Court File No. CV-12-444388

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

EPOCH'S GARAGE LIMITED, COOK SCHOOL BUS LINES LIMITED, 678928 ONTARIO INC. and ROBERT DOUGLAS AKITT O/A DOUG AKITT BUS LINES

Plaintiffs

- and -

UPPER GRAND DISTRICT SCHOOL BOARD, THE WELLINGTON PUBLIC DISTRICT SCHOOL BOARD, SERVICE DE TRANSPORT DE WELLINGTON-DUFFERIN STUDENT TRANSPORTATION SERVICES AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

STATEMENT OF FACT AND LAW OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office, Civil
8th Floor, 720 Bay Street
Toronto, Ontario M7A 2S9

Ronald E. Carr, LSUC #13341F
Tel: 416-326-2704
Nadia Laeeque, LSUC #58335J
Tel: 416-326-4165
Fax: 416-326-4181

Counsel for the Defendant,
Her Majesty the Queen in right of Ontario

TO: **Lax O'Sullivan Scott Lisus LLP**
145 King Street West, Suite 1920
Toronto, Ontario
M5H 1J8

Jonathan Lisus/Matthew Law
Tel: 416-598-7873
Fax: 416-598-3730

Lawyers for the Plaintiffs

AND TO: **Thomson, Rogers**
Barristers and Solicitors
390 Bay Street, Suite 3100
Toronto, Ontario
M5H 1W2

Alan Farrer
Tel: 416-868-3100
Fax: 416-868-3134

Lawyer for the Defendants,
Upper Grand District School Board, The Wellington Public District School Board, Service De Transport De Wellington-Dufferin Student Transportation Services

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STATEMENT OF FACT AND LAW OF HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

PART I

1. This is a motion brought by the Defendant, Her Majesty the Queen in Right of Ontario (hereinafter, the "Crown") to strike all or significant portions of the Fresh as Amended Statement of Claim of the Plaintiffs. The motion is brought pursuant to Rule 21 of the Rules of Civil Procedure.

PART II – OVERVIEW

2. The action is brought by school bus operators who complain that the conduct of the Defendants, including the Crown, have destroyed their businesses. Damages are claimed against the Crown for negligence and negligent misrepresentation.

3. The complaints against the Crown fall within a number of categories relating to the decision of the Crown through the Ministry of Education (hereinafter, "the Minister") to require school boards and consortia of school boards to implement a competitive procurement process in regard to contracts for student transportation.

4. It is respectfully submitted that these complaints do not give rise to a duty of care on the part of the Crown or the Minister to the Plaintiffs. In introducing a programme of competitive procurement for school bus transportation services, the Minister did not owe a duty of care exclusively to school bus operators. The duty of care was owed to the public as a whole, of which the operators are but one constituent.

5. The decision-making of the Crown and the Minister sound in the area of true or core policy decisions. Even to the extent decision-making involves the implementation of those policy decisions, such decisions were also within the realm of protected policy decision-making.

6. Even if there was a proximate relationship between the Crown, the Minister and the Plaintiffs or any of them, the claim of the Plaintiffs for negligence or negligent misrepresentation fails at the second or policy stage of the *Anns* test.

7. Furthermore, there is immunity provided to the Crown and the Minister in respect of anything done or not done in accordance with the *Broader Public Sector Accountability Act,* 2010, the regulations, directives and guidelines.

8. Finally, pursuant to the *Limitations Act,* 2010, the within action must have been commenced within two years from the date the cause of action arose. The claim by the Plaintiffs, Epoch's and Cook that they lost routes in the Pilot RFP because of breaches of duties of the Defendants (see paragraphs 43, 44 and 45, Fresh as Amended Statement of Claim) is out of time. The action was commenced January 18, 2012, more than two years after completion of the Pilot RFP.

PART III – ISSUES AND THE LAW

9. The issues on the motion are as follows:

A: Does the statutory scheme create a duty of care on the part of the Crown or the Minister to the Plaintiff school bus operators or any of them;

B: Do the decisions which form the subject-matter of complaint fall under the realm of protected true or core policy decisions or do they fall under the realm of operational;

C: Even if there be proximity between the Plaintiffs and the Crown or Minister, do the claims in negligence and negligent misrepresentation fail under the second or policy stage of the *Anns* test;

D: Does the fact that the Minister funds the school bus transportation programmes and/or exercises some discretion or control over the delivery of educational services in Ontario give rise to a duty of care to the Plaintiffs;

E: Is the conduct of the Crown and Minister immune from action under the *Broader Public Sector Accountability Act,* 2010; and

F: Is the action relating to the Pilot RFP statute-barred under the *Limitations Act,* 2002.

Rule 21

10. The requirements on a Rule 21 motion are as follows:

a) The allegations of fact pleaded in the Statement of Claim must be accepted as proven;

b) the moving party must show that it is plain and obvious and beyond doubt that the plaintiff could not succeed if the matter were to proceed to trial;

c) the claim should not be struck merely because it is novel; and

d) the pleading must be read generously in favour of the plaintiff with allowances for drafting deficiencies.

Williams v. Canada, 2009 ONCA 378 at paragraphs 10-11, [2009] OJ No. 1819

Duty of Care

11. The movement toward competitive procurement of school bus transportation contracts which the Crown began in 2008, and various decisions relating to competitive procurement as well as the modes of implementing competitive procurement, were true or core policy-related decisions. Therefore, they are beyond the ambit of a private party seeking damages even if the economic well-being and ability to carry on business of such party was affected by such decisions. In introducing a procurement programme for school bus contracts, the Minister did not owe a duty of care exclusively to the school bus operators. Any duty of care owed was to the public as a whole of which the operators are but one constituent.

> *Granite Power Corp. v. Ontario*, 2004 OJ No. 3257; leave to appeal to refused, [2004] S.C.C.A. No. 409
>
> *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42

12. *Granite Power* is a case involving substantially similar facts to the within action. The claims were for misfeasance in public office, negligence and wrongful expropriation. The province had made a policy decision in favour of open market competition for electricity, essentially ending the monopoly enjoyed by the plaintiff. Prior to the decision of the Crown, the plaintiff, a small utility company, had enjoyed a monopoly in relation to the supply, distribution and sale of electricity for the town of Gananoque since 1885. Additionally, the plaintiff had entered into a 20 year agreement with the town in 1995 giving it exclusive rights and protection against competition. Granite incurred significant cost and expense in connection with the agreement.

13. In considering the nature of the duty owed by the Minister to Granite Power, the Court held:

> "…having regard to the statutory scheme under which the Minister was operating and the many competing interests he was required to weigh and balance in fulfilling his duties, the Minister did not owe a duty of care to Granite. While Granite was clearly a stakeholder, it was one of many to be considered by the Minister in determining the reach of the new legislation…
>
> Manifestly, under the legislative scheme, the Minister did not owe a duty of care exclusively to Granite. On the contrary, he owed a duty of care to the public as a whole, of which Granite was but one constituent. Hence, even if the Minister ought reasonably to have foreseen that Granite would suffer economic harm if he was careless in carrying out his duties under the Act, there was insufficient proximity between the Minister and Granite to ground a prima facie duty of care: see : *Cooper v. Hobart…"*
>
> *Granite Power, supra,* at paras 23 and 24

14. A consideration of the governing statutory scheme is central to the question of whether or not proximity exists between a plaintiff and a statutory public authority. The Supreme Court recently cautioned that it may be difficult to find sufficient proximity arising from any statute since most statutes are aimed at the public good and a private law duty would conflict with the public authority's duty to the public:

> "It may be difficult to find that a statute creates sufficient proximity to give rise to a duty of care. Some statutes may impose duties on state actors with respect to particular claimants. However, more often, statutes are aimed at public goods, like regulating an industry (*Cooper*), or removing children from harmful environments (*Syl Apps*). In such cases, it may be even more difficult if the recognition of a private law duty would conflict with the public authority's duty to the public…"
>
> *Imperial Tobacco, supra* at paras. 43-45

15. The importance of the legislative scheme in the proximity inquiry was explained in a recent decision of the Ontario Court of Appeal:

> "The legislative scheme looms large in the proximity inquiry for two reasons. First, the question of whether a regulator should owe a private law duty of care to those individuals affected by its actions is largely a policy decision that falls squarely within the legislative bailiwick. The legislature announces that policy decision through the terms of its legislation. Second, even where the legislation is not determinative and the court must look to the interaction between the regulator and the plaintiff, the terms of the legislation describing the powers and duties of the regulator may to some extent shape the relationship between the regulator and the regulated. That relationship will be relevant in deciding whether the specific interactions between the regulator and the plaintiff are sufficient to create the degree of proximity required to establish a *prima facie* duty of care."

Taylor v. Canada (Attorney General), 2012 ONCA 479 at paras. 76-78

16. No private law duty of care can arise where the purpose of the legislative scheme and the conduct of the Crown are to facilitate the interests of the public in general. The Court must consider the governing statute in order to determine whether the scheme of the Act mandates that the public authority owes a duty of care to specific individuals in a particular segment of the public or, as Ontario submits is the case at bar, to the public as a whole.

> *Attis v. Canada* (*Minister of Health)*, [2008] O.J. No. 3766 (C.A.) at para. 58, leave to appeal refused, [2008] S.C.C.A. No. 491
>
> *Imperial Tobacco*, *supra* at paras. 43-50
>
> *Granite Power*, *supra* at para. 24
>
> *Cooper v. Hobart*, [2001] 3 S.C.R. 537 at paras. 43-50

17. In March 2008, Ontario's Treasury Board of Cabinet directed that a Supply Chain Guideline be prepared and that as of April 1, 2009, it be incorporated into the funding agreements of Broader Public Sector organizations receiving more than $10 million per

fiscal from various ministries (the "Guideline"). In 2010 the *Broader Public Sector Accountability Act,* 2010 was passed (the "Act"). The Act was followed by the Broader Public Sector Procurement Directive, July 2011 (the "Directive").

18. The Act provides that the Management Board of Cabinet may issue directives governing the procurement of goods and services by designated broader public organizations. The Act further provides that such directives may incorporate by reference a government policy or directive, in whole or in part. The Act further stipulates that every designated broader public sector organization to which the directives apply shall comply with the directives.

Broader Public Sector Accountability Act, 2010, section 12 (1), (2) and (3)

19. The Act designates every school board as a broader public sector organization.

Broader Public Sector Accountability Act, 2010, section 1 (1)(b)

20. Pursuant to the Act, the Management Board of Cabinet issued the Directive which requires organizations to conduct an open competitive procurement process where the estimated value of procurement of goods and services is $100,000 or more.

Broader Public Sector Procurement Directive, section 7.2.3.

21. The Directive also requires broader public sector organizations to adopt the Supply Chain Code of Ethics so that the conduct of such organizations comply with the Code.

Broader Public Sector Procurement Directive, section 7.1

22. The Guideline, the Act and the Directive are hereafter collectively referred to as the "Legislative Scheme".

23. It is submitted that the Legislative Scheme does not create any private law duty of care and cannot be so interpreted.

24. It is respectfully submitted that the Legislative Scheme implemented by the Crown and the decisions of the Crown in connection therewith were intended for the public good. It is further submitted that the decision-making of the Crown was entirely directed toward the promotion of open, fair and transparent competition in regard to the procurement of school bus transportation contracts.

Policy/Operational

25. A private law duty of care may arise at the implementation stage of a policy decision.

Sagharian (Litigation Guardian of) v. Ontario (Minister of Education), 2008 ONCA 4111.

26. However, not all decisions encompassing implementation of policy fall within the realm of operation. Decisions about the scope of the operation and the staffing and monitoring of the programme related to policy decisions are not operational decisions. A negligence claim is not appropriate where such decision-making is involved. Accordingly, directions as to processes to be followed in respect of procurement, alternatives available, training and support would, fall into the realm of policy and not operational decisions.

Sagharian, supra

R. v. Imperial Tobacco Ltd., 2011 S.C.C. 42.

Cooper v. Hobart, [2001] 3 S.C.R. 537

Hercules Managements Ltd. v. Ernst & Young, [1997] 2 S.C.R. 165

27. In *Imperial Tobacco*, the Province of British Columbia brought an action against a number of tobacco manufacturers to recover health care costs incurred by the Province in regard to the treatment of tobacco-related disease. The defendant, Imperial Tobacco Canada Limited issued a third party notice to the Government of Canada alleging that if the company was held liable to the Province, then it was entitled to compensation from Canada for negligent misrepresentation, negligent design and failure to warn.

28. Imperial asserted that Health Canada advised tobacco companies that low tar cigarettes were less harmful than regular cigarettes and instructed smokers to switch to low-tar cigarettes if they were unwilling to quit smoking altogether. Contrary to expectations, low-tar cigarettes are potentially more harmful to smokers.

29. Imperial also alleged that Agriculture Canada researched, developed, manufactured and licensed several strains of low-tar tobacco and collected royalties from the companies, including Imperial, that used these strains. Imperial asserted that by 1982, the tobacco varieties developed by Agriculture Canada were "almost the only tobacco varieties available to Canadian tobacco manufacturers".

30. The Supreme Court of Canada considered the nature of Canada's involvement and whether the decisions at issue were protected from tort liability. The Court found that the actions of Canada were "core policy" government decisions related to the health of the citizenry. The Court described such decisions "…as to a course or principle of action that are based on public policy considerations, such as economic, social and political factors,

provided they are neither irrational nor taken in bad faith". In such circumstances, the decisions of the government are protected from suit.

Imperial, supra at para 90

31. The Court noted that:

> "… The decision to develop low-tar strains of tobacco on the belief that the resulting cigarettes would be less harmful to health is a decision that constitutes a course of action based on Canada's health policy. It was a decision based on social and economic factors. As a core government policy decision, it cannot ground a claim for negligent design".

Imperial, supra at para 116

32. In *Sagharian,* an action was initiated against the Crown and seven school boards on behalf of children with autism in Ontario. The Plaintiffs alleged deficiencies in the Crown's provision of services that administered to special needs of autistic children. These services related to certain behavioural intervention programmes (the "ABA programme") that were not provided for in the public school system. The Plaintiffs sought damages by reason of the failure of the Crown to provide the ABA programme.

33. The Court considered whether Ontario's decision about the provision of the ABA programme was anything other than a policy decision or a matter regarding its implementation and therefore, falling within the operational realm. In arguing that the government action was operational, the Plaintiffs alleged that Ontario "created, implemented and operated" a system that denied the benefit of the ABA programme to children in public schools. As well, the Plaintiffs asserted that Ontario and the school boards permitted "incompetent or insufficiently qualified" persons to design, implement and administer the programs and failed to adequately staff, administer and monitor the

programmes. The Plaintiffs also argued that the Crown's failure to harmonize the ABA programme and public education was an operation decision.

34. The Court of Appeal, however, held, as follows:

> "… I agree with the motion judge's conclusion that '[i]f decisions to provide ABA and other educational programs are policy decisions that do not give rise to a duty of care, a decision as to the appropriate harmonisation of such programmes cannot, in my judgment, sensibly be characterised otherwise.' This issue was specifically addressed in *Wynberg* at para 255, where this court dismissed similar claims as relating not to operational failures, but rather to 'government decision-making about the scope of the IEIP and the services to be provided within the special education system.'
>
> I also agree with the motion judge's assessment that the allegations against Ontario regarding staffing and monitoring of the programmes relate to policy decisions and not operations decisions. As found in *Wynberg*, these challenges relate essentially to the scope of the programmes, rather than to their operation."
>
> *Sagharian, supra* at paras 40 and 41

35. It is respectfully submitted that the determination by the Crown to require school boards and consortia to procure school bus transportation contracts by way of open competition was a true or core policy decision based on public interest considerations. It is further submitted that decisions such as the mode of transitioning the programme of competitive procurement, the use and manner of pilot projects, the determination to employ RFP's, the content of the RFP templates and the like, all fall within the type of conduct described by the Supreme Court of Canada in *Imperial* and the Ontario Court of Appeal in *Sagharian* as being within the realm of policy and outside the ambit of operational. It is therefore submitted that all of these decisions are protected from tort liability.

Negligence and Negligent Misrepresentation

36. In order to found a claim of either negligence or negligent misrepresentation, the Plaintiffs must establish that there is a private law duty of care owed by the Minister. The determination whether a duty of care exists is a legal issue and can be determined on a Rule 21 motion:

1597203 Ontario Ltd. v Ontario, [2007] O.J. No. 2349

37. In determining whether a duty of care exists, the Court must apply the two-part test set out in *Anns v. Merton London Borough Council* and updated in *Imperial Tobacco:*

> "At the first stage of this test, the question is whether the facts disclose a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If this is established, a prima facie duty of care arises and the analysis proceeds to the second stage, which asks whether there are policy reasons why this prima facie duty of care should not be recognized: *Hill v. Hamilton-Wentworth Regional Police Services Board, 2007 SCC 41, [2007] 3 S.C.R. 129.*

38. As previously submitted, the scheme for the introduction and implementation of competitive procurement of school bus transportation contracts were motivated by a general policy to promote open, fair and transparent procurement of goods and services through the use of public funds. There is nothing in the Legislative Scheme of the Crown to suggest that there is a private law duty of care owed to the Plaintiffs by statute.

39. A special relationship can arise by reason of interactions between the Crown and the Plaintiffs. A special relationship may be created where the Crown or the Minister ought reasonably to foresee that the Plaintiff will rely on the representation, and where such reliance would in the circumstances of the case be reasonable:

Imperial Tobacco, supra at para. 52

40. However, even if there can be a relationship of proximity by reason of any such interactions, there are policy reasons why the prima facie duty of care should not be recognized. Chief Justice McLachlin in *Imperial* noted with approval the holding of the Supreme Court of the United States in *U.S. v. Gaubert,* 499 U.S. 315, as follows:

> "Instead of defining protected policy decisions negatively, as 'not operational', the majority in *Gaubert* defines them positively as discretionary legislative or administrative decisions and conduct that are grounded in social, economic, and political considerations. Generally, policy decisions are made by legislators or officers whose official responsibility requires them to assess and balance public policy considerations. The decision is a considered decision that represents a 'policy' in the sense of a general rule or approach, applied to a particular situation. It represents 'a course or principle of action adopted or proposed by a government': New Oxford Dictionary of English (1998), at p. 1434. When judges are faced with such a course or principle of action adopted by a government, they generally will find the matter to be a policy decision. The weighing of social, economic and political considerations to arrive at a course or principle of action is the proper role of government, not the courts. For this reason, decisions and conduct based on these considerations cannot ground an action in tort".
>
> *Imperial Tobacco, supra* at para. 87

41. While the Supreme Court found that the relationship between Canada and the tobacco companies was sufficiently proximate to give rise to a *prima facie* duty of care, the Court found that the representations could not give rise to tort liability because of conflicting policy considerations. The representations made by Canada to the tobacco companies were protected from suit as they were part and parcel of government policy that was developed out of concern for the health of Canadians.

> *Imperial Tobacco, supra* at para. 95

42. Similarly, any representations of the Crown in the matter at bar were made pursuant to the Minister's decision to move towards competitive procurement and are part and parcel of government policy.

43. It is respectfully submitted that the decisions and conduct of the Crown and the Minister are grounded in social, economic and political considerations and are protected from an action in negligence or negligent misrepresentation.

Funding the Procurement Programmes/Discretionary Power of Minister

44. The fact of funding the procurement programmes or providing financial incentives to support such programmes does not, of itself, create a duty of care.

McKinney v. University of Guelph, [1990] S.C.J. No. 122.

45. The funding of a programme created to facilitate a public policy goal will not give rise to a duty of care even if the school boards or consortia of school boards depended upon such funding to carry out the procurement process.

McKinney, supra.

46. Furthermore, while the Minister makes broad rules of general application with respect to the school boards and consortia delivery of educational services, the discretionary nature of the Minister's powers does not lead to the conclusion that he or she has control over the boards nor a duty to monitor or oversee their daily operations.

Wiggins v. British Columbia, 2009 B.C.S.C. 121

Immunity From Liability - *The Broader Public Sector Accountability Act*, 2010

47. The Act provides for a broad immunity from suit under section 22 as follows:

> (a) No cause of action arises against the Crown, or any of the Crown's ministers, agents, appointees, employees, or an organization subject to this Act, as a direct or indirect result of,
>
> (b) the making or revocation of any provision of the regulations, directives or guidelines made under this Act, or
>
> (c) anything done or not done in accordance with this Act or the regulations or the directives or guidelines.
>
> Without limiting the generality of subsection (1), that subsection applies to an action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief.
>
> No proceeding, including but not limited to any proceeding in contract, restitution, tort, trust, fiduciary obligation or otherwise, that is directly or indirectly based on or related to anything referred to in clause (1) (a), (b) or (c) may be brought or maintained against the Crown or any of the Crown's ministers, agents, appointees and employees or an organization subject to this Act.

48. It is respectfully submitted that the introduction of competitive procurement, the decisions regarding the use of the RFP process, the preparation of templates, the transition strategy and the pilot projects all fall within the provisions of the Act. To the extent that the Crown or the Minister did anything in respect of the Act, these parties are protected against a cause of action for damages.

49. There are also allegations that the Crown or the Minister failed to do certain things. It is respectfully submitted that all of these allegations sound in the area of section 22(1)(b) of the Act; i.e., anything done or not done in accord with the Act, the regulations, directives or guidelines. In the result, no cause of action against the Crown or the Minister is available.

***The Limitations Act,* 2002**

50. Section 4 of *the Limitations Act,* 2002 provides that a proceeding shall not be commenced after the second anniversary of the day on which the claim was discovered.

51. School bus transportation contracts arising out of the 2009 Pilot Project were made no later than April 2009 (see paragraph 45, Fresh as Amended Statement of Claim). The within action was commenced by Notice of Action issued January 18, 2012. The claim for damages of Epoch's Garage Limited and Cook School Bus Lines Limited in regard to the said Pilot Project is statute-barred by reason of the expiry of the limitation period before the action was commenced.

PART IV – REMEDY SOUGHT

52. An Order is sought dismissing the within action against the Defendant, Her Majesty the Queen in Right of Ontario with costs.

53. In the alternative, an Order is sought dismissing the following paragraphs or excerpts from the Fresh as Amended, Statement of Claim: paragraph 22; paragraphs 23 to 27; paragraphs 28 to 30; paragraphs 31 to 34; paragraphs 35 to 36; paragraphs 37 to 38; paragraph 47; paragraph 49; the word "Defendants" in the first sentence of paragraph 60; the words "…under the Ministry's direction…" in paragraph 63; paragraphs 75 to 84; paragraphs 86 to 88; and the word, "Defendants" in paragraph 91.

54. In the further alternative, an Order striking out the claims of the Plaintiffs Epoch's Garage Limited and Cook School Bus Lines Limited in regard to the Pilot RFP.

Dated: July 8, 2013

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office – Civil Law
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Ronald E. Carr, LSUC #13341F
Tel: 416-326-2704
Nadia Laeeque, LSUC #58335J
Tel: 416-326-4165
Fax: (416) 326-4181

Counsel for the Defendant,
Her Majesty the Queen in right of Ontario

SCHEDULE A

1. *Williams v. Canada*, [2009] ONCA 378, [2009] OJ No. 1819

2. *Granite Power Corp. v. Ontario*, [2004] OJ No. 3257; leave to appeal to refused, [2004] S.C.C.A. No. 409

3. *R. v. Imperial Tobacco Canada Ltd.*, [2011] SCC 42

4. *Taylor v. Canada (Attorney General)*, [2012] ONCA 479

5. *Attis v. Canada* (*Minister of Health)*, [2008] O.J. No. 3766 (C.A.), leave to appeal refused, [2008] S.C.C.A. No. 491

6. *Cooper v. Hobart*, [2001] 3 S.C.R. 537

7. *Sagharian (Litigation Guardian of) v. Ontario (Minister of Education)*, [2008] ONCA 4111.

8. *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165

9. *1597203 Ontario Ltd. v Ontario*, [2007] O.J. No. 2349

10. *McKinney v. University of Guelph*, [1990] S.C.J. No. 122

11. *Wiggins v. British Columbia*, [2009] B.C.S.C. 121

SCHEDULE B

1. *Broader Public Sector Accountability Act*, 2010, section 1 (1)(b); section 12 (1), (2) and (3)

2. *Broader Public Sector Procurement Directive*, July 2011, section 7.1; section 7.2.3

3. *The Limitations Act, 2002*, section 4

Broader Public Sector Accountability Act, 2010

Interpretation

1. (1) In this Act,

"agency of the Government of Ontario" means a public body designated in regulations made under the *Public Service of Ontario Act, 2006*; ("organisme du gouvernement de l'Ontario")

"broader public sector organization" means,

(a) a designated broader public sector organization, and

(b) a publicly funded organization; ("organisme du secteur parapublic")

"community care access corporation" means a community care access corporation within the meaning of the *Community Care Access Corporations Act, 2001*; ("société d'accès aux soins communautaires")

"consultant" means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making; ("expert-conseil")

Directives

12. (1) The Management Board of Cabinet may issue directives governing the procurement of goods and services by designated broader public sector organizations. 2010, c. 25, s. 12 (1).

Same

(2) Without limiting the generality of subsection (1), the directives may incorporate by reference a Government of Ontario policy or directive, in whole or in part, as amended from time to time. 2010, c. 25, s. 12 (2).

Compliance

(3) Every designated broader public sector organization to which the directives apply shall comply with the directives. 2010, c. 25, s. 12 (3).

Broader Public Sector
Procurement Directive

Effective July 01, 2011

7.1 SUPPLY CHAIN CODE OF ETHICS (CODE)

The Code does not supersede codes of ethics that Organizations have in place, but supplements such codes with supply chain-specific standards of practice.

Organizations must formally adopt the Code in accordance with their governance processes. The policy intent is to establish that the conduct of all Members of an Organization involved with Supply Chain Activities must be in accordance with the Code.

The Code must be made available and visible to all Members of the Organization, as well as suppliers and other stakeholders involved with Supply Chain Activities.

7.2.3 *Mandatory Requirement #3: Competitive Procurement Thresholds*

Organizations must conduct an open competitive procurement process where the estimated value of procurement of goods or services is $100,000 or more. The exemptions must be in accordance with the applicable trade agreements.

Organizations must competitively procure consulting services irrespective of value. The exemptions must be in accordance with the applicable trade agreements. **Goods, Non-Consulting Services and Construction**		
Total Procurement Value	**Means of Procurement**	**Recommended/Required**
$0 up to but not including $100	Petty cash	Recommended
$100 up to but not including $3,000	Procurement card (P-card)	Recommended
$3,000 up to but not including $10,000	Purchase order	Recommended
$10,000 up to but not including $100,000	Invitational competitive procurement (minimum of three suppliers are invited to submit a bid)	Recommended
$100,000 or more	Open competitive process	Required
Consulting Services		
Total Procurement Value	**Means of Procurement**	**Recommended/Required**
$0 up to but not including $100,000	Invitational or open competitive process	Required
$100,000 or more	Open competitive process	Required

Limitations Act, 2002

S.O. 2002, CHAPTER 24

Basic limitation period

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.

Court File No. CV-12-444388

EPOCH'S GARAGE LIMITED et al. **v.** **UPPER GRAND DISTRICT SCHOOL BOARD et al.**
Plaintiffs Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

STATEMENT OF FACT AND LAW

ATTORNEY GENERAL FOR ONTARIO
Crown Law Office, Civil
8th Floor, 720 Bay Street
Toronto, Ontario M7A 2S9

Ronald E. Carr, LSUC #13341F
Tel: 416-326-2704
Nadia Laeeque, LSUC #58335J
Tel: 416-326-4165
Fax: 416-326-4181

Counsel for the Defendant,
Her Majesty the Queen in right of Ontario