Canadian Electorate | électorat Canadien
2308 - 93 Dunrobin Road, Ottawa, Ontario K0A1T0
Tel: (613) 265-6360
Fax: (613) 832-2051
Email: canadaelectorate@gmail.com
Twitter: @fairnominations

Elections Ontario Acceptance Of Ade Olumide Intervenor Application Declarations

May 24, 2018 By Ade Olumide for Canadian Electorate, électorat Canadien Tel: 613 265 6360 Fax: 613 832 2051 Email: canadaelectorate@gmail.com Twitter: @fairnominations

One of the hallmarks of any democracy is that "Every citizen shall have the right and the opportunity .. without unreasonable restrictions … to be elected … government ..", Canada is a signatory to this United Nations Human Right, therefore political party nomination rules cannot escape compliance to s2 s3 s12 s15 Charter rights of party members and nomination contestants. Government ministers were recruited through Liberal Party nominations, therefore the difference between the Liberal Party Caucus and government ministers is a distinction without a difference, therefore the Liberal Party nomination process is a government prospective employment process which must engage the Charter. https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1593

As an undecided voter who has never voted for any party than the Conservative, one vote of conscience, will not change the election result. Federal Green Party Leader Elizabeth May has issued a letter endorsing this House of Commons petition goal of party nominations Charter compliance. The House of Commons petition is also sponsored by Nathan Cullen, federal NDP Critic for Democratic Reform. https://adeolumideonline.files.wordpress.com/2018/05/houseofcommonspartyleaderelizabethmayletter_s674ccanadaelectionsact.pdf

Per to enclosed application, Elections Ontario has granted Ade Olumide Intervenor status in Ontario NDP complaint re 12 Ontario PC nominations. We will provide them valuable expertise on legislation and case law from other G7 countries. If Elections Ontario agrees that Charter compliance legislation is required, we will fight to make that binding on Elections Canada and all provinces.

There are 5 police investigations of party nominations in Ontario, Sudbury (Liberal), Hamilton (Ontario PC), Toronto (Ontario PC), Peel (Ontario PC), York (Ontario PC), the federal parties and provinces may obdurately try to bury their heads in the sand but they will not be able to escape the Canadian Electorate opprobrium winds of change. The Premier of the largest province in Canada, Kathleen Wynne has committed to nominations legislation and Elections Ontario enforcement, former Ontario Conservative Party leader Patrick Brown supports nominations legislation, therefore the obdurate silence of Andrea Horwath, Doug Ford on petition to #rootouttherot in party nominations is flummoxing; https://www.theglobeandmail.com/canada/article-ex-ontario-pc-leader-patrick-brown-calls-for-more-oversight-in/

Firstly this is an opportunity of national importance because there are about 17 million voters / 1 million party numbers with s3 Charter rights to representation in Government. s67(4c) Canada Elections Act, s61[1d(iv)] Alberta Elections Act, s60(1)(3b) BC Elections Act, 241(2) Quebec Elections Act, s27(2h) Ontario Elections Act, s51(3) NB Elections Act, s45(1a) SK Elections Act, s58(1) Manitoba Canada Elections Act, s40(2) PEI Elections Act, s70(4) NFLD Elections Act, s65(2a) NS Elections Act all suffer from the same radical defect of excluding political party nominations from Charter compliance.

The Elections Ontario declarations sought, includes;

I. **Intervenor status** in below mentioned Ontario NDP complaint about Ontario PC Nominations alleged use of alleged stolen 407 data AND
https://www.theglobeandmail.com/canada/article-ontario-elections-watchdog-reviewing-pc-candidate-campaigns/
Declaration that; Elections Ontario lacks jurisdiction to investigate NDP compliant re Ontario PC nominations because the letter and intent of the words "prospective candidate" "corrupt practice" "election" "ballot" "nomination contestant" "contribution" in Ontario Elections Act / Election Finances Act, nominations and statutory interpretation common law, precludes Elections Ontario jurisdiction over non-financial contribution activities in political party nominations AND
Declaration that; if Elections Ontario has jurisdiction because the alleged stolen 407 data was not a volunteer service but a financial contribution OR the alleged stolen data was used for "general election" purposes, then, shared jurisdiction with York Regional Police, s52.1 Ontario Election Finances Act Vicarious responsibility, s11(c), s13 Charter rights against self-incrimination precludes Elections Ontario determination of jurisdiction before a York Regional Police finding of fact.

II. **Declaration that**; s15 Charter Rights are a positive obligation on Elections Ontario, the primary purpose of "registered parties" created by government legislation, is to form a government, nominations are a government prospective employment process, therefore s27(2h) Ontario Elections Act is unconstitutionally narrow and grossly disproportionate because it violates s1(a,b,e), s2(a,b,c,e) Canada Bill of Rights / s2 s3 s12 s15 Charter Rights of party members and nomination contestants, it should read in as follows "that states <u>with reasons</u> that the <u>nomination contestant and</u> prospective candidate and is endorsed by the party".

III. **Declaration that**; s89 Ontario Elections Act s12.1(2) Election Finances Act are unconstitutionally narrow and grossly disproportionate because they violate party members' s1(a,b,e), s2(a,b,c,e) Canada Bill of Rights / s2 s3 s12 s15 Charter right to representation in government, they should read in as follows; "s12.1(2) A registered party or registered constituency association ~~that proposes to~~ shall hold a nomination contest shall file with the Chief Electoral Officer a statement <u>confirming Charter compliance</u> ... " "s89 The Chief Electoral Officer, in addition to any other requirements of this Act in respect of the tabling of the results of an election <u>and nomination contest</u>, shall report .. whether or not .. the conduct of the election was free or otherwise of any of the actions which are declared to be offences or corrupt practices under this Act."

"Canadian Electorate" refers to anyone that signs the House of Commons petition affirming that no party should be able to use government legislation public power to discriminate against anyone that is prochoice or prolife or gay or straight or christian or muslim or jewish or visible minority etc AND no party member or nomination contestant should be subject to "corrupt practices".

Government legislated some election procedures e.g. Ontario Elections Act provisions for general elections and by-elections ".. list of electors… Rights of Candidates …Corrupt Practices and Other Offences: Penalties and Enforcement … Contested Elections…", it is therefore necessary to legislate some nomination procedures that are sine quio non for an s2 s3 s12 s15 Charter compliant government prospective employment process.

A party leader has a duty to lead, but if he or she needs to violate the Charter, there is an s1 Charter test to determine if the Charter breach is justifiable. For example, any nomination rule without procedure for dealing with "lists" criminal misconduct complaints is a violation of contestants' s12 Charter rights.

The common statement that political parties are 100% private associations is a false narrative. "Registered parties" are created by the Ontario Elections Act, Parliament also created the s27(2h) s89 Ontario Elections Act s12.1(2) Ontario Elections Finances Act right to remove a party's nomination contestant or prospective candidate or candidate through a process that does not comply with the Charter. Unless there is a mandatory duty to hold nominations and a mandatory duty to give reasons for removals, there cannot be a meaningful s2 s3 s12 s15 Charter test for nomination rules.

In the USA no one is prevented from contesting party primaries, if there is a corrupt practice, the House or the Senate can vote to expel a member, but the party cannot expel anyone from caucus let alone expel without a reason, that is a power reserved for the party primary voters, further, there are no whipped votes. Clearly despite the extreme position in the USA, the political parties are still able to communicate and implements parties' platforms without violating s2 s3 s12 s15 Charter of members and contestants.

Ade Olumide for Canadian Electorate

ELECTIONS ONTARIO INTERVENOR FILE 2018-222

TO: Elections Ontario, Attention: Office of the Chief Electoral Officer, Compliance and Enforcement 51 Rolark Drive, Toronto ON M1R 3B1, Phone: 1-888-668-8683, 1-866-566-9066 Fax: 1-866-714-2809

CC: Andrea Horwarth, Ontario NDP Party Leader, 2069 Lakeshore Blvd West, Suite 201 Toronto, Ontario. M8V 3Z4 Phone: 416-591-8637, Fax: 416-599-4820 Email: info@ontariondp.ca

CC: Kathleen Wynne, Ontario Liberal Party Leader, Tel (800) 268-7250 Fax (416) 323-9425 info@ontarioliberal.ca, 10 St. Mary Street, Suite 210, Toronto, ON M4Y 1P9

CC: Doug Ford, Ontario Progressive Conservative Party Leader, doug@fordnation.ca Tel 416-861-0020, Fax 416-861-9593, 59 Adelaide Street East, Suite 400, Toronto, ON M5C1K6

CC: Chief Eric Jolliffe, O.O.M., BA, MA, CMM York Regional Police, 47 Don Hillock Drive, Aurora, ON L4G 0S7, info@yrp.ca Tel 905-830-0303 Fax 905-853-5810

From Ade Olumide, Dunrobin, Ottawa, ON, Tel: 613 265 6360 Fax: 613 832 2051, ade6035@gmail.com
May 21, 2018

ADE OLUMIDE V ELECTIONS ONTARIO

NOTICE OF APPLICATION AND CONSTITUTIONAL QUESTION

TAKE NOTICE that pursuant to s4(7)(10), s4.0.1, s4.0.2, 4.4(1)(2) Ontario Elections Act, s2(1a,f,g,j) Ontario Election Finances Act, s33 Public Inquiries Act, s3(1), s6, s9.1, s15, s16, s16.1, s16.2, s17(1), s25.0.1, s25.1 Statutory Procedures Act AND;

I. s52(1) Constitution Acts 1867 to 1982 common law right to without a court proceeding raise a constitutional question before any statutory decision maker,

Nova Scotia (Workers' Compensation Board) v. Martin; [2003] 2 SCR 504, 2003 SCC 54 (CanLII) The Constitution is the supreme law of Canada and, by virtue of s52(1) of the Constitution Act 1982, the question of constitutional validity inheres in every legislative enactment. From this principle of constitutional supremacy flows, as a practical corollary, the idea that **Canadians should be entitled to assert the rights and freedoms that the Constitution guarantees them in the most accessible forum available, without the need for parallel proceedings before the courts**.

II. s15 Charter positive obligation on Elections Ontario to grant the declarations sought,

Gosselin v. Québec (Attorney General), [2002] 4 SCR 429, 2002 SCC 84… "[i]n some contexts it will be proper to characterize **s.15 as providing positive rights"….** in order to make a fundamental freedom meaningful, a posture of restraint would not be enough, and positive governmental action might be required". [360] … Most obviously, they stand for the proposition that the Charter's fundamental freedoms can be infringed even absent overt state action. Mere restraint on the part of government from actively interfering with protected freedoms is not always enough to ensure Charter compliance; **sometimes government inaction can effectively constitute such interference**….

Vriend v. Alberta, [1998] 1 SCR 493, 1998 CanLII 816 (SCC) 2 66 … submission has failed to distinguish between "private activity" and "**laws that regulate private activity".** The former is not subject to the Charter**, while the latter obviously is**. …to **wait until someone is discriminated against …challenge the validity of the provision** in each appropriate case… would not only be wasteful of judicial resources, but also unfair in that it would impose burdens of delay, cost and personal vulnerability to discrimination for the individuals involved in those eventual cases…. provisions… **do not depend on any particular factual context in order to resolve their constitutional status,** there is really no need to adduce additional evidence…

III. constitutional rule of law against arbitrary (contrary to objects of Ontario Elections Act) application of discretionary statutory power which is codified in s10 Ontario Interpretation Act;

Ontario Interpretation Act, All Acts remedial 10**.** Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or **to prevent or punish the doing of any thing that it deems to be contrary to the public good**, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

APPLICANT HEREBY SEEKS THE FOLLOWING RELIEF;

IV. **Intervenor status** in below mentioned Ontario NDP complaint about Ontario PC Nominations alleged use of alleged stolen 407 data AND
https://www.theglobeandmail.com/canada/article-ontario-elections-watchdog-reviewing-pc-candidate-campaigns/
Declaration that; Elections Ontario lacks jurisdiction to investigate NDP compliant re Ontario PC nominations because the letter and intent of the words "prospective candidate" "corrupt practice"

"election" "ballot" "nomination contestant" "contribution" in Ontario Elections Act / Election Finances Act, nominations and statutory interpretation common law, precludes Elections Ontario jurisdiction over non-financial contribution activities in political party nominations AND
Declaration that; if Elections Ontario has jurisdiction because the alleged stolen 407 data was not a volunteer service but a financial contribution OR the alleged stolen data was used for "general election" purposes, then, shared jurisdiction with York Regional Police, s52.1 Ontario Election Finances Act Vicarious responsibility, s11(c), s13 Charter rights against self-incrimination precludes Elections Ontario determination of jurisdiction before a York Regional Police finding of fact.

V. **Declaration that**; Elections Ontario "s3 Election Act – Complaints, Investigation, and Enforcement Policy August 2011" is unconstitutionally overbroad and grossly disproportionate to the s1(a,b,e), s2(a,b,c,e) Canada Bill of Rights / s2 s3 s12 s15 Charter Rights of party members and nomination contestants, it should read in "With exception of an Ontario Elections Act / Election Finances Act Constitutional Question When the Chief Electoral Officer decides not to investigate …".

VI. **Declaration that**; s15 Charter Rights are a positive obligation on Elections Ontario, the primary purpose of "registered parties" created by government legislation, is to form a government, nominations are a government prospective employment process, therefore s27(2h) Ontario Elections Act is unconstitutionally narrow and grossly disproportionate because it violates s1(a,b,e), s2(a,b,c,e) Canada Bill of Rights / s2 s3 s12 s15 Charter Rights of party members and nomination contestants, it should read in as follows "that states with reasons that the nomination contestant and prospective candidate and is endorsed by the party".

VII. **Declaration that**; s89 Ontario Elections Act s12.1(2) Election Finances Act are unconstitutionally narrow and grossly disproportionate because they violate party members' s1(a,b,e), s2(a,b,c,e) Canada Bill of Rights / s2 s3 s12 s15 Charter right to representation in government, they should read in as follows; "S12.1(2) A registered party or registered constituency association ~~that proposes to~~ shall hold a nomination contest shall file with the Chief Electoral Officer a statement confirming Charter compliance ... " "s89 The Chief Electoral Officer, in addition to any other requirements of this Act in respect of the tabling of the results of an election and nomination contest, shall report .. whether or not .. the conduct of the election was free or otherwise of any of the actions which are declared to be offences or corrupt practices under this Act."

THE GROUNDS FOR THIS APPLICATION ARE;

Public Importance of Meritorious Government Legislation Constitutional Question

1. In 2011 and 2014 the Applicant was a victim of s27(2h) s89 Ontario Elections Act s12.1(2) Election Finances Act, the constitutionality of government legislation is a serious justiciable issue, the applicant is likely the only Canadian who has been removed 3 times (without a reason) from Progressive and Conservative Party nominations, there is likely no one else in the country with more USA, UK, Canadian common law and legislation expertise to qualify for intervenor status public interest standing.

2. Canadian Egg Marketing Agency v. Richardson, [1998] 3 SCR 157, 1997 CanLII 17020 (SCC)…. Court is always free to hear Charter arguments from parties who would not normally have standing to

invoke the Charter on the basis of the **residuary discretion** if the question involved is one of **public importance**.

All Government Prospective Employment Process Must Comply With The Charter

3. One of the hallmarks of any democracy is that "Every citizen shall have the right and the opportunity .. without unreasonable restrictions … to be elected to … government ..", Canada is a signatory to this United Nations Human Right, therefore political party nomination rules cannot evade s2 s3 s12 s15 Charter rights of party members and nomination contestants.

4. "Registered parties" are created by Ontario Elections Act, Parliament also created the s27(2h) s89 Ontario Elections Act s12.1(2) Ontario Elections Finances Act right to remove a party's nomination contestant or prospective candidate or candidate without a Charter compliant process.

5. Government ministers were recruited through Liberal Party nominations, therefore the difference between the Liberal Party Caucus and government ministers is a distinction without a difference, the Liberal nomination was a government prospective employment process which engages the Charter.

Party Leader Support For Elections Act Amendment Shows Merit of Constitutional Question

6. Federal Green Party Leader Elizabeth May has issued a letter to all 4 federal party leaders endorsing this House of Commons petition goal of bringing party nominations into Charter compliance. The petition is also sponsored by the federal NDP Critic for Democratic Reform. https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1593

Questions of National, Legal and Public Importance

7. Declarations are issues of national importance because there are about 17 million voters / 1 million party numbers with s3 Charter rights to representation in Government. s67(4c) Canada Elections Act, s61[1d(iv)] Alberta Elections Act, s60(1)(3b) BC Elections Act, 241(2) Quebec Elections Act, s27(2h) Ontario Elections Act, s51(3) NB Elections Act, s45(1a) SK Elections Act, s58(1) Manitoba Canada Elections Act, s40(2) PEI Elections Act, s70(4) NFLD Elections Act, s65(2a) NS Elections Act suffer from the same radical defect of excluding political party nominations from Charter compliance.

S12 Charter Includes Nomination Contestant Rights Of Not To Be Subject To Corrupt Practices

8. No party member or nomination contestant should be subject to "corrupt practices". Government legislated some election procedures e.g. Ontario Elections Act provisions for general elections and by-elections "Policy re information from permanent register or list of electors …Rights of Candidates …Corrupt Practices and Other Offences: Penalties and Enforcement … Contested Elections…", it is therefore necessary to legislate s2 s3 s12 s15 Charter complaint nomination procedures.

Evidence That Charter Compliant Nomination Rules Are A Viable System Of Government

9. In the USA no one is prevented from contesting party primaries, if there is a corrupt practice, the House or the Senate can vote to expel a member, but the party cannot expel anyone from caucus let

alone expel without a reason, that is a power reserved for the voters. Further, there are no whipped votes. Clearly, despite the extremely democratic USA system, political parties are still able to communicate and implements parties' platforms without violating s2 s3 s12 s15 Charter of members and contestants.

Test For Unconstitutionally Overbroad and Grossly Disproportionate

10. Allard v. Canada, 2016-02-24, 2016 FC 236, T-2030-13 [125]….**principles of fundamental justice**. With respect to the principles of arbitrariness, overbreadth, and gross disproportionality, the specific questions are whether the law's purpose, taken at face value, is connected to its effects and whether the negative effect is grossly disproportionate to the law's purpose… **whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal** of the law in furthering the public interest... [126]….**weigh the negative impact of the law on people's rights against the beneficial impact** of the law in terms of achieving its goal for the greater public good. The impacts are judged both qualitatively and quantitatively. …[255]…whether 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:… [272]… gross disproportionality only applies in extreme cases where the **seriousness of the deprivation is totally out of sync with the objective of the measure**…It balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law…gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a **grossly disproportionate effect on one person is sufficient to violate the norm**.

S15 Charter Rights Against Discrimination Is A Positive Obligation

11. No party should be able to use government legislation public power to discriminate against anyone that is prochoice or prolife or gay or straight or christian or muslim or jewish or visible minority etc. Unless there is a mandatory duty to hold nominations and a mandatory duty to give reasons for removals, there cannot be a meaningful s2 s3 s12 s15 Charter test for nomination rules. The political party right to refuse without a reason, will disproportionately affect visible minorities.

12. Guergis v. Novak, 2013 ONCA449 "[90] Even if the allegation regarding the Prime Minister's involvement is read as proven, s. 67(4)(c) of the Canada Elections Act, S.C. 2000 c.9, gives the leader of a political party the authority to refuse to endorse a candidate. **As it is statutorily allowed, it therefore cannot be an unlawful act**"

13. Pick v. Conservative Party of Canada, 2004 CanLII 38425 (SK QB) It is neither surprising nor offensive to the logic of the above candidate selection process that Article 3, subsection k of the **Candidate Nomination Rules and Procedures, as well as Section 67(4)(c) of the Act should be compatible with one another**. It makes no sense to me that an application for the position of a "nomination contestant" should have his application accepted in the first instance, proceed to the riding election and if duly elected, subsequently fail to receive the endorsement of the party under Section 67(4)(c)…

14. Grewal v. Conservative Party of Canada, 2004 CanLII 9568 (ON SC) [29] I cannot accept the plaintiff's position on the meaning of s. 67(4)(c) and the restrictive application of that section. [30] Firstly, there is **nothing in that section that stipulates that a leader must give reasons** for not

endorsing a candidate. …[31] Secondly … The Court should not interfere with a process that has been established by a Party or a **process that has been established pursuant to a statute**..

15. Figueroa v. Canada (Attorney General), 2003 SCC 37 (CanLII), 227 D.L.R. (4th) 1... the purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se, but the right to "effective representation". Ours is a representative democracy. **Each citizen is entitled to be represented in government**. …… Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions: This…ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens….

16. An s15 Charter positive obligation means;

a) "obligation...to be aware of whether … policies … are having an adverse impact or resulting in systemic discrimination" means willful blindness to the adverse impact of a lack of with reasons agree or disagree substantial response on a victim of political party racism, is racism.
b) "ignore .. human rights matters, whether or not a complaint has been made" means whether or not applicant is a victim of racism, refusing the constitutional question is racism.
c) "An organization violates the Code where it .. does not directly infringe the Code but rather authorizes, **..** behaviour that is contrary.." means authorizing and encouraging racism by political parties by refusing the constitutional question is racism.
d) "human rights duty not to condone or further a discriminatory act that has already occurred" means that in light of evidence that applicant is a victim of racism by a political party, refusing declarations is "further a discriminatory act that has already occurred" racism.
e) "obligation extends to those who become involved in a situation that involves a discriminatory act, who, while not the main actors, are drawn into the matter nevertheless" means that whether or not Elections Ontario is the "main actor", refusing to hear the application "draws you into the matter nevertheless", which is racism.

17. Brar and others v. B.C. Veterinary Medical Association and Osborne, 2015 BCHRT 151 (CanLII) [742] Finally, organizations have an obligation to ensure that they are free from discrimination. In this respect they have an obligation: ...to be aware of whether their practices, policies and programs are having an adverse impact or resulting in systemic discrimination vis-à-vis racialized persons or groups. **It is not acceptable** from a human rights perspective **to choose to remain unaware of the potential existence of discrimination** or harassment, to **ignore or to fail to act to address human rights matters**, **whether or not a complaint has been made**. An organization violates the Code where it directly or indirectly, intentionally or unintentionally infringes the Code or does not directly infringe the Code but rather authorizes, **condones, adopts or ratifies behaviour that is contrary to the Code**. In addition, there is a **human rights duty not to condone or further a discriminatory act that has already occurred**. To do so would extend or continue the life of the initial discriminatory act. The **obligation extends to those who become involved in a situation that involves a discriminatory act, who, while not the main actors, are drawn into the matter nevertheless**, through contractual relations or otherwise.…

Elections Ontario Lacks Jurisdiction To Use Statutory Power To Violate S52(1) Constitution Acts 1867 To 1982 By Refusing To Hear This Declaratory Relief Application On Merits (Bad Faith)

18. No such thing as absolute discretion, means refusing to decide each declaratory relief by sighting rebuttal case law, is tantamount to bad faith by Elections Ontario. The rule of law against arbitrary (contrary to objects of Ontario Elections Act) application of discretionary statutory power which is codified in s10 Ontario Interpretation Act is part of the Constitution.

19. Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27, 1998 CanLII 837 (SCC) 27 "consequences... 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. .. 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 ... absurdity can be attached to **interpretations which defeat the purpose of a statute** or render some aspect of it pointless or futile.."

20. Brown v. British Columbia (Minister of Transportation and Highways), [1994] 1 SCR 420, 1994 CanLII 121 (SCC) It will always be open to a plaintiff to attempt to establish, **on a balance of probabilities**, that the policy decision was **not bona fide or was so irrational or unreasonable as to constitute an improper exercise of governmental discretion**. This is not a new concept. It has long been recognized that government decisions may be attacked in those relatively rare instances where the policy decision is shown to have been made in bad faith or in circumstances where it is **so patently unreasonable that it exceeds governmental discretion**. The test to be applied when a policy decision is questioned is set out in City of Kamloops v. Nielsen, 1984 CanLII 21 (SCC), [1984] 2 S.C.R. 2, …

21. Kamloops v. Nielsen, [1984] 2 SCR 2, 1984 CanLII 21 (SCC) In my view, inaction for no reason or inaction for an improper reason cannot be a policy decision taken in the bona fide exercise of discretion. Where the question whether the requisite action should be taken has not even been considered by the public authority, **or at least has not been considered in good faith, it seems clear that for that very reason the authority has not acted with reasonable care**. I conclude therefore that the conditions for liability of the City to the plaintiff have been met

22. Roncarelli v. Duplessis 1959 CanLII 50 (SCC), [1959] S.C.R. 121..there is **no such thing as absolute and untrammeled "discretion**", .. 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**.

23. Freeman v. Canada (Citizenship and Immigration), 2013-10-23, 2013 FC 1065, IMM-6304-12, Bad Faith …[24] The Supreme Court also stated in Roncarelli that "good faith" means "… not with an **improper intent** and for an alien purpose… "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 statu**s".. [27]..Supreme Court observed … 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, .. be inferred from the surrounding circumstances.. [29].. **absence of good faith can be deduced and bad faith presumed**".

24. 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] ….. 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".....[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**.

FOR THE APPLICATION, THE APPLICANT WILL RELY ON; The Affidavit of Ade Olumide, A Factum And A Book Of Authorities, May 21, 2018