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Toronto

Court file no.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**NEVILLE HEWAGE**

Applicant

-and-

**ATTORNEY GENERAL OF ONTARIO**

Respondent

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**NOTICE OF CONSTITUTIONAL QUESTION  
(Re. Bill 104, *Tamil Genocide Education Week Act, 2021*)**

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APPLICATION UNDER Rule 14.05(3) (g.1) and (h) of the Rules of Civil Procedure

The Applicant intends to question the constitutional validity of Ontario Bill 104, *Tamil Genocide Education Week Act, 2021*.

The question is to be argued (*choose one of the following*)

- In person
- By telephone conference
- By video conference

The question is to be argued on a date and time to be determined by the Registrar of the Superior Court at 330 University Avenue, Toronto, Ontario M5G 1R7.

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

01. On May 07, 2021, *Tamil Genocide Education Week Act, 2021* (TGEW) 3<sup>rd</sup> reading carried at the Legislative assembly Ontario and about to receive Royal Assent;
02. TGEW resolute Tamil Genocide;
03. TGEW preamble alleged that Tamils were physically or mentally traumatized by the Genocide the Sri Lankan state from 1948;
04. There is no evidence to support a Genocide from 1948 and therefore the allegation Tamils were physically or mentally traumatized by a Genocide do not substantiate and have no legal basis;
05. TGEW was alleged May 2009 alone, about 40,000 to 75,000 Tamil civilians were killed. Furthermore, it states others estimation as 146,679 civilians' deaths;
06. There is no evidence to support death totals, as stated in the TGEW. Allegations do not substantiate;
07. TGEW is also alleged that Tamils were seriously disadvantage for participating in the public service of Sri Lanka by *Sinhala Only Act 1956* and information provided is inaccurate as there was no such *Act* passed at Sri Lankan parliament in 1956;
08. TGEW is proclaimed Tamil Genocide education week, the seven days in each year ending on May 18;

09. Liberation Tigers of Tamil Eelam (LTTE) Tamil terrorist group fought to create mono ethics for Tamils in North and East. LTTE killed many Tamil civilians and over 160 Tamil political leaders;
10. The Government of Sri Lanka (GOSL) fought against the proscribed terrorist organization LTTE under *Anti-terrorism Act* S.C. 2001, c. 41, in 2006, a Tamil Terrorist group that occupied a portion of Sri Lanka's territory. It is pertinent to recall that Sri Lanka was subjected to a brutal 26 years of a secessionist campaign unleashed by the LTTE, which sought to divide Sri Lanka into ethnic lines and carve out a separate state;
11. It is important to note that during the 26-years armed conflict, not only Tamils, all ethnic groups, including Sinhalese and Muslims, also died and were injured;
12. A twenty-six (26) years civil war ended on May 18, 2009, after eliminating the group's military capabilities, the supreme leader and LTTE cadre;
13. Tamil Genocide has not been determined by any competent legal authority such as the International Criminal Court and International Court of Justice. The United Nation never directed any investigation on a Tamil Genocide in Sri Lanka;
14. TGEW has constituted with untruth, false, merely unfounded allegations;
15. Since the competent legal authority does not recognize the alleged Tamil Genocide, the Ontario Legislature must verify the facts on the alleged Tamil Genocide;

16. Ontario Legislature is failed to do so. Furthermore, Ontario Legislature has no legal authority to investigate or decide the alleged Tamil Genocide;
17. Ontario Legislature accepted all the facts presented in the TGEW without validating the information in it;
18. TGEW was referred to Standing Committee on Regulations and Private Bills. Many organizations, individuals including Applicant, opposed the TGEW and requested deputations. The Committee on Regulations and Private Bills did not invite deputation from any organizations, including applicant with different views on the TGEW;
19. Committee Chair acted in conflict of interest as he himself being a promoter of TGEW.
20. The defeat of the LTTE Tamil terrorism ended the proliferation of unlawful activities in Sri Lanka in May 2009, ushering in peace and normalcy. It is important to note that Sri Lankan military forces rescued 290,000 Tamil civilians from the clutches of the LTTE, who had used them as human shields;
21. The Government of Sri Lanka (GOSL) has fulfilled its constitutional obligation to protect its citizens from acts of terror and defended territorial integrity. A humanitarian operation was deployed with the support of armed forces to defend and liberate all Sri Lankans, keeping with the constitutional guarantees;
22. The armed conflict between the Liberation Tigers of Tamil Eelam (LTTE) and Sri Lanka's Government is accurately classified as a non-international armed conflict.

Therefore, any analysis of legal issues appurtenant to that conflict should be analyzed accordingly. Therefore, LTTE's utilization of civilians as a human shield needs to be addressed when assessing civilian casualties. Sri Lanka's armed forces acted in broad terms proportionately, and collateral damage must be examined under International Human Rights Law;

23. The Applicant is of Sri Lankan origin living in the Province of Ontario;
24. The Applicant seeks a declaration that Bill 104, *Tamil Genocide Education Week Act, 2021* is unconstitutional and an order rendering them of no force and effect.

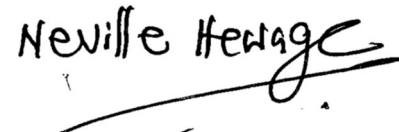
**The following is the legal basis for the constitutional question:**

25. The TGEW fail to strike a proportionate balance between the goals of the legislature and the constitutional rights of the Applicant who seek redress for those wrongs before the Superior Court;
26. While the provincial government has the power to control education matters under s. 93 of the *Constitution Act, 1867*, it does not have power to decide a Genocide, a matter Criminal in nature under s. 91(27) therefore province of Ontario acted in *ultra vires*;
27. The exercise of the s. 93 powers must be harmonious with the Constitution as a whole, and should be aligned with the *Canadian Charter of Rights and Freedoms*;
28. The s. 92(16) limits exclusive powers of Provincial Legislatures since Ontario must address, generally all matters of a merely local or private Nature in the Province;

29. TGEW fundamentally infringes the *Constitution Act, 1867* since alleged Tamil Genocide is not under provincial jurisdiction to create, pass or amend laws since deciding alleged Tamil Genocide is not merely local or private nature nor it is a matter under education in the Province of Ontario;
30. Standing committee on Regulations and Private Bills of Legislative Assembly of Ontario opt-out calling deputations submitted by Applicant, opposition to TGEW with out any reasonable cause, which infringes s. 2(b) of the *Canadian Charter of Rights and Freedoms* and is not saved by s. 1;
31. The treatment of the Applicant pursuant to the TGEW is discriminatory and arbitrary infringes s. 7 of the *Canadian Charter of Rights and Freedoms* due to Applicant's life, liberty or security was deprived by state action and deprivation was contrary to a principle of fundamental justice. A "security of the person" extends beyond physical harm and includes psychological and emotional stress, and is not saved by s. 1;
32. The *Charter* requires the Province to ensure that the law is enacted do not have a discriminatory impact or exacerbate historical and ongoing disadvantage. The state action put Applicant at a disadvantage due to unfounded allegation in TGEW, i.e., alleged Tamil Genocide and among others. This differential disadvantage violates the norm of substantive equality, thereby infringing Applicant's rights under s.15(1) of the *Canadian Charter of Rights and Freedoms*.

33. Any further and other grounds that Applicant's counsel may advise, and this Honourable Court may permit.

Date: May 10, 2021.



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PROCEEDING COMMENCED AT TORONTO

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