

## Global Webinar

# Canadian Courts Ruled: TGEWA does not Constitute a Tamil Genocide Declaration

LTTE Tamil terrorists' global human smuggling network collapsed.

We do not engage in personal vendetta and discuss matters with principles. We respect different views and opinions on subjects that interest the public while respecting the freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms.

### Extended Abstract

Liberation Tigers of Tamil Eelam (LTTE) Tamil terrorist organization's sympathizers and their operatives portrayed the *Tamil Genocide Education Week Act (TGEWA)* as a declaration by Ontario; otherwise, Tamil genocide is recognized by Ontario. This theory and ideology were widely publicized.

Dr. Neville Hewage disagreed.

### Legal Challenge

Dr. Neville Hewage challenged the impugned law *Tamil Genocide Education Week Act, 2021 (TGEWA)* as an individual and received "public interest standings." He named Attorney General Ontario (AGO) as a respondent. AGO did not challenge Dr. Hewage's standings.

#### **Ontario Superior Court of Justice**

*Hewage v. Attorney General Ontario* – File No.: CV-21-00663853-0000  
(Represented by Hasaka Ratnamalala, Ratnamalala Law.)

#### **Court of Appeal for Ontario**

*Hewage v. Attorney General Ontario* – File No.: C70919  
(Represented by Dhiren Chohan, Weaver Simmons LLP.)

#### **Supreme Court of Canada**

*Hewage v. Attorney General Ontario* - File No.: 41520  
(Represented by Dhiren Chohan, Weaver Simmons LLP.)

Regarding court records, two community organizations, the Sri Lankan Canadian Action Coalition (SLCAC) and the Sri Lanka Canada Association of Brampton (SLCAB), filed the applications against *TGEWA*. The court's record states Sri Lankan Canadian Action Coalition (SLCAC) did not advance the appeal to the Supreme Court of Canada.

At the primary level, SLCAC and SLCAB raised the following issues in the applications: Federal Power of Peace Order and Good Government (POGG), Criminal Power, and s. 2(b) freedom of expression, s. 15(1) Equality rights of Charter Rights and freedoms.

Among other arguments, Dr. Hewage specifically argued that Ontario has no power to declare Tamil genocide and that *TGEWA* does not fall under s 93 of the *Constitution Act, 1867*, provincial power of Education.

The court did not address Dr. Hewage's arguments at the primary level.

Dr. Hewage appealed.

With the enactment of *TGEWA*, LTTE's global human's human smuggling network has increased its operations. Our intelligence suggests LTTE operatives are planning to smuggle a large number of Tamils to Canada. LTTE human smugglers collect \$35,000 - \$60,000 from each asylum seeker. These operatives were abusing Canada's generous asylum system.

To address the principal questions, Dr. Hewage challenged the constitutionality of the *TGEWA*. For strategic reasons, a few other arguments were also in place.

His arguments are two prongs.

1. Sri Lanka did not commit genocide against the Tamils. It is an armed conflict between LTTE and Sri Lankan security forces.
2. *TGEWA* does not fall under provincial power of section 93 Education, *Constitution Act*, 1867.

#### **Question**

**Did Ontario declare Tamil genocide by enacting *TGEWA*?**

**Deploying arguments: Sri Lanka did not commit genocide against the Tamils.**

Both the Ontario Superior Court of Justice and the Court of Appeal for Ontario did not determine whether an alleged Tamil genocide took place in Sri Lanka.

Both courts further confirmed that *TGEWA* is not a declaration of Tamil genocide against Sri Lanka.

**In the decision of Court of Appeal Ontario Para 75 states the dominant purpose of the *TGEWA* is not to “declare” or “recognize” a (Tamil) genocide.**

#### **Reasons:**

*Hewage v Attorney General of Ontario*, 2022 ONSC 3849, Para 09, 10, 11, 12, 13

*Hewage v Attorney General of Ontario*, 2024, ONCA 657, Para 18, 19, 75

#### **Supreme Court of Canada**

To succeed, the leave to appeal to the “public importance test” must be satisfied. Otherwise, the Applicant must establish a legal error in the Appellate court decision. In this case, the Supreme Court Agreed with the Appellate Court decision (dismissal of leave to appeal); as such, the Appellate Court decision will stand. As a policy, the Supreme Court does not issue any reasons for its decisions.

#### **Conclusion**

Superior Court of Justice Ontario, the Court of Appeal for Ontario and the Supreme Court of Canada have not determined that the Tamil genocide took place in Sri Lanka. Further, courts found no declaration of alleged Tamil genocide took place in Sri Lanka. This concludes Ontario did not recognize the alleged Tamil genocide.

**Question**

Does *TGEWA* fall under provincial power section 93 Education, *Constitution Act*, 1867?

The Ontario Superior Court of Justice states that *TGEWA* comes under the provincial power of Education under s. 93 of the *Constitution Act*, 1867.

Dr. Hewage appealed against the decision.

The Appeal Court for Ontario did not agree with the Application judge's reasoning and stated that *TGEWA* does not come under s. 93 Education of the *Constitution Act*. The appeal court for Ontario concluded that "public awareness" does not come under Education. Further, the Court of Appeal for Ontario concluded that *TGEWA* has no reference to Education under the purpose of law.

**Reasons:**

*Hewage v Attorney General of Ontario*, 2024, ONCA 657 paras 09, 54, 62, 75, 76, 94

**Conclusion**

As such, *TGEWA* does not fall under provincial power section 93 of the *Constitution Act*, 1867 education. Therefore, the alleged Tamil genocide cannot be included in the Ontario school curriculum.

**Important Note:**

The appeal court has provided its own reasoning that *TGEWA* is valid legislation under the Local Matters Power: Section 92(16) gives the provinces the power to enact laws regarding "[g]enerally all Matters of a merely local or private Nature in the Province."

**Reasons:**

*Hewage v Attorney General of Ontario*, 2024, ONCA 657, para 92, 101

**Conclusions on Characterization: Dominant Purpose of TGEWA**

- [...] affirm and commemorate the Tamil-Ontarian community's experience of the Sri Lankan Civil War and
- thus promote, within Ontario, the values of human rights, diversity and multiculturalism.

**Reasons:**

*Hewage v Attorney General of Ontario*, 2024, ONCA 657, para 74.

Dr. Hewage does not oppose by any means allowing Ontario Tamils to commemorate their losses during the civil war and fully supports them for healing and reconciliation efforts.

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## Final Outcome

- Canadian courts found that no declaration by Ontario on alleged Tamil genocide took place in Sri Lanka.
- *TGEWA* does not fall under s 93 of the *Constitution Act, 1867* education. Therefore, the alleged Tamil genocide cannot be included in the Ontario school curriculum.
- *TGEWA* is a valid legislation under s. 92(16) *Constitution Act, 1867* Local and Private Nature. Ontario Tamils are entitled to commemorate their losses during the armed conflict and support healing and reconciliation effort.

## Discussion

With reference to Court of Appeal for Ontario's ruling Ontario Provincial Parliament did not declare alleged Tamil genocide that took place in Sri Lanka by enacting *Tamil Genocide Education Week Act* (*TGEWA*). Otherwise, Ontario did not recognize Tamil genocide. It also decided that purpose of *TGEWA* is not educational. Therefore, so called alleged Tamil genocide cannot be included in the school curriculum.

Also, court pronounced purpose of *TGEWA* is within local and private nature which provides the province to pass legislations such as commemorative nature. *TGEWA* is a valid legislation in Ontario allowing Ontario Tamils to commemorate their losses during civil war and support healing and reconciliation effort. It also allowed Tamils to express their opinion about last phase of the civil war.

Freedom of Expression under the *Canadian Charter of Rights and Freedoms* ensures that all Canadians, including Ontario Tamils, have the right to express their views and share their experiences. This includes the freedom to commemorate their losses, engage in healing and reconciliation efforts, and speak openly about the armed conflict in Sri Lanka. Given that these freedoms are already protected by the *Charter*, the enactment of the *TGEWA* may be viewed as unnecessary or redundant.

The enactment of the *TGEWA* appears to be aimed at influencing Canada's asylum system in favour of Tamil applicants. Human smugglers affiliated with the (Liberation Tigers of Tamil Eelam) Tamil terrorist group LTTE have been known to bring large numbers of Tamil asylum seekers into the western countries under the pretext of fleeing genocide. These smugglers reportedly charge between \$35,000 and \$65,000 per person.

Certain self-proclaimed rights groups and councils, which advocate for these migrants, are allegedly profiting from a highly lucrative asylum business. However, following a recent court ruling, their global human smuggling network has reportedly collapsed.

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