

**LEGISLATIVE ASSEMBLY OF ONTARIO**  
**COMMITTEE ON REGULATIONS AND PRIVATE BILLS**

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**Submission against Bill 104, *Tamil Genocide Education Week Act, 2019***

**Intend to Proceed with Constitutional Question**

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## **FINDING OF FACTS**

01. Bill 104, *Tamil Genocide Education Week Act*, 2019 has introduced by Mr. Vijay Thanigasalm MPP Scarborough Rough Park. Now, Bill 104 has been referred to the Committee on Regulations and Private Bills.

02. Bill 104 primarily alleged Tamil Genocide occurred in Sri Lanka from 1948 to May 2009.

03. The facts on Bill 104 were widely disputed.

## **04. CONSTITUTIONAL QUESTION**

The following is the legal basis for the constitutional question:

If Bill 104 becomes Ontario Law, will it contravene to S 92 (16) of the *Constitution Act*, 1867?

## **05. LAW**

*The Constitution Act* 1867, S 92, described Exclusive Power of Provincial Legislatures.

S 92 (16) provides that  
Generally all Matters of a merely local or private Nature in the Province

## **ANALYSIS AND CONCLUSIONS**

06. Bill 104 alleged the Tamil Genocide in Sri Lanka, which not have been recognized by the International Criminal Court, International Court of Justice.

07. The government of Canada is in a position that Courts should determine whether Genocide has taken place and legal test to be met for Genocide in international law is a very high one.

08. The government of Canada has not officially recognized (alleged) Tamil Genocide.

09. The subject matters that are proposed on Bill 104 are not merely local or private Nature in the Province of Ontario.

10. Therefore, if the proposed Bill 104 becomes a law of Ontario, will contravene to the *Constitution Act*, 1867, S 92 (16).

11. If the Committee on Regulations and Private Bills decided to move 3rd reading, I intend to question the constitutional validity of Bill 104 under Rule 14.05 of the Rules of *Civil Procedure*, R.R.O. 1990.

12. In my view, judicial review is not the route for challenging the constitutionality of Bill 104.

13. The existence of a possible parallel route by way of judicial review does not nullify the Superior Court's well-established jurisdiction to hear a constitutional challenge to subordinate legislation by way of a Rule 14.05 application. Nor is it enough to require that this Rule 14.05 application proceeds as an application for judicial review.<sup>1</sup>

14. As the Court of Appeal noted in *Gratton-Masuy*,<sup>2</sup> the jurisdiction of the Superior Court under ss. 11(2) and 97 of the *Courts of Justice Act*<sup>3</sup> to make "binding declarations of right" and to exercise the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario is "beyond controversy."<sup>4</sup>

15. The fact that similar applications are occasionally proceeding in Divisional Court as applications for judicial review<sup>5</sup> is not expected contest and, in any event, is an issue that should best be addressed by the Divisional Court.

16. If it turns out that material facts are in dispute and a trial of an issue or even a full trial is needed, then a judge of this Court will no doubt make the appropriate direction.

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1 Di Cienzo v Attorney General of Ontario, 2017 ONSC 1351

2 *Ontario v Gratton-Masuy Environmental Technologies Inc.*, 2010 ONCA 501 (CanLII), [2010] O.J. No. 2935 (C.A.).

3 *Supra*, note 2.

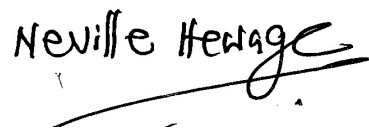
4 *Supra*, note 8, at para. 61. Also see *MacLennan v. Ontario (Minister of Transportation)* [2014] O.J. No. 2873 (Div. Ct.) at para. 8: "As a Superior Court of general jurisdiction and the successor to the Supreme Court of Ontario, the Superior Court has all the powers that are necessary to do justice between the parties and unless specifically limited, is unlimited in substantive law in civil matters."

5 See, for example, *Joshi v. Minister of Health and Long-Term Care*, 2015 ONSC 1001 (Div. Ct.); *Yuan v. Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, 2014 ONSC 351 (CanLII), [2014] O.J. No. 420 (Div. Ct.); *MacLennan v. Ontario (Minister of Transportation)* (2014), 121 O.R. (3d) 134 (Div.Ct.); and *Babineau v. Ontario (Lieutenant Governor)*, 2009 CanLII 55370 (Div. Ct.).

17. I request to appear before the Committee submits my oral deliberation.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**Submitted at Ottawa, City of Ottawa, Ontario, on June 17, 2020.**

A handwritten signature in black ink that reads "Neville Hewage". The signature is written in a cursive style with a long horizontal stroke underneath the name.

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