 Where an officer of the court, in exercising the powers and performing the duties of the officer, acts in good faith, an action shall not be brought against the officer with respect to an act of the officer unless the act is **malicious and is done without reasonable grounds**

Prince Edward Island Provincial Court Act, RSPEI 1988, C P-25 11. Limitation of Action (1) Except as provided in this Act, no action lies or may be instituted against a judge, or justice of the peace for any act done by him or her in the execution of his or her duties unless the act was done **maliciously or without reasonable cause**.

Id. at 368-69 (Stewart, J., dissenting quoting Pierson v. Ray, 386 U.S. 547, 554 (1967) The "central feature" in *Sparkman*, he wrote, was Judge Stump's "preclusion of any possibility for the vindication of respondents' rights elsewhere in the judicial system. Powell noted that the *Bradley* Court accepted the injustices the doctrine of judicial immunity sometimes imposes because those injustices are usually mitigated by the availability of appeal. But **where a judicial officer acts in a manner that precludes all resort to appellate or other judicial remedies that otherwise would be available, the underlying assumption of the *Bradley* doctrine is inoperative...**

Piper v. Pearson, id., 2 Gray 120. ... entitlement to immunity, the U.S. Supreme Court focused upon the nature of the act: is it an act ordinarily performed by a Judge? But an act done in **complete absence of all jurisdiction** cannot be a judicial act. It is no more than the **act of a private citizen, pretending to**

**have judicial power** which does not exist at all. In such circumstances, to grant absolute judicial immunity is contrary to the **public policy expectation** that there shall be a **Rule of Law**.

State use of Little v. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697. When a judicial officer acts **entirely without jurisdiction** or without compliance with jurisdiction requisites he may be held **civilly liable for abuse of process** even though his act involved a decision made in good faith, that he had jurisdiction.

Ableman v. Booth, 21 Howard 506 (1859). "**No judicial process**, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and **an attempt to enforce it beyond these boundaries is nothing less than lawless violence.**"

Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872) "**Where there is no jurisdiction, there can be no discretion**, for discretion is incident to jurisdiction."

Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326. When a judge knows that he lacks jurisdiction, or acts in the face of **clearly valid statutes expressly depriving him of jurisdiction**, judicial immunity is lost.

Ashelman v. Pope, 793 F.2d 1072 (1986), the Ninth Circuit, en banc , criticized the "judicial nature" analysis it had published in Rankin as unnecessarily restrictive. But Rankin's ultimate result was Judge Howard had been independently divested of absolute judicial immunity by his **complete lack of jurisdiction**.

Stump v. Sparkman, id., 435 U.S. 349 Some urge that any act "of a judicial nature" entitles the Judge to absolute judicial immunity. But **in a jurisdictional vacuum**, (that is, absence of all jurisdiction) the second prong necessary to absolute **judicial immunity is missing**.

Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938) judge must be acting **within his jurisdiction** as to subject matter and person, to be entitled to immunity from civil action...

All of which respectfully submitted by Ade Olumide