



Model Supreme Court of Canada

Citation: zhantongz v. Ontario (Premier),
2017 MSCC 3

Judgement Rendered: February 19, 2017

Docket: 004.1

Between:

zhantongz

Applicant

- and -

Premier of Ontario

Respondent

Coram: TheLegitimist C.J and kriegkopf and ray1234786 JJ.

Reasons for Judgement:
(paras. 1 to 12)

ray1234786 J. (TheLegitimist C.J. and kriegkopf J.
concurring)

Cases Cited

/u/BrilliantAlec v. Canada (Secretary of State), 2017 MSCC 1

/u/zhantongz v. Canada (Attorney General), 2016 MSCC 1

Statutes and Regulations Cited

Order in Council #4 Ontario Transparency and Reform Directive, 2017 OC-4

The judgement of the Court was delivered by

ray1234786 J. —

1. This case concerns *Order in Council #4 Ontario Transparency and Reform Directive* (hereinafter referred to as the “*Order*”). The applicant has requested an interim injunction against paragraph (a), subparagraph (i) of the first section of the *Order*. The applicant believes that the phrasing “and the executives of the corporation are now relieved of duty effective the day the order is submitted” would be a violation of the rights of shareholders and stakeholders in the business.

Order in Council #4 Ontario Transparency and Reform Directive, 2017 OC-4

2. To determine whether to grant an interim injunction, the Court will use the test set out in */u/BrilliantAlec v. Canada (Secretary of State)* (hereinafter referred to as the “*BrilliantAlec* test”):

- I) Is there a serious issue to be tried?
- II) Will there be irreparable harm suffered if the injunction is not granted?
- III) Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits?

/u/BrilliantAlec v. Canada (Secretary of State), 2017 MSCC 1

3. **Part I:** We find that there is a serious issue to be tried. It is clear that the power of shareholders and stakeholders would be affected in some way by this *Order*. There is a serious issue as to whether that effect on their power would constitute a violation of rights as prescribed by the *Business Corporations Act* and the *Securities Act*.

4. Withal, the respondents in this matter have brought up the issue of frivolous and vexatious litigation. The Court would like to address this issue specifically with a common law test and also would like to admonish counsels frivolous usage of the terms ‘frivolous & vexatious’ without establishing any merit to its substance in a court of law. The Court will

utilize these factors which are relevant in determining whether a pattern of conduct constitutes an abuse of process.

- (1) Number of requests
- (2) Nature and scope of the requests
- (3) Purpose of the requests

5. In addressing criteria (1) the Court feels the number of requests is more than reasonable. The applicant, for most of the tenure of the federal government, was inactive in Court and only started to make a large number of requests when the federal government issued a series of Orders in Council before its calling of an election. Although some were not fully decided in the merits, it was clear to this Court that all of the requests, including, this were completely reasonable.

6. Criteria (2) requires a basic analysis of the applicant's litigious history before this Court. The applicants briefs and submissions to the Court for other matters have all met their evidentiary legal thresholds to withstand the scrutiny of the Court and have never been meritless.

7. In regards to (3), as we've stated before, the Court feels as if the requests have never been meritless in its nature and have served an important purpose in reviewing the

government's actions. Looking at this framework holistically, the Court is confident in saying these matters have never amounted to abuse of process or abuse of our judicial institutions.

8. Part II: The applicant has submitted that the unquantifiable nature of the damage done to Hydro One would make it irreparable. Although the harm is financial, we find that the *Order* would cause long term, if not permanent, damage to the company in the capital markets for which it would be extremely hard to award damages. We agree that there will be irreparable harm suffered, but that it does not pass this part of the *BrilliantAlec* test, *intra*.

9. Firstly, any harm suffered to the shareholders and stakeholders would still exist if the interim injunction was granted. The argument made by the applicant is that the investor confidence in the company will be lost. We agree that this will happen. However, even if this interim injunction is granted, the investors would not be confident. They would be wary that, at any second, this Court could drop a decision reinstating that subparagraph of the *Order* and they would find themselves in the exact same situation. Furthermore, even if this Court rules with a permanent injunction in favour of the applicant, they could still not be confident. As this challenge is statutory in nature, the effects of the subparagraph could still be instated through an Act of Parliament pushed through by a majority government. In such an environment, we are not convinced that any investor could still have confidence in the company.

10. The applicant has also argued that the recognition that this claim is not frivolous would also restore investor confidence. That this suit is not frivolous does not need an interim

injunction to be recognized. We have already found, *supra*, that the suit is not frivolous through part 1 of this test.

11. Although this harm may still be irreparable in nature, this Court has ruled in */u/zhantongz v. Canada (Attorney General)* that this test is not watertight. If the irreparable harm suffered would exist regardless of this interim injunction, we do not believe an interim injunction is warranted.

/u/zhantongz v. Canada (Attorney General), 2016 MSCC 1

12. Therefore, we find that the effects of this order do not pass the *BrilliantAlec* test for an interim injunction. As such, section 1, paragraph 1, subparagraph 1 of the *Order* is upheld until a decision on the permanent injunction is made.

Interim Injunction dismissed.

Solicitor for the Applicant: zhantongz.