COURT OF APPEAL

ON APPEAL FROM the order of Mr. Justice Gomery of the Supreme Court of B.C. pronounced on the 21st day of June 2022

BETWEEN:

Democracy Watch and Wayne Crookes (Petitioners)

AND:

The Lieutenant Governor of British Columbia, the Lieutenant Governor in Council of British Columbia, the Premier of British Columbia, the Attorney General of British Columbia, and His Majesty the King in Right of the Province of British Columbia (Respondents)

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TABLE OF CONTENTS

CHRONOLOGY

Date	**Event**
December 6, 2002	The *Constitution (Fixed Election Dates) Amendment Act, 2001,* SBC 2001, c 36 comes into force, amending the *Constitution Act,* RSBC 1996, c 66 (the "***Constitution Act***") and making British Columbia the first province in Canada to adopt fixed election dates.
May 17, 2005 - May 9, 2017	Four consecutive general elections take place in British Columbia, all on the fixed election date set out in the *Constitution Act*.
November 1, 2017	*Bill 5: Constitution Amendment Act, 2017,* SBC 2017, c 11 comes into force changing the election date from a four-year fixed cycle with the election falling on the second Tuesday in May to a four-year fixed cycle with the election falling on the third Saturday in October. The next election is scheduled to occur on October 16, 2021.
March 18, 2020	The Minister of Public Safety and Solicitor General declares a state of emergency throughout British Columbia due to the COVID-19 pandemic. The state of emergency lasts until June 30, 2021.
September 21, 2020	After receiving advice from the Premier to dissolve the Legislature and to cause the writs to be issued for an election, the Lieutenant

	Governor issues a Proclamation dissolving the Legislative Assembly and ordering a general election at a time when the Premier held the confidence of the Legislature (the "**Snap Election**").
October 23, 2020	Democracy Watch and Wayne Crookes (together, the "**Petitioners**") file the within petition (the "**Petition**") against various respondents (collectively the "**Respondents**") seeking a declaration that calling the Snap Election contravened the *Constitution Act.*
October 24, 2020	The general voting day takes place, and the government is re-elected with a majority of seats.
June 9, 2021	The Respondents file an application to strike the Petition.
August 19, 2021	The hearing of the Respondents' application to strike is adjourned as no judges were available on the scheduled date.
November 10, 2021	The Respondents agree to abandon their application to strike and file a petition response.
May 12 & 13, 2022	The Petition is heard by Gomery J.
June 21, 2022	Justice Gomery dismisses the Petition.
July 21, 2022	The Petitioners file a notice of appeal.

OPENING STATEMENT

In 2001, the BC Legislature implemented a constitutional innovation: it amended s. 23 of the *Constitution Act* to establish a fixed four-year election cycle. The Legislature's clear purpose was to "reform[] the institutions of government" and prevent Premiers from timing elections for political gain.

The appellants' underlying petition seeks declarations on the legality of the snap election called in 2020, held a full year before the election date set by the *Constitution Act* and during BC's longest state of emergency. The then-Premier held the confidence of the Legislature. His advice to the Lieutenant Governor to dissolve the Legislature was plainly timed for partisan gain.

Justice Gomery dismissed the Petition. He properly found that the "idea" behind s. 23 was to implement a cycle of fixed elections and to curb the power of the Premier. Nevertheless, Gomery J. concluded that the Premier's power to time elections is unconstrained by s. 23—irrespective of the Legislature's stated purpose.

Justice Gomery's flawed interpretation of s. 23 was driven by his erroneous view that the Premier's power to recommend dissolution is necessarily and quintessentially non-justiciable. As the New Brunswick Court of Appeal has held in considering analogous fixed-election legislation, the statutory limit of the Premier's advice-giving power is justiciable. If government actions cannot be challenged in court, the state cannot be held to account—and the government will be, or be seen to be, above the law.

This error regarding justiciability overwhelmed Gomery J.'s interpretation of the statute. The modern approach to statutory interpretation dictates a different result.

The plain language of the *Constitution Act*, the Legislature's purpose, and the surrounding context all indicate that the Legislature intended to bind the Premier to a cycle of fixed election dates, subject only to the Lieutenant Governor's discretion in situations of non-confidence. Crucially, the legislation prevents a Premier from timing a provincial election to further their political agenda. Indeed, if the Premier were free to ignore the fixed election cycle, s. 23(2) of the *Constitution Act* would be a dead letter.

PART 1 - STATEMENT OF FACTS

A. Statutory Background

1. Prior to 2001, s. 23 of the *Constitution Act* provided that, in the absence of dissolution of the Legislative Assembly, members of the Legislative Assembly would hold their seats for a maximum of five years. This provision echoed the maximum duration of a legislative assembly allowed under s. 4(1) of the Charter.[1]

2. As a consequence, provincial elections in British Columbia could occur at any time, on the Premier's advice and at the Lieutenant Governor's discretion, as long as the five-year maximum window between elections was not exceeded.

3. In 2001, s. 23 of the *Constitution Act* was amended by Bill 7, the *Constitution (Fixed Election Dates) Amendment Act, 2001*. The new s. 23 established a fixed election date, with a general voting day to occur on May 17, 2005, and on the second Tuesday in May every four years thereafter (the "**2001 Amendment**").

4. The purpose of the 2001 Amendment was set out in Hansard. The then-Attorney General of British Columbia stated:

   a. The purpose of the 2001 Amendment was "to ensure that provincial elections in British Columbia must be held on a fixed date every fourth year or immediately if a government loses a confidence vote in the Legislature".[2]

   b. The 2001 Amendment was made so that provincial elections in British Columbia could not be timed "according to the political agenda of a Premier" or "as an aspect of their re-election strategy".[3]

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[1] *Canadian Charter of Rights and Freedoms,* s 4(1), Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
[2] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 21 (August 20, 2001) at 1410 (emphasis added).
[3] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1010 – 1015.

c. The 2001 Amendment would strike "at the heart of the power that is concentrated in the Premier's office" and was "about reforming the institutions of government".[4]

d. Subsection 23(1) of the *Constitution Act* preserved the prerogative of the Lieutenant Governor to prorogue or dissolve the Legislative Assembly, so that "should a government be defeated in the Legislative Assembly on a vote of non-confidence, the Lieutenant-Governor may dissolve the Legislative Assembly and call a general election immediately".[5]

e. Following the 2001 Amendment, the *Constitution Act* would not allow the timing of a provincial election to be determined based on the Premier's political agenda.[6]

5. After the enactment of the fixed election provisions in the *Constitution Act* in 2001, the subsequent four elections were held on the dates required by the *Constitution Act*.

6. In November 2017, s. 23 was again amended by Bill 5, Constitution Amendment Act, 2017, which moved the fixed election date from May to October (the "**2017 Amendment**"). Section 23 of the *Constitution Act* then read:

> 23 (1) The Lieutenant Governor may, by proclamation in Her Majesty's name, prorogue or dissolve the Legislative Assembly when the Lieutenant Governor sees fit.
>
> (2) Subject to subsection (1), a general voting day must occur on the third Saturday in October in the fourth calendar year following the general voting day for the most recently held general election.[7]

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[4] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.
[5] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1005.
[6] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.
[7] Section 23 also contains s. (3) and (4), which have no bearing on this appeal. In addition, on March 11, 2022, s. 23 was further amended to change the term "general voting day" to "final voting day", to reflect the trend towards voting periods of multiple days when voters in British Columbia can vote. This is the version quoted by Gomery J. in his reasons at para 49. Nothing turns on this amendment.

7. Consequently, the next election was scheduled to occur on the third Saturday of October in 2021.

B. The 2020 Snap Election

8. In 2020, the Province was labouring under a the longest state of emergency in its history due to the COVID-19 pandemic. [8]

9. The government of the day had the confidence of the Legislature: the Premier's party held a slight minority of the seats in the Legislature, but governed with the written agreement of three additional MLAs (two members of the Green Party and one independent MLA). [9] The written agreement specified that:

a. the agreement would last for four years or until the next fixed election date;

b. the Premier would not request dissolution during the term of the agreement, except following a vote of non-confidence;

c. the members of the Green Party would not vote non-confidence during the term of the agreement, so long as the principle of good faith was respected, and no surprises were observed; and

d. both parties agreed to follow specific consultation and dispute resolution practices, and to advance certain policy initiatives.[10]

10. Nevertheless, the Premier wished to call an election.[11] He advised the Lieutenant Governor to dissolve the Legislature and call an election (the "**Snap Election**"), and the Lieutenant Governor did so on September 21, 2020.[12]

11. It is an inescapable inference that the Premier called the Snap Election for partisan political purposes.

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[8] *Democracy Watch v. British Columbia (Lieutenant Governor),* 2022 BCSC 1037 at para 9 ("**Reasons**").
[9] Reasons at para 9.
[10] 2017 Confidence and Supply Agreement, Affidavit of Wayne Crookes, filed on October 23, 2020, Ex "B".
[11] Reasons at para 9.
[12] Reasons at para 9.

12. The Snap Election was held on October 24, 2020, a year before the date stipulated by s. 23(2) of the *Constitution Act*. The Premier's party won a majority of the seats in the Legislature, and the Premier retained his position as the head of the government.[13]

C. Proceedings in the British Columbia Supreme Court

13. The appellants commenced the Petition in the British Columbia Supreme Court on October 23, 2020, one day before the Snap Election. The Petition asked the Court to declare that either the Premier or the Lieutenant Governor, or both, contravened s. 23 of the *Constitution Act* as follows:

a. in the case of the Premier, by advising the Lieutenant Governor to dissolve the Legislative Assembly and call the Snap Election a year in advance of the scheduled date stipulated by s. 23(2) of the *Constitution Act;* and

b. in the case of the Lieutenant Governor, by improperly exercising her discretionary power under s. 23 of the *Constitution Act* in dissolving the Legislative Assembly and by improperly exercising her power under s. 24(1) of the *Election Act* in calling the Snap Election to occur a year in advance of the date stipulated by s. 23(2) of the *Constitution Act*.[14]

14. The Petitioners' essential theory was that s. 23 of the *Constitution Act* bound the Premier to a cycle of fixed elections, subject only to a vote of non-confidence. The Petitioners did not, and do not, seek to overturn the result of the election, but rather sought declaratory relief that would guide future Premiers and Lieutenant Governors.

D. The British Columbia Supreme Court Decision

15. On June 21, 2022, Gomery J. dismissed the Petition.[15]

16. Justice Gomery properly found that British Columbia has the constitutional authority to enact legislation affecting the Lieutenant Governor's prerogative power to dissolve the Legislature.[16] He concluded that the *Constitution Act* does just that, by

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[13] Reasons at para 10.
[14] *Election Act, RSBC 1996,* c 106 ("***Election Act***")
[15] Reasons at para 79.
[16] Reasons at para 41-42.

displacing the prerogative power of dissolution and converting it into a statutory power.[17] Justice Gomery also correctly found that the statutory nature of the power of dissolution in British Columbia distinguishes the British Columbia *Constitution Act* from the fixed election provisions in other jurisdictions, which instead expressly preserve the prerogative power of dissolution.[18]

17. Having found that dissolution is a statutory power in British Columbia, Gomery J. rightly concluded that:

> [...] Any limitations imposed by the statute must be respected, even if the Crown might have performed the same act in the exercise of the Crown prerogative, without limitation, apart from the statute [...][19]

18. Justice Gomery then considered the statutory interpretation question of whether s. 23 of the *Constitution Act* places any constrains on the power of dissolution. Justice Gomery found that "the idea" behind the 2001 Amendment was "that elections should take place on a fixed four-year schedule, rather than at the politically motivated whim of the Premier of the day".[20] Justice Gomery also noted that the Respondents' argument—that the *Constitution Act* allows a Premier to time an election as part of their re-election strategy—is "contrary to the stated intention in 2001".[21]

19. Despite those findings, Gomery J. ultimately concluded that nothing in the *Constitution Act* restricts the Lieutenant Governor's power to dissolve the Legislature or the Premier's power to recommend that dissolution.

PART 2 - ERRORS IN JUDGMENT

20. This appeal is concerned with only one aspect of Gomery J.'s decision: that Gomery J. erred in concluding that s. 23 of the *Constitution Act* places no limits on the

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[17] Reasons at para 47.
[18] Reasons at para 59.
[19] Reasons at para 45 citing *Delivery Drugs Ltd. v. Ballem,* 2007 BCCA 550 at paras 64, 66, leave to appeal ref'd, [2008] SCCA No 17.
[20] Reasons at para 5.
[21] Reasons at para 13.

Premier's power to advise the Lieutenant Governor to dissolve the Legislature. In the result, Gomery J. failed to give any effect to s. 23(2) of the *Constitution Act*.

21. In particular, Gomery J. erred by:

a. finding that judicial reviews of the Premier's advice to the Lieutenant Governor on dissolution pursuant to s. 23 of the *Constitution Act* would necessarily raise a non-justiciable "political question"; and, relying on that finding,

b. holding that s. 23 of the *Constitution Act* should not be interpreted in a manner that would give rise to judicial reviews of the Premier's advice to the Lieutenant Governor.

PART 3 – ARGUMENT

A. The standard of review is correctness

22. Justice Gomery's determination that s. 23 of the *Constitution Act* does not place any limits on Premier's power to recommend dissolution turned entirely on his construction of that provision. The construction of a statute is a question of law that is reviewed on a correctness standard.[22]

B. Overview: Gomery J. erred in his interpretation of section 23(2) of the *Constitution Act*

23. Justice Gomery erred in concluding that "the Lieutenant Governor's power to dissolve the Legislature under s. 23(1) of the *Constitution Act* is unaffected by the establishment of the fixed election cycle under s. 23(2)", and that "the Premier's power to recommend a dissolution is equally unconstrained".[23] In the result, Gomery J. rendered s. 23(2) of the *Constitution Act* a dead letter.

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[22] *Canadian National Railway Co. v. Canada (Attorney General),* 2014 SCC 40 at para 33; *Zongshen (Canada) Environtech Ltd. v. Bowen Island (Municipality)*, 2017 BCCA 267 at paras 35-36.

[23] Reasons at para 71.

24. Justice Gomery's flawed interpretation of s. 23 was driven by his erroneous view that the Premier's power to recommend dissolution is necessarily non-justiciable:

> I do not think that s. 23 of the CA(BC) should be interpreted in a manner that would foreseeably give rise to non-justiciable court applications concerning the Premier's advice to the Lieutenant Governor.[24]

25. As set out below, however, whether the Premier acted within the legal boundaries of his advice-giving power is justiciable.[25]

26. Justice Gomery then allowed his misapprehension concerning justiciability to overwhelm his interpretation of the statute, stating: "This cannot be what was intended when the legislation was enacted".[26]

27. In fact, the Legislature said precisely the opposite. The plain language of the statute, the Legislature's purpose, and the statutory context all indicate that the Legislature intended to bind the Premier to a cycle of fixed election dates, subject only to the Lieutenant Governor's discretion in situations of non-confidence. The legislation's purpose is to prevent the timing of a provincial election to be used for the Premier's political agenda. [27]

28. The following addresses (1) the justiciability of the Premier's dissolution advice; (2) the correct interpretation of s. 23; (3) the s. 23 test for the lawfulness of the Premier's advice; and (4) the relief sought by the appellants.

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[24] Reasons at para 68.
[25] *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525 at 545-546; *Alani v. Canada (Prime Minister),* 2015 FC 649 at paras 33-36; *Brewers Retail v. Campbell,* 2022 ONSC 850 at para 21.
[26] Reasons at para 68.
[27] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.

C. The legality of the Premier's dissolution advice is justiciable

29. Justice Gomery erred in finding that the Premier's advice on dissolution is "quintessentially political and non-justiciable".[28] The legal limits of a statutory power—even one that was formerly prerogative—is, without exception, justiciable.

30. The Petition focuses squarely on the legality of the Premier's advice to the Lieutenant-Governor: specifically, its compliance with s. 23 of the *Constitution Act*. To answer this question, the Court need consider only whether the Premier's dissolution advice was in accordance with the legal limits found in s. 23. This is a quintessentially *justiciable* question, and Gomery J. erred in finding otherwise. The political wisdom of the Premier's advice is not at issue.

31. Canadian courts have the ability and the constitutional responsibility to ensure that exercises of public power—even if politically controversial—are in accordance with the laws that define the scope of that power.[29]

32. For an issue to be justiciable, it must raise only a "sufficient legal component" to warrant intervention from the judicial branch.[30] The category of cases that are non-justiciable is small.[31] The fact that a legal issue raises political concerns does not render it non-justiciable:[32] a court will only find a matter to be non-justiciable in the rare instance where the question before the courts is "*purely* political".[33] Even if a legal question involves difficult public interest concerns, courts will assess the acceptability and defensibility of government decision-making.[34] In a situation engaging significant extra-

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[28] Reasons at para 66.
[29] *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525 at 545-546; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 26-27; *Democracy Watch NBCA* at para 55.
[30] *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525 at 545.
[31] *Hupacasath First Nation v. Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 4 at para 67 ("***Hupacasath***").
[32] *Victoria (City) v Adams*, 2009 BCCA 563 at para 67.
[33] *Black v. Canada (Prime Minister),* 2001 CanLII 8537 (ON CA) at para 50 citing *Reference re Canada Assistance Plan (British Columbia),* [1991] 2 SCR 525 at p. 545 (emphasis added).
[34] *Hupacasath* at para 67.

legal components, courts will limit the question before them to answer only its legal aspects.[35]

33. By relying on what he called the "political questions doctrine", however, Gomery J. misconstrued justiciability, erroneously importing a distinctly American concept rejected by the Supreme Court of Canada.[36]

34. The American "political questions doctrine" renders certain matters non-justiciable if they are too political.[37] The Supreme Court of Canada has been clear that Canadian courts can engage in politically controversial matters—*particularly* when asked to do so by statute.[38] So long as they are engaging with questions of legality and not adjudicating on the wisdom of political decision-making, Canadian courts are free to engage in matters of political controversy.[39]

35. In determining justiciability, Justice Gomery relied on the reasons of the Federal Court of Appeal in *Conacher* and the Alberta Court of Appeal in *Engel*,[40] but those decisions concern a *prerogative* power of dissolution—not a statutory one. The legislation at issue in *Conacher* and *Engel* expressly preserves the Crown's dissolution prerogative.[41] In contrast, s. 23(1) of the *Constitution Act* converts the prerogative into a statutory power of decision.[42] As a consequence, fundamentally different interpretive principles are engaged: as Gomery J. accepted, a statutory power may be limited by—

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[35] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 28.
[36] Reasons at paras 66-67; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 27.
[37] Peter W. Hogg, Constitutional Law of Canada, 5th ed (Toronto: Thomson Reuters, 2007) (loose-leaf updated 2019) at §36:12 ("**Hogg**"), citing Lorne Sossin, Boundaries of Judicial Review: the Law of Justiciability in Canada (Toronto: Carswell, 1999), 133, 199-200.
[38] *Operation Dismantle v the Queen*, [1985] 1 SCR 441 at para 63; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 27; *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525 at 545-546. Also see: Hogg, at §36:12, citing Lorne Sossin, Boundaries of Judicial Review: the Law of Justiciability in Canada (Toronto: Carswell, 1999), 133, 199-200.
[39] *Victoria (City) v Adams*, 2009 BCCA 563 at para 68.
[40] Reasons at paras 60-66.
[41] *Conacher v Canada (Prime Minister)*, 2010 FCA 13 at para 4 ("***Conacher***"); *Engel v. Alberta (Executive Council)*, 2019 ABQB 490 at paras 42-51 ("***Engel***").
[42] Reasons at para 47.

and certainly must be interpreted in light of—its statute.[43] It is the role of courts to enforce those statutory constraints on the exercise of public power.[44]

36. Importantly, the New Brunswick Court of Appeal recently considered a challenge to the Premier's dissolution advice and found that it was justiciable. In *Democracy Watch v. The Premier of New Brunswick et al* ("***Democracy Watch NBCA***"), former Chief Justice Drapeau interpreted New Brunswick's fixed-election provisions and held that the scope and legality of the Premier's advice is a justiciable question.[45] Justice Drapeau found that the fixed elections statute in New Brunswick *altered*—without entirely displacing—the prerogative power to dissolve.[46]

37. The *Constitution Act* similarly alters the prerogative of dissolution and thus the scope and legality of the Premier's advice-giving power in British Columbia is at least equally justiciable. Indeed, the case that the *Constitution Act* gives rise to a justiciable question is even stronger. While the New Brunswick statute "alters" the prerogative power, the BC statute *converts* the prerogative power to a statutory power.[47] Thus, even more than in New Brunswick, in British Columbia the question of whether the dissolution power was lawfully exercised is strictly a question of compliance with the statute.

38. As stated by the New Brunswick Court of Appeal, "legality lies at the heart of the underlying application".[48] This appeal concerns the legality of the exercise of the statutory power of dissolution—a matter squarely within the supervisory authority of the courts.[49]

39. The justiciability of a challenge to the Premier's advice is also made evident by the UK Supreme Court's decision in *Miller*, to which Justice Gomery did not refer.[50] *Miller*

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[43] Reasons at para 47.
[44] Lorne Sossin, "The Unfinished Project of *Roncarelli v. Duplessis*: Justiciability, Discretion, and the Limits of the Rule of Law" (2010) 55 McGill LJ 661 at 663 with reference to *Roncarelli v. Duplessis*, [1959] SCR 12.
[45] *Democracy Watch NBCA* at para 56. This decision overturned the decision of the New Brunswick Queen's Bench in *Democracy Watch v. New Brunswick (Attorney General)*, 2021 NBQB 233, on which Gomery J. also relied.
[46] *Democracy Watch NBCA* at para 56.
[47] Reasons at para 47.
[48] *Democracy Watch NBCA* at para 51.
[49] *Crevier v. A.G. (Québec) et al.,* [1981] 2 SCR 220 at 236-238.
[50] *R. (on the application of Miller) v. Prime Minister,* [2019] UKSC 41 ("***Miller***").

concluded that a challenge to the Prime Minister's advice to prorogue Parliament was justiciable.[51] The Court in *Miller* accepted that the challenge before it was only to the advice given by the Prime Minister, separate from the sovereign's acceptance of that advice.[52] The Court also found that the power to advise on prorogation places on the Prime Minister a constitutional responsibility to have regard to all relevant interests, including the interests of Parliament.[53]

D. In enacting s. 23(2), the Legislature bound the Premier to fixed elections and intended that a court would review the Premier's advice

40. Justice Gomery misapprehended the justiciability of the Premier's advice, and he allowed that misapprehension to overwhelm his interpretation of the statute. Commenting that the Legislature could not have intended to open up the Premier's dissolution advice to judicial reviews, Gomery J. concluded that s. 23(2) must be without legal effect.[54] He erred in doing so.

41. Justice Gomery erred in reasoning backwards from his misapprehension of the justiciability of the Premier's advice. Indeed, the logic goes the other way: a statute that establishes a statutory power of decision also, by definition, makes the statutory limits of that power a justiciable question.

42. Neither the law's purpose (as amply reflected in the Hansard) nor the statutory language indicate that the provision should be without effect. On the contrary: the plain language, the Hansard, and the statutory context all establish that s. 23(2) binds the Premier to a schedule of fixed elections, subject only to the Lieutenant Governor's discretion following votes of non-confidence.

43. Moreover, the provisions of the *Constitution Act* must be given a large, liberal, and remedial interpretation that is consistent with its status as a constitutional or quasi-

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[51] *Miller* at paras 32-33.
[52] *Miller* at paras 30.
[53] *Miller* at para 30.
[54] Reasons at para 71.

constitutional statute. The *Constitution Act*, after all, establishes and governs the role of democratic institutions and actors in the Province.[55]

1. The plain language of the statute establishes a mandatory cycle of fixed elections

44. At the time of the Snap Election, s. 23 read as follows:

> 23 (1) The Lieutenant Governor may, by proclamation in Her Majesty's name, prorogue or dissolve the Legislative Assembly when the Lieutenant Governor sees fit.
>
> (2) Subject to subsection (1), a general voting day must occur on the third Saturday in October in the fourth calendar year following the general voting day for the most recently held general election.

45. The use of "must" in subsection (2) indicates a mandatory requirement. BC's *Interpretation Act* is clear that in an enactment the word "must" is to be construed as imperative.[56]

46. The plain meaning of "occur" is "to happen" or "to take place".[57] The plain language of s. 23(2), then, mandates that an election must take place on a specific date.

47. Subsection 23(1) establishes that the Lieutenant Governor has a statutory power to dissolve the Legislature when she "sees fit".[58] "Sees fit" is not defined in subsection 23(1) or elsewhere in the *Constitution Act*. In other contexts, however, the discretion provided by "sees fit" or "thinks fit" has been interpreted as a discretion that is not unfettered: "[t]he words 'as they think fit' do not mean 'as they choose'."[59]

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[55] *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 33; *Interpretation Act,* RSBC 1996, c 238, s. 8 ("***Interpretation Act***"); Hogg at §1:6.
[56] *Interpretation Act*, s. 29 (emphasis in original).
[57] Collins English Dictionary, "occur", (December 22, 2022) online: <www.collinsdictionary.com/dictionary/english/occur>.
[58] Reasons at para 49.
[59] *Performing Rights Organization of Can. Ltd. v. CBC*, 1986 CarswellNat 839 (FCA) at para 21, citing *Roberts v. Hopwood and others*, [1925] AC 578 at 613 *per* Lord Wrenbury; see also *Bank of Montreal v. Wilder*, [1986] 2 SCR 551 at 570.

48. Subsection 23(2) is "subject to" the Lieutenants Governor's discretion in s. 23(1). Justice Gomery called this the "obvious challenge" in giving s. 23(2) mandatory effect,[60] and he concluded that this "challenge" was best addressed by stripping s. 23(2) of any legal effect (despite also stating that this interpretation is "contrary to the stated intention in 2001").[61]

49. Justice Gomery erred in doing so: depriving s. (2) of any legal effect is contrary to the principle that every word and provision found in a statute has a meaning and a function, and that courts should avoid interpreting a provision to render it meaningless, pointless, or redundant.[62] It is also contrary to the BC *Interpretation Act*, which states:

> Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.[63]

50. Justice Gomery misapprehended the import of "subject to". The phrase merely indicates that the legislative provisions "operate *together* to create a coherent…regime".[64] Every effort should be made to interpret s. 23(1) and (2) harmoniously, as required by the principles of statutory interpretation, with each subsection given meaning and work to do.[65]

51. In *Democracy Watch NBCA*, Drapeau J.A. rejected the argument that "subject to" means that the fixed election provision has no legal effect. Justice Drapeau held:

> Before this Court, the Premier submitted s. 3(4) is not legally binding on him because it is subject to s. 3(3), and that provision implicitly preserves his unfettered discretion to provide dissolution and election advice as he deems

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[60] Reasons at para 47.
[61] Reasons at para 13.
[62] Ruth Sullivan, Sullivan on the Construction of Statutes, 7th ed. (Toronto: LexisNexis Canada, 2022) at §8.03; *R. v. Proulx,* 2000 SCC 5 at para 28.
[63] *Interpretation Act*, s. 8.
[64] *N. (J.) v. Kozens (2004)*, 2004 ABCA 394 at para 30. See also *Montgrand v. Saskatchewan Government Insurance,* 2009 SKQB 70 at paras 12-14.
[65] *Democracy Watch NBCA* at para 63, citing *R. v. W. (C.K.)*, 2005 ABCA 446 at para 40**.**

> appropriate. There is no merit to this submission. If it carried the day, s. 3(4) would be rendered inoperative.[66]

52. Justice Drapeau concluded that the two provisions must be interpreted together:

> By making s. 3(4) subject to s. 3(3), the Legislature intended to preserve the Premier's prerogative to provide dissolution and election advice to the Lieutenant-Governor, but only to the extent that it did not render s. 3(4) inoperative. Both provisions can be reconciled if account is taken of the object of ss. 3(3) and 3(4), as described by the Government House Leader in 2007. Section 3(4) sets the date for future elections, subject to the Premier's prerogative to provide election advice at variance with the schedule established in s. 3(4) where, for example, "major circumstances" bring about "a need" to seek a mandate from the voters or where the Legislative Assembly has become "unworkable". <u>What s. 3(4), contextually interpreted, prohibits is dissolution and election advice driven by purely partisan electoral advantage</u>.[67]

53. BC's legislation should be similarly interpreted to give legal effect to both subsections 23(1) and (2). Consistent with the approach taken by the New Brunswick Court of Appeal, the law's purpose and the legislative context assist in interpreting s. 23.

2. The Hansard illuminates the purpose of s. 23 and the binding effect of s. 23(2) on the Premier

54. The modern rule of statutory interpretation requires that s. 23 be interpreted "harmoniously" with its purpose.[68] BC's *Interpretation Act* also requires that statutes be given the interpretation that "best ensures the attainment of its objects".[69] And as Drapeau J.A. held:

> [T]he Legislature does not intend courts to settle upon an interpretation that contradicts the object of a provision…[70]

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[66] *Democracy Watch NBCA* at para 65.
[67] *Democracy Watch NBCA* at para 66 (emphasis added).
[68] *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31 at para 54.
[69] *Interpretation Act*, s. 8.
[70] *Democracy Watch NBCA* at para 63, citing *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 SCR 27 at para 23.

55. Justice Gomery accurately held that the Legislature's "idea" in enacting s. 23 "was that elections should take place on a fixed four-year schedule, rather than at the politically motivated whim of the Premier of the day".[71]

56. This purpose is well-supported by the Hansard. Hansard is of particular importance and should be given greater weight when, as here, it is clear and specifically addresses the issues before the court.[72] As Drapeau J.A. observed in *Democracy Watch NBCA*, it makes "good sense" to consider Hansard evidence from members of the Legislative Assembly when interpreting the object of legislation which concerns their very own rights and privileges.[73]

57. As set out below, the members of the Legislative Assembly stated clearly that s. 23 would have binding effect; that it would limit the Premier's power; and that it would be interpreted in light of the constitutional conventions of responsible government. The Legislature's goal, as made express in the Hansard, was to prevent the Premier from using the timing of elections for partisan political advantage. Section 23 must be interpreted consistent with this purpose.

i. The Legislature intended s. 23(2) to have teeth

58. The Legislature's clear purpose was to impose *substantive, legal limits* on the Premier's power to time elections, as expressed during debate and recorded in the Hansard.[74] When introducing the 2001 Amendment, the Attorney General said that the purpose was "<u>to establish</u> a fixed provincial election date under the B.C. *Constitution Act* <u>to ensure</u> that provincial elections <u>must be held</u> on a fixed date every fourth year or immediately if a government loses a confidence vote in the Legislature".[75] Nothing in Hansard reveals an intention to enact a symbolic or aspirational provision. On the

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[71] Reasons at para 5.
[72] Ruth Sullivan, Sullivan on the Construction of Statutes, 6th Ed. (Toronto: LexisNexis Canada, 2014) at §23.88-89.
[73] *Democracy Watch NBCA* at para 64.
[74] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 21 (August 20, 2001) at 1410.
[75] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1010 – 1015 (emphasis added).

contrary, the Attorney General stated that this change was about "reforming the institutions of government".[76]

ii. The Legislature intended to limit the Premier's power

59. As Gomery J. held, s. 23 was intended to prevent Premiers from calling elections at their "politically motivated whim".[77] The Attorney General said this was the very mischief that s. 23(2) was meant to address:

> A key element of that power under our system as it is presently regulated is the Premier's power to determine when a general election will be called. Traditionally, that is the way it's done. It's the Premier who gets to decide when a general election will be called. Of course, he has to go to the Lieutenant-Governor, and the constitutional principles have to be adhered to. But those constitutional principles recognize that in a parliamentary democracy, it's the government's call, in a vast majority of cases, when an election should be held.
>
> It would be nice to think that our political tradition shows an unbroken succession of Premiers who exercise that authority only when it is in the public interest to call a general election. I don't think that is our political history. Rather, I think our political history indicates, at least in British Columbia, that Premiers use their power to determine the timing of the calling of an election as an aspect of their re-election strategy.
>
> They can accelerate election dates if it suits their political strategy, or they can delay election dates if it suits their political strategy. In all of those cases where there is an argument about the use of the timing of an election for political purposes, there is at least an argument that the public interest in certainty and predictability in the conduct of public affairs has been subordinated to the private political interests of the Premier.[78]

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[76] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015-1020.
[77] Reasons at para 5.
[78] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1010, quoted in Reasons at para 6.

60. The ability of first ministers in Westminster systems to opportunistically time elections for political gain is a well-studied problem.[79] When proposing the 2001 Amendment, the Attorney General was well aware of this problem. He stated: “When people are suspicious of the timing of an election, they become suspicious of the work their politicians do”.[80] Solving that problem was the central idea of the 2001 Amendment.

61. The Attorney General stated that the amendment would strike “at the heart of the power that is concentrated in the Premier's office”.[81] He further stated that s. 23 would “ensur[e] that the general elections in British Columbia will be held not according to the political agenda of a Premier but rather according to a timetable which is fixed, which is certain and which is predictable”.[82]

62. Interpreting s. 23(2) to bind the Premier is consistent with the requirements of BC’s *Interpretation Act*. Section 14, uniquely within Canada, provides that unless an enactment specifically provides otherwise, it is binding on the government.[83] It follows that s. 23(2) is binding on the government, including the Premier. In turn, while s. 23(1) expressly preserves the Lieutenant Governor’s discretion, nothing in the *Constitution Act* exempts the Premier the application of s. 23(2).

iii. The Legislature contemplated unscheduled elections in situations of non-confidence

63. The Legislature made clear that s. 23(1) was intended to preserve the dissolution power of *only* the Lieutenant Governor, so as to respect constitutional conventions of responsible government—in particular, the confidence convention.[84]

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[79] Bryan Schwartz & Andrew Buck, "Fixed Date Elections" (2008) Manitoba Law Journal 5 UTGB 1, p 2-3.
[80] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1020.
[81] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.
[82] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.
[83] *Interpretation Act*, s 14.
[84] Hogg at §9:20.

64. The Attorney General stated:

> It's important, however, to emphasize that this bill is drafted in a way that preserves the constitutional prerogative of the Lieutenant-Governor to prorogue or dissolve the Legislative Assembly and, in so doing, ensures that should a government be defeated in the Legislative Assembly on a vote of non-confidence, the Lieutenant-Governor may dissolve the Legislative Assembly and call a general election immediately.[85]

65. To the same effect, the Attorney General also stated that the 2001 Amendment was brought "to ensure that provincial elections must be held on a fixed date every fourth year or immediately if a government loses a confidence vote in the Legislature".[86]

66. This is consistent with the interpretive principle, discussed below, that constitutional conventions may inform the interpretation of statutes—in particular, constitutional ones.[87]

67. Despite the Legislature's many clear statements, Gomery J. apprehended an "ambiguity" from the Attorney General's statement that the fixed election date "is subject to the possibility that the Lieutenant-Governor may exercise his or her prerogative to prorogue or dissolve the assembly and call a general election".[88] Justice Gomery concluded that the Attorney General contemplated the possibility of early dissolution on some other ground than non-confidence. From this, Gomery J. drew support for his view that s. 23(2) was not intended to constrain in any way the Premier's power to recommend dissolution.

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[85] Reasons at para 7, citing British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1005 (emphasis added).
[86] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 21 (August 20, 2001) at 1410 (emphasis added).
[87] *Re Resolution to Amend the Constitution*, [1981] 1 SCR 753 at 880; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 52-54; Andrew Heard, "Conacher Missed the Mark on Constitutional Conventions and Fixed Election Dates" (2010) 19:1 Constitutional Forum at 129-130.
[88] Reasons at para 69.

68. With respect, given the many Hansard passages that speak of binding the Premier and that refer specifically to the confidence convention as the one alternative to the fixed election dates, this one passage from the Attorney General cannot give the legislation the opposite effect.

3. The surrounding context underscores s. 23(2)'s legal effect

69. The legislative history, the broader legislative context, and constitutional conventions all support this interpretation of s. 23(2): it binds the Premier to a fixed election date, subject only to votes of non-confidence.

i. The 2001 Amendment is presumed to be purposeful

70. The 2001 Amendment altered s. 23(2) to establish a fixed election date, replacing the previous language which simply provided that in the absence of dissolution, members of the Legislative Assembly would hold their seats for a maximum of five years. The contrast between the language in s. 23(2) before and after the 2001 Amendment evidences a legislative intention to do something more than merely reduce from five years to four the lifespan of each Legislative Assembly. Before the 2001 Amendment, s. 23(2) of the *Constitution Act* read as follows:

> (2) In the absence of dissolution the members of the Legislative Assembly hold their seats for 5 years from the day named as the return day in the writs for the election of members to the Legislative Assembly and no longer.

71. At the time of the Snap Election, s. 23(2) read:

> (2) Subject to subsection (1), a general voting day must occur on the third Saturday in October in the fourth calendar year following the general voting day for the most recently held general election. (emphasis added)

72. While the mere fact of an amendment does not *necessarily* indicate that the Legislature intended to bring about change, changes to the wording of legislation are

nevertheless presumed to be purposeful.[89] Moreover, as noted above, the *Interpretation Act* requires that every enactment be construed as "remedial".[90]

73. If the Legislature's intent was, as Gomery J. found, for s. 23(2) to place no limits on the powers of dissolution and the Premier's discretion to control the timing of elections, then there was no reason for the Legislature to pass the 2001 Amendment. Instead, the Legislature chose to adopt the prescriptive language: "a general voting day must occur on".[91] This denotes a clear intention not just to reduce the maximum lifespan of a Legislature from five to four years, but to legally require that general elections occur on a specified date every four calendar years.

ii. BC's Election Act supports the legal effect of s. 23(2)

74. Section 27 of BC's *Election Act* further indicates that s. 23(2) of the *Constitution Act* has legal effect. The *Election Act* provides that elections may be held on the schedule set out in s. 23(2) or at the Lieutenant Governor's discretion under s. 23(1):

> 27 (1)Final voting day for an election,
>
> (a) in the case of a general election conducted in accordance with section 23 (2) or (3) of the Constitution Act, and in the case of a by-election, is the 28th day after the date on which the election is called, and
>
> (b) in the case of a general election that is not conducted in accordance with section 23 (2) or (3) of the Constitution Act, subject to subsection (3) of this section, is at least the 32nd day but no later than the 38th day after the date on which the election is called.[92]

75. While the *Election Act* does not specify the circumstances in which s. 23(1) may be resorted to, it does support that s. 23(2) has legal effect.

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[89] *Interpretation Act*, s. 37(2); Ruth Sullivan, Sullivan on the Construction of Statutes, 7th Ed. (Toronto: LexisNexis Canada, 2022) at § 23.02; *English v. Richmond (City)*, 2021 BCCA 442 at para 119.
[90] *Interpretation Act*, s. 8.
[91] Emphasis added.
[92] *Election Act*, s. 27.

iii. Constitutional conventions inform the interpretation of s. 23

76. The Supreme Court of Canada has found that constitutional principles, including conventions, can aid in the interpretation of statutes.[93] Accordingly, as noted above, in enacting s. 23, the Legislature made room for constitutional conventions to operate.

77. It is part of the conventions of responsible government for the Lieutenant Governor to dissolve the Legislature and order a general election when the government loses the confidence of the Legislature.[94] The Lieutenant Governor's discretion in s. 23(1) is informed by this convention, ensuring that s. 23 is consistent with Canada's constitutional principles. As described by Prof. Peter Hogg:

> The Prime Minister's effective power to select the date of the next election (within the five-year constitutional time frame) is often regarded as giving the governing party an advantage in the election. This has led to suggestions that Canada should move to a system of fixed election dates, like those of the United States, in order to strip the Prime Minister of a discretion that may be used for purely partisan purposes. Needless to say, in a system of responsible government, any regime of fixed election dates needs to preserve the discretion of the Governor General to dissolve the House in the event that the government loses the confidence of the House of Commons before the stipulated date. But as long as this discretion is preserved, fixed election dates are not inconsistent with responsible government. In fact, fixed election dates at intervals of four years have now been established by statute for the federal House of Commons and for nine of the ten provincial legislative assemblies.[95]

78. Section 23 is also consistent with, and informed by, the protection of the constitutional principles of parliamentary sovereignty and accountability. As articulated by the UK Supreme Court in *Miller,* protecting these principles requires that the executive's actions do not, without reasonable justification, frustrate or prevent the legislative body

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[93] *Toronto (City) v. Ontario (Attorney General),* 2021 SCC 34 at paras 55-56; *Re Resolution to Amend the Constitution,* [1981] 1 SCR 753 at 880; *Reference re Secession of Quebec,* [1998] 2 SCR 217 at paras 52-54

[94] Hogg, at §9.14.

[95] Hogg, at §9:20 (emphasis added).

from performing its legislative functions and supervising the executive.[96] In passing the 2001 Amendment, the Legislature statutorily protected these constitutional principles from the executive's actions by removing from the Premier's office the ability to time elections for political gain.[97]

E. Section 23 establishes a yardstick against which the Premier's advice can be measured

79. Justice Gomery was concerned that s. 23 did not provide sufficient guidance as to the circumstances in which dissolution is permissible. He commented:

> In their written argument, the petitioners concede that "there are situations in which the Crown prerogative of dissolution may be exercised outside of the fixed election schedule" and submit that it is beyond the scope of the present proceeding to exhaustively enumerate them. But if the situations cannot be enumerated in advance, then who would be responsible to identify them in a world in which the legality of the dissolution may be called into question in a court proceeding such as this one? How would the relevant actors – the Premier and the Lieutenant Governor – determine if the circumstances were such that the Premier might lawfully advise dissolution?[98]

80. Justice Gomery conflated the *factual* situations that may justify an unscheduled election with the *legal test* that a court applies. As set out above, the legal test can be elucidated from the plain language of the statute, the Hansard, the legislative context, and constitutional conventions—much like every statutory interpretation exercise.

81. Courts are the institutions in our democratic system that are tasked with the legal responsibility of determining whether government action complies with mandatory statutory provisions.[99] Consequently, it is the role of the courts when interpreting all

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[96] *Miller* at paras 41-50.
[97] British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001) at 1015.
[98] Reasons at para 65.
[99] *Hupacasath* at paras 66-67.

statutes, particularly those of a constitutional nature, to "seek out its purpose and give it effect".[100]

82. The New Brunswick Court of Appeal was faced with the same task. The Court concluded that the New Brunswick provision fixing election dates is subject to the Premier's power to provide election advice at a different time where "'major circumstances' bring about 'a need' to seek a mandate from the voters or where the Legislative Assembly has become 'unworkable.'" The Court also found that when "contextually interpreted", the fixed election provisions prohibit dissolution and election advice driven by "purely partisan electoral advantage".[101]

83. The plain language of the New Brunswick statute did not say anything about major circumstances that bring about a need to seek a mandate from the voters, or about Premiers timing elections for purely partisan electoral advantage. Applying the modern rule of statutory interpretation, however, the New Brunswick Court of Appeal looked to the law's purpose and context to give meaning to the statutory language. This allowed the Court to interpret the legislation in a way that was true to its purpose and that gave the enactment meaning.

84. This Court should adopt a similar approach. Applying the modern approach to statutory interpretation, s. 23 allows the Premier to advise the Lieutenant Governor to dissolve the Legislative Assembly only in accordance with the fixed election schedule, or when the Premier's government has lost the confidence of the Legislative Assembly. Crucially, dissolution advice driven by purely partisan electoral advantage clearly fails to comply with s. 23.

85. The factual determination required to decide this issue is no more difficult than that facing the UK Supreme Court in *Miller*. While *Miller* dealt with the Prime Minister's prorogation advice as opposed to dissolution advice, the UK Supreme Court found that:

> [...] The extent to which prorogation frustrates or prevents Parliament's ability to perform its legislative functions and its supervision of the executive is a question of fact which

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[100] *Ont. Human Rights Comm. v. Simpsons-Sears,* [1985] 2 SCR 536 at para 12.
[101] *Democracy Watch NBCA* at para 66.

> presents no greater difficulty than many other questions of fact which are routinely decided by the courts. […][102]

86. Canadian courts are just as well-equipped to decide the factual questions that would arise in a judicial review of the legality of the Premier's dissolution advice.

87. Finally, Canadian courts have the tools to dispense with judicial reviews in a manner that does not trammel unduly on the Premier's ability to give advice. The very structure of a judicial review allows deference to the Premier's exercise of power. First, as set out above, it is only the legality of the exercise of the dissolution power that is justiciable—not the wisdom of a dissolution within the legal limits established by statute. Second, on judicial review, the court would consider the legality of the Premier's advice on a contextual standard of reasonableness, as set out in *Vavilov*.[103]

88. Applying these principles, this Court can allow s. 23 of the *Constitution Act* to operate as the Legislature intended when it sought to reform the institutions of government in 2001.

F. This matter should be remitted to Gomery J. for reconsideration as a judicial review

89. At the hearing, Gomery J. raised for the first time and on his own motion whether the Petition should have been brought as a judicial review. He found that the Petition was "in substance an application for judicial review".[104] He further opined that, if he had agreed with the Petitioners' interpretation of s. 23, he would have invited the parties to submit further evidence and make further submissions on the merits of the judicial review.

90. Consequently, in this Court the Petitioners ask that the appeal be disposed of in the manner contemplated by Gomery J.: that is, remitted to Gomery J. for reconsideration as a judicial review, in accordance with this Court's interpretation of s. 23.

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[102] *Miller* at para 51.
[103] *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at paras 88-90 ("***Vavilov***").
[104] Reasons at para 76.

PART 4 - NATURE OF ORDER SOUGHT

91. The appellants seek an order remitting the Petition to Gomery J. to be decided as a judicial review in accordance with this Court's reasons.

92. The appellants seek no costs and ask that no costs be awarded against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, Province of British Columbia, this December 23rd of 2022.

Emily MacKinnon, Sergio Ortega, Brodie Noga,
Emilie Dillon, and Viktor Nikolov

Appellants' Counsel

APPENDICES: LIST OF AUTHORITIES

Authorities	**Page # in factum**	**Para # in factum**
Alani v. Canada (Prime Minister), 2015 FC 649	12	25
Andrew Heard, “Conacher Missed the Mark on Constitutional Conventions and Fixed Election Dates” (2010) 19:1 Constitutional Forum 21	23	66
Bank of Montreal v. Wilder, [1986] 2 SCR 551	17	47
Bessette v. British Columbia (Attorney General), 2019 SCC 31	19	54
Bill 5: Constitution Amendment Act, 2017, SBC 2017, c 11	3, 7	6
Black v. Canada (Prime Minister), 2001 CanLII 8537 (Ont CA)	13	32
Brewers Retail v. Campbell, 2022 ONSC 850	12	25
British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 21 (August 20, 2001)	6, 20, 23	4(a), 58, 65
British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 37th Parl., 2nd Sess., No. 22 (August 21, 2001)	6, 7, 12, 20, 21, 22, 23, 27	4(b), 4(c), 4(d), 4(e), 27, 58, 59, 60, 61, 64, 78
Bryan Schwartz & Andrew Buck, "Fixed Date Elections" (2008) Manitoba Law Journal 5 UTGB 1	22	60
Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65	29	103

		54, 56, 76, 82
Election Act, RSBC 1996, c 106	9, 25	13(b), 74
Engel v. Alberta (Executive Council), 2019 ABQB 490	14	35
English v. Richmond (City), 2021 BCCA 442	24, 25	72
Hupacasath First Nation v. Canada (Foreign Affairs and International Trade Canada), 2015 FCA 4	13, 27	32, 81
Interpretation Act, RSBC 1996, c 238, s. 8	17, 18, 19, 22, 24, 25	43, 45, 49, 54, 62, 72
Lorne Sossin, "The Unfinished Project of *Roncarelli v. Duplessis*: Justiciability, Discretion, and the Limits of the Rule of Law" (2010) 55 McGill LJ 661	15	35
Lorne Sossin, *Boundaries of Judicial Review: the Law of Justiciability in Canada* (Toronto: Carswell, 1999)	14	34
Montgrand v. Saskatchewan Government Insurance, 2009 SKQB 70	18	50
N. (J.) v. Kozens (2004), 2004 ABCA 394	18	50
Ont. Human Rights Comm. v. Simpsons-Sears, [1985] 2 SCR 536	27, 28	81
Operation Dismantle v the Queen, [1985] 1 SCR 441	14	34
Performing Rights Organization of Can. Ltd. v. CBC, 1986 CarswellNat 839 (FCA)	17	47
Peter W. Hogg, Constitutional Law of Canada, 5th ed (Toronto: Thomson Reuters, 2007)	14, 17, 22, 26	34, 43, 63, 76, 77

APPENDICES: ENACTMENTS

CANADIAN CHARTER OF RIGHTS AND FREEDOMS, PART 1 OF THE CONSTITUTION ACT, 1982, BEING SCHEDULE B TO THE CANADA ACT 1982 (UK)

1982, CHAPTER 11

Maximum duration of legislative bodies

4 (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

CONSTITUTION ACT

[RSBC 1996] CHAPTER 66

General elections

23 (1) The Lieutenant Governor may, by proclamation in Her Majesty's name, prorogue or dissolve the Legislative Assembly when the Lieutenant Governor sees fit.

(2)Subject to subsection (1), a final voting day must occur on the third Saturday in October in the fourth calendar year following the final voting day for the most recently held general election.

(3) As an exception to subsection (2), if the campaign period for a general election to be held under that subsection would overlap with the campaign period for a general local election to be held under section 52 of the Local Government Act or the election period for a federal general election to be held under section 56.1 (2) or section 56.2 of the Canada Elections Act, the final voting day for the general election must be held instead on a date to be specified under the Election Act that the Lieutenant Governor in Council determines to be suitable after consulting the Chief Electoral Officer, the Leader of the Official Opposition and each leader of a recognized political party.

(4) In this section, "general election" and "final voting day" have the same meaning as in section 1 of the *Election Act*.

INTERPRETATION ACT

[RSBC 1996] CHAPTER 238

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Government bound by enactments; exception

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the Assessment Act, does not bind or affect the government.

Expressions defined

29 In an enactment:

"must" is to be construed as imperative;

No implications from repeal, amendment, etc.

37 (2) The amendment of an enactment must not be construed to be or to involve a declaration that the law under the enactment prior to the amendment was or was considered by the Legislature or other body or person who enacted it to have been different from the law under the enactment as amended.

ELECTION ACT

[RSBC 1996] CHAPTER 106

Order for a general election

24 (1) For a general election to be held, the Lieutenant Governor in Council must issue an order under this section that

(a) directs the chief electoral officer to issue writs of election for all electoral districts,

(b) sets the date of issue for the writs of election, which must be the same for all writs,

(c) specifies the final voting day for the election in accordance with section 27 of this Act and section 23 of the Constitution Act, and

(d) directs that the writs of election be returned in accordance with this Act.

(2) If a general election is called before final voting day for a by-election that is in progress, the by-election is cancelled and the election for that electoral district is to take place as part of the general election.