CITATION: Highland Cannabis Inc. v. Alcohol and Gaming Commission of Ontario, 2024 ONSC 423
COURT FILE NO.: CV-23-12
DATE: 20240119

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Highland Cannabis Inc. Plaintiff	Brian Kelly, for the Plaintiff/Respondent
– and –	
Alcohol and Gaming Commission of Ontario and High Tide Inc. Defendant	Jeffrey P. Hoffman, for the Defendant/Moving Party High Tide Inc.
	HEARD: October 11, 2023

<u>AMENDED</u> REASONS FOR DECISION

<u>ANTONIANI J.</u>

INTRODUCTION AND OVERVIEW

[1] The Defendant High Tide Inc. and the Plaintiff, Highland Cannabis Inc., are in the retail cannabis industry. The Plaintiff has commenced an action against High Tide and the Alcohol and Gaming Commission of Ontario ("AGCO"), in relation to a data breach at the AGCO. Specific data regarding the sales of retail cannabis stores for the months of July 2021 and December 2021 was either leaked or misappropriated. The Plaintiff claims that High Tide accessed data about the Plaintiff's sales and used it to the Plaintiff's detriment.

[2] High Tide asks that the court dismiss the Action, as against High Tide only, on the basis that it is frivolous, vexatious, and an abuse of the court's process. High Tide says that the two torts pled against it are not available to the Plaintiff, and that, in all of the circumstances, it is plain and obvious that the action cannot succeed.

[3] I find the Statement of Claim, as against High Tide, is frivolous and vexatious.

[4] I find that there is no cause of action against High Tide for intrusion upon seclusion.

[5] I find that there is no actionable tort of conversion against High Tide.

[6] I find that it is plain and obvious that the claims against High Tide cannot succeed.

FACTUAL BACKGROUND

[7] The retail cannabis industry is highly competitive. As of December 31, 2021, there were over 1300 authorized retail cannabis stores in Ontario. Licenced retailers are required to remit detailed sales and inventory information monthly.

[8] The government owned Ontario Cannabis Retail Corp is the only legal source of cannabis for retailers in Ontario.

[9] High Tide is one of Ontario's largest cannabis retailers, with 24 stores in the province as of December 2021.

[10] There are no restrictions regarding proximity between cannabis retail locations in Ontario. Licensees apply to the AGCO and are granted licenses. High Tide established one of the first cannabis stores in Kitchener-Waterloo. Before the data breach, it owned and operated four "Canna Cabana" stores in the region.

[11] The Plaintiff also operated in the Kitchener-Waterloo region. Before the breach, the Plaintiff, a single store independent cannabis retailer, had conducted a media campaign including press releases. In the press releases, it shared, without specifics, the story of its own impressive retail success. The press releases included the fact that the Plaintiff ranked number one among the 53 cannabis retailers in the region, after only one year in business.

[12] Since as early as December 2020, long before the 2021 data breach, High Tide had been looking to establish a fifth retail cannabis store in the Kitchener-Waterloo region.

[13] After the data breach, High Tide approached the Plaintiff with an Offer to Purchase its store. High Tide told the Plaintiff that High Tide preferred to purchase existing retail stores rather than open new ones. In the only meeting between the parties, High Tide disclosed that it was aware of the specifics of the Plaintiff's sales figures. Later, there were brief cordial negotiations in writing between the two parties, but ultimately there was no agreement on price, and the negotiations were aborted.

[14] Before meeting with the Plaintiff, and before the data breach, High Tide had unsuccessfully bid for a lease on a fifth Kitchener-Waterloo location. That location is referred to as the "Ira Needles" location. High Tide had been interested in Ira Needles for some time, but lost the opportunity to lease it, when the lease was awarded to a competitor cannabis retailer. However, during the brief negotiations to determine whether it could purchase the Plaintiff's store, High Tide learned that the Ira Needles location was back on the market.

[15] As noted in the introduction, data regarding the sales of retail cannabis stores for the months of July 2021 and December 2021 was either leaked or misappropriated. There is no evidence as to how or by whom the data was breached and disseminated. It is agreed that the data eventually made its way to each of High Tide and the Plaintiff, by way of other individuals also involved in the cannabis industry. It is clear that the leaked data was accessed by a number of people.

[16] Unsolicited, High Tide received the data from two sources. There is no allegation that High Tide forwarded or disseminated the leaked data to any other party. High Tide did, however, review the data.

[17] In the Statement of Claim, the Plaintiff alleges that High Tide accessed the breached data inappropriately and used it to have an unfair advantage against the Plaintiff in making an offer to purchase the Plaintiff's retail cannabis business, and then relied on the data to establish a predatory new location – the Ira Needles store. The Plaintiff claims intrusion upon seclusion, and it argues that High Tide committed the tort of conversion.

[18] There were nine cannabis stores situated closer to the Plaintiff than High Tide's new Ira Needles location, including one of High Tide's four pre-existing Kitchener-Waterloo stores.

ISSUES

[19] On this Rule 21 motion, there are three issues in relation to the Defendant, High Tide (and not the co-defendant, AGCO):

i. Is the Plaintiff's action frivolous or vexatious or otherwise an abuse of the court's process?

ii. Is the tort of intrusion upon seclusion, upon which this action was based, a cause of action available to the Plaintiff?

iii. Is there a viable cause of action of conversion as against High Tide?

ANALYSIS

[20] Where pursuant to Rule 21, a defendant submits that the plaintiff's pleading does not disclose a reasonable cause of action, to succeed in having the action dismissed, the defendant must show that it is plain, obvious, and beyond doubt that the plaintiff cannot succeed in the claim: *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Hunt v. Carey Canada Inc.* (1990), 74 D.L.R. (4th) 321 (S.C.C.).

[21] Matters of law that are not fully settled should not be disposed of on a motion to strike, and the court's power to strike a claim is exercised only in the clearest cases: *Dawson v. Rexcraft Storage & Warehouse Inc.* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Temelini v. Ontario Provincial Police (Commissioner)* (1990), 73 O.R. (2d) 664 (C.A.).

[22] In *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 at paras. 17-25, the Supreme Court of Canada noted that although the tool of a motion to strike for failure to disclose a reasonable cause of action must be used with considerable care, it is a valuable tool because it promotes judicial efficiency by removing claims that have no reasonable prospect of success and it promotes correct results by allowing judges to focus their attention on claims with a reasonable chance of success.

[23] The legal test on a motion under Rule 21.01(3)(d) to dismiss an action as frivolous or vexatious or an abuse of process is: "a court must be satisfied that, on the face of the action and in all the circumstances, it is plain and obvious that the action cannot succeed."

[24] Motions may be brought under Rule 21.01(3)(d), in consideration of the following principles:

a) The power to dismiss a case as frivolous and vexatious or as an abuse of process is exercised only in the clearest of cases;

b) A claim may be found to be frivolous, vexatious or an abuse of process when it asserts untenable pleas, contains insufficient material facts to support the allegations made, or is made for an extraneous or collateral purpose; and

c) Any action for which there is clearly no merit may qualify for classification as frivolous, vexatious or an abuse of process.

[25] Evidence is permissible on a motion under Rule 21.01(3)(d), although the facts must be uncontroverted or easily ascertainable, and the motion may not be used to resolve a factual dispute or to circumvent the requirements of the summary judgment rules: see *Kantor v. Fry*, 2015 ONSC 6857, at para. 39.

[26] When the court invokes its authority under rule 21.01(3)(d) or pursuant to its inherent jurisdiction to dismiss or stay an action, it does so only in the clearest of cases: see *Currie v. Halton Regional Police Services Board* (2003), 233 D.L.R. (4th) 657 (Ont. C.A.), at para. 18; *Salasel v. Cuthbertson*, 2015 ONCA 115, 124 O.R. (3d) 401 at para. 8.

ISSUE 1: Is the action frivolous or vexatious or otherwise an abuse of the court's process?

[27] In *Currie, supra,* Justice Armstrong considered the definition of "frivolous" in the context of a Rule 21 motion and noted that "Black's Law Dictionary defines 'frivolous' as: 'Lacking a legal basis or legal merit; not serious; not reasonably purposeful." Justice Armstrong also considered the definition of "vexatious" and what might constitute a vexatious proceeding at para. 15; he stated:

> In *Foy v. Foy (No. 2)* (1979), 26 O.R. (2d) 220 (Ont. C.A.) at 226, Howland, C.J.O. considered the meaning of "vexatious" under the *Vexatious Proceedings Act*, R.S.O. 1970, c. 481:

> The word "vexatious" has not been clearly defined. Under the Act, the legal proceedings must be vexatious and must also have been instituted without reasonable ground. In many of the reported decisions the legal proceedings have been held to be vexatious because they were instituted without any reasonable ground. As a result, the proceedings were found to constitute an abuse of the process of the Court.

[28] Justice Henry in *Lang Michener Lash Johnston v. Fabian* (1987), 59 O.R. (2d) 353 (H.C.J.), at para. 20 enumerated several general principles to determine whether a proceeding was vexatious, including:

> Where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious.

[29] To analyze whether the claims made in relation to High Tide are frivolous and vexatious, putting aside the claims for intrusion on seclusion and conversion, I shall focus on the allegations made against High Tide and not the co-defendant. In the immediate case, the Statement of Claim makes allegations in relation to High Tide at paragraphs 13, 14, 15, 17, 19, 20, 21 and 22. The balance of the statement of claim is in relation to the AGCO only.

[30] As against High Tide, paragraphs 13, 14 and 15 plead the contact by High Tide offering to purchase the Plaintiff and the pleadings describe the negotiations. I take these facts as true for the purposes of this motion, save and except for the pleading that the Plaintiff felt threatened by High Tide's offer to purchase, which I find to be not tenable or realistic.

[31] As against High Tide, paragraphs 17 and 19 allege that High Tide used the information from the data breach to strategically choose its locations, and in particular, to choose and acquire the Ira Needles location. The claim is that High Tide used the data "to position a predatory retail location as previously intimated and in fact threatened".

[32] The evidentiary record, however, establishes that High Tide was already a competitor of the Plaintiff. High Tide already had four stores in Kitchener-Waterloo before the data breach, and, more significantly, High Tide had previously bid on and (initially) lost the Ira Needles location to yet another competitor cannabis retailer.

[33] There is no reasonable interpretation of the uncontroverted facts that would lead to a conclusion that the Ira Needles location was selected as a result of High Tide's access to the leaked data. The data leak came after High Tide had targeted the Ira Needles location for acquisition. Moreover, one of High Tide's pre-existing locations was geographically closer to the Plaintiff, as were eight other retail cannabis stores; there is no reasonable basis upon which the new Ira Needles location would be singled out as a predatory acquisition.

[34] It is plain and obvious on the evidentiary record that an unknown number of parties in the cannabis industry received the breached data. The cannabis industry is extremely competitive, and it is an uncontroverted fact that the number of cannabis retailers increased dramatically both before and after the data breach.

[35] The Plaintiff itself provide evidence that there were 26 additional locations expected to open in the region within a year following the breach. With the level of competition increasing so enormously, there is no reasonable basis upon which to link any decline in sales that the Plaintiff might experience to any particular competitor, especially when nine other competitors are geographically closer than the Ira Needles location. Although this fact is intuitive, I note also that the record includes the government owned Cannabis Retail Store Inc.'s Quarterly report for the quarter ending March 31, 2022. The report states: "with more stores open, in closer proximity to consumers, the average number of grams sold per store decreased by 18%". I find that it is plain and obvious that this aspect of the claim will fail.

[36] Since there are no regulations requiring minimum distances between cannabis retailers, and the AGCO grants licences for each new location, there is no actionable tort in relation to the selection of any location, at any time. The Plaintiff and High Tide's past, present, and future locations, are just competitors in the same cannabis retail market, and each is entitled to compete. It is plain and obvious that the claim of a predatory acquisition based on a data breach caused by an unknown intruder will fail. Paragraph 20 of the Statement of Claim alleges the Plaintiff's sales will decline due to the data breach and in particular to High Tide's use of the data. There are no material facts plead or proven to support this allegation.

[37] Paragraphs 23 and 24 allege that the AGCO permits cannabis retailers to sell their own data. The suggestion here is that the sales ought not be permitted. However, since they are permissible, there is nothing actionable about High Tide's sale of its own data. In any event, there is no connection between High Tide's data sales and the data breach, and there is no cause of action articulated in relation to this issue. Since there is no dispute that the sale of data is specifically permitted in law, it is plain and obvious that this claim cannot succeed.

[38] I turn now to a consideration of the availability of the two torts that have been pled.

ISSUE 2: Is the tort of intrusion upon seclusion a cause of action available to the Plaintiff on these facts?

[39] In *Jones v. Tsige*, 2012 ONCA 32, 108 O.R. (3d) 241, Justice Sharpe confirmed that the tort of intrusion upon seclusion is a recognized tort in Ontario. Justice Sharpe defined intrusion upon seclusion at paras. 70 and 72 as follows:

> One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be highly offensive to a reasonable person.
>
> …
>
> These elements make it clear that recognizing this cause of action will not open the floodgates. A claim for intrusion upon seclusion will arise only for deliberate and significant invasions of personal privacy. Claims from individuals who are sensitive or unusually concerned about their privacy are excluded: it is only

> intrusions into matters such as one's financial or health records, sexual practices and orientation, employment, diary or private correspondence that, viewed objectively on the reasonable person standard, can be described as highly offensive. (Emphasis added)

[40] In *Owsianik v. Equifax Canada Co.*, 2022 ONCA 813, 164 O.R. (3d) 497, at para. 54, Justice Doherty rearticulated the elements of the tort of intrusion upon seclusion as follows:

i) The Defendant's conduct must be intentional, which includes reckless.

ii) the Defendant must have invaded, without lawful justification, the plaintiff's private affairs or concerns; and

iii) a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.

[41] I have examined the uncontroverted facts here to assess the existence of the three elements as defined by the caselaw:

First element: High Tide's conduct must be intentional, which includes reckless.

[42] In the present case, there is no allegation that High Tide sought out the data or was involved in the breach. As such, there is no "intentional" act by High Tide in relation to the intrusion. In fact, High Tide's own retail locations were included in the data breach, and, as such, High Tide itself was a victim of the leak.

[43] It is obvious that each of High Tide and the Plaintiff were passive recipients of the data, but it is equally clear that they each viewed the data. I do not accept that viewing the data, which was received by an unknown number of people in the industry, can be seen to satisfy the element of having an intention to intrude on the seclusion of all others whose data was included therein. It is plain and obvious that this critical element of the tort is not made out.

Second Element: High Tide must have invaded, without lawful justification, the Plaintiff's private affairs or concern:

[44] High Tide admits to having reviewed the data in relation to the Plaintiff before it reached out to discuss a possible acquisition of the Plaintiff's business.

Third Element: A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish:

[45] Since I have already determined that High Tide is cannot be found to be culpable for the release of the Plaintiff's financial information, i.e., it is not an invader, it is a *non sequitur* to consider a reasonable person would regard High Tides invasion as highly offensive, causing distress, humiliation or anguish. However, for the purposes of analysis, I will assume that the first two elements of the tort of intrusion or seclusion have been satisfied

and analyze whether the third element of the tort is viable in the circumstances of the immediate case.

[46] A plaintiff's expectation of privacy is a factor the court may look to in its analysis as to whether a reasonable person would regard the invasion as highly offensive causing distress, humiliation, or anguish.

[47] In this case, the documented communications between High Tide and the Plaintiff are central to the claim. The entire exchange was brief and is reproduced it in its entirety below. After an initial introduction, at 2:38 pm on March 3, 2022, High Tide sent the message below to the Plaintiff. I have left in the times of the communications because I find them to be informative of the level of comfort/interest that the parties had in the discussion:

> From Defendant: Hi Owen - thanks for getting back so quickly - we are reaching out to established cannabis stores in Ontario to see who is interested in an exit. Is this a conversation that interests you at all? Please let me know and I can coordinate an introductory call between you and our CEO Raj Grover - he is always an interesting person to speak with.

[48] The Plaintiff replied 14 minutes later:

> k at an exit [sic]. But it's all just a numbers game - an earlier exit that is financially equivalent would free us up to spend more time with our kids and enjoy them while they're young - that would be hard to say no to.

[49] High Tide replied again at 5:22 pm, also on the same date:

> Appreciate that Owen - both as the father of a 4-month-old son, and the son of a father who worked too hard for too long. Why don't you have a call with Raj Grover our CEO? Worst case maybe we can sell you some accessories. We do like your store it fits our target profile.

[50] Plaintiff, on March 7, 2022, at 1:51 pm:

> Sure – let's set up a call. Let me know when it works for Raj – I'm usually available Mon-Thurs. 9am to 3pm.

[51] On March 21, 2022, after a zoom meeting had occurred where High Tide had offered to purchase the Plaintiff's store, the Plaintiff wrote the following in response to the offer:

> Apologies for the delayed response - we had a crazy week last week! Niki and I have discussed at length and done some of our own forecasting. Where I believe we may have a challenge is that we anticipate growth to $10m/yr revenue run-rate by the end of 2022, **whereas Raj seemed to have our Dec 2021 run-rate** in mind with the view that we are likely to decline in 2022. Raj shared with me that High Tide's metric is 3.5x current EBITA run-rate - if this is a hard limitation then we are selling ourselves short considering a deal at this point in time. If that's a deal

> breaker, we entirely understand and there's no point in further discussion. [emphasis added]

[52] On March 23, 2022, at 9:20 am, High Tide sent a final message to the Plaintiff:

> Hi Owen - understood that your growth projections may be different than High Title's forecasts for future revenue / earnings trajectory. High Tide does have well calibrated models which predict store performance, and we think $10M is a very optimistic given the inevitable additional applications that will appear around the gap you currently enjoy. Our 3.5x price accounts for this downside and competitive risk inherent to cannabis retail. That being said we won't pry the store away from you. If there is a different earnings multiple which you find appealing let us know. Otherwise best of luck and keep us in mind if you ever plan to exit.

[53] On March 23, 2022, at 10:03 am, the Plaintiff made this final response:

> What we're seeing is an acceleration as stores across the city start to close - we expect this trend to continue over the next 24 months. Not worried about more stores opening close to us - we do not see that having an impact. With that said, if we were basing a deal on the $7.2m figure Raj had in mind ***based on our Dec run-rate,*** the multiplier would have to be closer to 5x EBITA in order to make an exit align with our view of the future value of the business. Alternatively, we are in no rush - happy to prove out our hypothesis and revisit a deal in the future when our projections become actuals. [emphasis added]

[54] The Plaintiff was clearly aware that High Tide was in possession of their December 2021 run rate (i.e., leaked data). There is nothing in the communications between the parties that suggests that the Plaintiff experienced distress, humiliation or anguish from that fact. The Plaintiff's claim that it experienced the meeting and the offer to purchase as a "threat" is untenable, given this exchange.

[55] I find that the parties engaged in brief unsuccessful negotiations, and, when High Tide determined that the Plaintiff was hoping to secure a much higher purchase price, the negotiations ended quickly. The Plaintiff provided additional information when it forecasted that its own sales would increase to $10m/year by the end of 2022. This disclosure is neither unusual nor surprising in the context of this type of negotiation. No doubt the parties would have exchanged significant additional financial particulars, had the discussions continued.

[56] The terms "distress, humiliation or anguish" clearly intend something more than upset or irritation. I do not accept that the access to two months of sales data in these circumstances, where it is obvious that the data was being circulated in the community, would result in distress, humiliation or anguish in a reasonable person. All of the easily ascertained and uncontroversial evidence taken together, I find that the Plaintiff did not, and a reasonable person would not, experience the anguish or humiliation contemplated as the third element of the tort of intrusion upon seclusion.

[57] As the facts pled and known do not make out two of the three elements required, I find that there is no cause of action for the tort of intrusion upon seclusion available to the Plaintiff. It is plain and obvious that this claim is doomed to failure.

ISSUE 3: Is there a viable cause of action of conversion as against High Tide?

[58] Although not formally pled, the Plaintiff made the submission that the elements, or underpinnings, of the tort of conversion were pled. The issue then is whether High Tide's review and use of the data can amount to actionable conversion?

[59] The elements that must be proven to establish the tort of conversion are:

(a) a wrongful act by the defendant involving the goods of the plaintiff;

(b) the act must consist of handling, disposing, or destroying the goods; and

(c) the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

[60] In the immediate case for High Tide to be liable for conversion it must have interfered with the plaintiff's right or title to the goods. In this case, the goods, so to speak, are financial information. In the case of a data breach such as the one here, the data came into the hands of an unknown number of recipients. Both High Tide and the Plaintiff admit to viewing the data. The great likelihood is that any recipient of the data who was in the cannabis retail business would review the information, if for no other reason other than to ascertain whether their own data was included.

[61] In *Del Giudice v. Thompson*, 2021 ONSC 5379, at paras. 172 – 173 and 178, Justice Perell held that the tort of conversion does not apply in the case of a data breach; he stated:

> 172. First, the tort of conversion does not apply to information, intellectual or intangible property. Such property does not entail a right of possession.
>
> 173. There are torts or legal remedies that do apply to provide remedies for the misappropriation and misuse of intellectual property that do not involve the notion of possession or tangible property; for example, there is breach of confidence. […] However, advancing a claim for conversion is a *non sequitur* in the circumstances of the immediate case. Information is not a type of property within the ambit of the tort of conversion, which is for tangible, not intangible, property. The misuse of private information might be amenable to a breach of confidence, but that is a misuse of information not a conversion of it.
>
> […]
>
> 178. Third, for there to be a conversion of the personal property, the property must be damaged in some way, which is not the situation in the immediate case. The

personal information of a person's name or contact information was not damaged in the immediate case.

[62] I adopt the reasons of Perell J. insofar as the availability of the tort of conversion applies to data disseminated after a data breach.

[63] In any event, I do not accept that the mere viewing by passive recipients, in the context of this breach, could amount to an unlawful act.

[64] Even on an assumption that the data could be subject of the tort of conversion, there is nothing pled/ in the record to suggest that High Tide's offer to purchase had the effect of denying the Plaintiff's right or title to its data.

[65] In terms of the brief negotiations, it is agreed by High Tide that viewing the data contributed to High Tide's decision to reach out to the Plaintiff. The basic fact that the Plaintiff had been enjoying significant success was already in the public domain. The Plaintiff itself had participated in media interviews and had published press releases which shared its status of achieving top sales among the 53 cannabis stores in region. Indeed, as noted, the Plaintiff also offered its own forecast and suggested an expected $10 Million in annual sales within a short time. The Plaintiff suggests that it was the knowing of ***exact*** sales figures and other particulars that gave High Tide an unfair advantage. However, there is nothing in the record to suggest how or why any detail would impact the offer to purchase, which was based on a multiple of earnings before interest, tax, depreciation, and amortization ("EBITDA").

[66] The subsequent assertion that the data was illegally and improperly used to bolster High Tide's market position, is a bald assertion that is not supported by any facts.

[67] I find that the tort of conversion is not available in the context of a data breach, and that, in any event, two of the three elements of the tort of conversion are not made out in the circumstances of the immediate case. The tort of conversion is not available to the Plaintiff.

CONCLUSION

[68] I am mindful that pursuant to Rule 21, a court should only exercise its power at this stage of an action to dismiss an action without leave to amend in the clearest of cases. For the reasons given, I find that this is one of those cases.

[69] I conclude that the Statement of Claim, as against High Tide, is frivolous and vexatious. It is plain and obvious that the claim cannot succeed. The Plaintiff has not pleaded legally viable causes of action for intrusion on seclusion or conversion. On the basis of these findings, the action is dismissed as against High Tide.

COSTS:

[70] I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows:

a. Within 15 calendar days of the distribution of these reasons to counsel, High Tide shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers; and

b. The Plaintiff shall serve and file its responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 25 calendar days of the distribution of these reasons; and

c. High Tide's reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons and are not to exceed two pages.

d. If no submissions are received within times allocated, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

Antoniani, J.

Released: January 19, 2024

Corrigendum

1) Cover page – from “Jeffrey P. Hoffman for the Plaintiff/Respondent” to “Brian Kelly as the Plaintiff/Respondent”
2) Cover page – from “Brian Kelly for the Defendant/Moving party “ to “Jeffrey P. Hoffman for the Defendant/Moving Party”

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Highland Cannabis Inc.

Plaintiff

- and –

Alcohol and Gaming Commission of Ontario and High Tide Inc.

Defendant

REASONS FOR JUDGMENT

S. Antoniani, J.

Released: January 19, 2024