COURT OF APPEAL FOR ONTARIO

CITATION: Ontario Securities Commission v. Katmarian, 2026 ONCA 266
DATE: 20260410
DOCKET: COA-26-OM-0077

Gomery J.A. (Motion Judge)

BETWEEN

Ontario Securities Commission

Appellant (Responding Party)

and

Stephan Katmarian

Respondent (Moving Party)

Brian Greenspan, for the moving party

Jim Cruess, for the responding party

Heard: March 24, 2026

REASONS FOR DECISION

[1] Stephan Katmarian applies for leave to appeal his fraud conviction under s. 126.1 of the *Securities Act*, R.S.O. 1990, c. S.5. The motion is granted subject to the terms set out below.

Background

[2] The fraud charge arises from the marketing of a cryptocurrency token by Peblik Inc., based on information provided by Mr. Katmarian, Peblik's founder, executive director, chair, and managing director. The Ontario Securities Commission alleged that Peblik fraudulently represented that the cryptocurrency token was secured by its interest in a copper mine in northern Ontario known as the Thierry Mine.

[3] Following a 16-day hearing in the Ontario Court of Justice, the trial judge found that Peblik did not have an interest in the Thierry Mine, and that representations that it did on Peblik's website and in its marketing documents were deceitful or a falsehood. It was undisputed that the 32 individuals who invested a total of approximately $484,000 in Peblik tokens lost their entire investment. The trial judge nonetheless acquitted Mr. Katmarian of the fraud charge. She held that, to prove the *actus reus* of fraud, the Commission had to show that investors suffered an actual deprivation or loss as a result of their reliance on a misrepresentation. She found that the Commission failed to prove that the investors who purchased the Peblik tokens were induced to do so based on any particular false statement about the company's interest in the Thierry Mine on Peblik's website or in its marketing documents.

[4] The Commission appealed the fraud acquittal to the Superior Court of Justice.[1] The appeal judge held that the trial judge erred in law by requiring the Commission to prove an actual loss caused by detrimental reliance on a specific misrepresentation; the deprivation element of criminal fraud may be established either by proof that an actual loss was induced by a prohibited act or by proof that the prohibited act placed a victim's pecuniary interests at risk.

[5] The appeal judge further concluded that the trial judge had made findings of fact necessary to prove each element of the fraud offence, such that it was appropriate to enter a conviction rather than directing a new trial. The appeal judge found that the Commission had proved that Peblik falsely represented that the cryptocurrency token was backed by a real-life asset and that this had placed investors' pecuniary interests at risk. He further found that the Commission had proved that Mr. Katmarian had the *mens rea* for fraud: Mr. Katmarian knew that Peblik did not have an interest in the Thierry Mine, and he knew that the misrepresentation that it did put investors' interests at risk.

[6] As a result, the appeal judge allowed the appeal, set aside Mr. Katmarian's acquittal for fraud, and entered a conviction.

[1] Mr. Katmarian was acquitted at trial of four violations of the *Securities Act*. The Commission appealed three of the acquittals. The appeal judge set aside the acquittal on the fraud charge but upheld the other two. I need not detail the courts' analyses with respect to the charges that are not the subject of the Mr. Katmarian's proposed appeal.

The test for granting leave

[7] The test for granting leave to appeal in this case is set out in s. 131 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33:

> **131** (1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the court to the Court of Appeal, with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone or as to sentence.
>
> (2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

[8] The moving party must therefore establish: "(i) special grounds; (ii) on a question of law alone; and (iii) that, in the particular circumstances of this case, it is essential in the public interest or for the due administration of justice that leave be granted": *Antorisa Investments Ltd. v. Vaughan (City)*, 2012 ONCA 586, 1 M.P.L.R. (5th) 240, at para. 8; see also *North Bay (City) v. Vaughan*, 2018 ONCA 319, at para. 10; *Mississauga (City) v. Khalid*, 2020 ONCA 446, 3 M.P.L.R. (6th) 1, at para. 5.

[9] No matter how wrong the judgment under appeal may appear to be, leave shall not be granted unless the moving party can articulate a question of law alone, the resolution of which, by this court, is essential in the public interest or for the due administration of justice: *R. v. Zakarow* (1990), 74 O.R. (2d) 621 (C.A.), at pp. 625-26; see also *Ontario (Ministry of the Environment and Climate Change) v.*

Sunrise Propane Energy Group Inc., 2018 ONCA 461, 17 C.E.L.R. (4th) 174, at para. 13.

[10] The threshold for granting leave is "very high": *Antorisa Investments Ltd.*, at para. 8; see also *R. v. Hicks*, 2014 ONCA 756, at para. 21; *R. v. Ontario Corporation 1796926*, 2016 ONCA 612, at para. 21. Provincial offences appeal judgments are intended to be final "in the overwhelming majority of cases": *Ontario (Labour) v. Enbridge Gas Distribution Inc.*, 2011 ONCA 13, 328 D.L.R. (4th) 343, at para. 34. As a result, leave is granted only in exceptional cases, "where the public interest or for the due administration of justice makes it absolutely indispensable or necessary for the Court of Appeal to decide": *Ontario (Ministry of Labour) v. Guelph (City)*, [2013] O.J. No. 6031 (C.A.), at para. 39; see also *Sunrise Propane*, at para. 15.

[11] When deciding whether to grant leave, the court also has discretion to narrow the proposed questions of law on which leave is sought, granting leave for some but not others: e.g., *Ontario (Labour, Immigration, Training and Skills Development) v. Benevides*, 2025 ONCA 426.

Application of the test to the proposed grounds of appeal

[12] Mr. Katmarian contends that it is essential in the public interest and for the due administration of justice that leave to appeal be granted on two questions of law:

(i) What is the standard for causation on the deprivation element of the *actus reus* of fraud?

(ii) Does *R. v. Hodgson*, 2024 SCC 25, 494 D.L.R. (4th) 501, modify the test for entering a conviction on appeal?

[13] Mr. Katmarian also argues that "special leave" should be granted in the circumstances of this case because denying leave to appeal would mean that he has no ability to seek appellate review of his conviction. I will address this submission in my analysis of the second proposed question.

Proposed question (i): What is the standard for causation on the deprivation element of the *actus reus* of fraud?

[14] I am not persuaded that it is essential in the public interest or for the due administration of justice that leave be granted for this court to determine the standard of causation on the deprivation element of the *actus reus* of fraud. The legal principles applied by the appeal judge are neither novel nor controversial.

[15] Canadian law has long recognized that a conviction for fraud does not require proof that a victim suffered an actual loss as a result of the fraudster's dishonest conduct. As the appeal judge observed, "[t]he element of deprivation is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim. It is not essential that there be actual economic loss as the outcome of the fraud": *R. v. Olan et al.*, [1978] 2 S.C.R. 1175, at p. 1182.

[16] In *Vézina and Côté v. The Queen*, [1986] 1 S.C.R. 2, at p. 19, the Supreme Court reiterated that: “Fraud consists of being dishonest for the purpose of obtaining an advantage and which results in prejudice or a risk of prejudice to someone’s “property, money or valuable security”. There is no need to target a victim … and the victim may not be ascertained.”

[17] Likewise, in *R. v. Théroux*, [1993] 2 S.C.R. 5, at p. 20, the Court affirmed that deprivation caused by a deceitful act constitutes fraud if it causes a deprivation either in the form of an actual loss or “the placing of the victim’s pecuniary interests at risk”.

[18] These principles were applied in *R. v. Drabinsky*, 2011 ONCA 582, 107 O.R. (3d) 595, leave to appeal refused, [2011] S.C.C.A. No. 491. *Drabinsky* concerned a company’s balance sheet filed as part of a package of materials in its initial public offering. The balance sheet misrepresented the company’s financial affairs, inflating the real value of the shares. At the fraud trial against two individuals responsible for the IPO package, the prosecution did not call evidence showing that investors were induced to purchase shares based on the misrepresentations in the balance sheet. The defendants argued that, as a result, the Crown had not proven that the misrepresentations were material to the shareholders’ decision to purchase shares and so the Crown had not established that the defendants’ deceit caused any deprivation.

[19] This defence was rejected. The trial judge in *Drabinsky* held that the investing public was put at risk by the falsehoods in the balance sheet, and that this was enough to establish the *actus reus* of the offence. This court upheld the convictions, endorsing the following passage of the trial judge's reasons, at paras. 81-82:

> The inclusion of a balance sheet that is false is an act of deceit, falsehood and dishonesty. Since members of the public are entitled to rely on these statements before risking their funds, there is potential risk to the public.
>
> If the balance sheet is false, it is no answer to say that the investors would only look to the income statement. One cannot pick and choose sections that may be more or less important to a potential investor. The reasons for investing may be as diverse as the number of investors.
>
> That the accused did not profit from the falsehood is irrelevant to the charge. That the public did not suffer is irrelevant to the charge.

[20] Similarly, in *R. v. Riesberry*, 2015 SCC 65, [2015] 3 S.C.R. 1167, the Supreme Court upheld a conviction for fraud based on an accused injecting race horses with performance-enhancing substances. There was again no evidence that this dishonest conduct had affected any racetrack betting or that any bettor had lost any money as a result of this conduct. Writing for the Court, Cromwell J. affirmed that evidence of inducement, reliance and actual loss may prove the *actus reus* of fraud, but such evidence is not always necessary. What is essential is proof of a sufficient causal connection between the fraudulent act and a victim's risk of

deprivation: *Riesberry*, at para. 22. At paragraph 26 of his reasons in *Riesberry*, Cromwell J. accepted that "a rigged race creates a risk of prejudice to the economic interests of bettors", and this made the absence of inducement or reliance irrelevant.

[21] Notwithstanding this long line of authority, Mr. Katmarian contends that the standard for causation on the deprivation element of the offence of fraud is unresolved or ambiguous, given the appeal judge's rejection of the causation analysis in *R. v. Kazman*, 2017 ONSC 5300, aff'd 2020 ONCA 22, 452 C.R.R. (2d) 185, leave to appeal refused, [2020] S.C.C.A. No. 58;[2] and his reliance on the analysis in *R. v. Nowack*, 2019 ONSC 2914.

[22] I disagree. These cases do not contradict the principle in *Olan*, *Vézina*, *Théroux*, *Drabinsky*, and *Riesberry* that, as a general rule, fraud may be proved if a deceitful act caused either an actual loss or a risk to victims' pecuniary interests. *Kazman* and *Nowack* are simply examples of the application of broad principles to specific facts.

[23] *Kazman* involved dishonest statements made in support of applications for bank loans. The trial judge in that case, Spies J., concluded that, in the context of these transactions, the Crown had to prove that the misrepresentations induced

[2] This court's decision in *Kazman* is unhelpful to my analysis because it deals with an alleged violation of the defendants' right to a trial in a reasonable amount of time as opposed to the trial judge's consideration of the elements of fraud.

the banks to advance the loans. I agree with the appeal judge in this case that Spies J. was describing the causation requirement in the specific circumstances of the case rather than advancing a novel proposition of law. This is apparent because, in setting out the elements of the offence of fraud at the outset of her analysis, Spies J. noted that deprivation may be established either by actual prejudice, or by a risk of prejudice to the economic interests of the victim, citing *Théroux* and *Olan*.

[24] The analysis in *Nowack* likewise does not, as Mr. Katmarian contends, broaden the *actus reus* that may constitute fraud. In *Nowack*, the accused argued that his misrepresentations to investors did not cause them any deprivation, because they were made after the investors' advanced funds. This defence was rejected, because the trial judge found that the misrepresentations nonetheless caused a risk to the investors' economic interests. This is again consistent with recognized principles.

[25] Mr. Katmarian asserts that the appeal judge erred in finding that the case at bar is more akin to *Drabinsky* and *Riesberry* than *Kazman*, and that he should not have suggested, based on *Nowack*, that Mr. Katmarian's fraud could be established based on versions of Peblik's website dated after investors invested in cryptocurrency tokens. I do not need to determine whether these are arguable errors. Even if they were, they would arise from the misapplication of established law to specific facts. As such, they would be errors of mixed fact and law that could

not be the basis for granting leave to appeal under s. 131 of the *Provincial Offences Act*.

[26] Finally, Mr. Katmarian contends that leave to appeal this question should be granted under the due administration of justice criterion in s. 131(2), because the Commission advanced a different theory of causation on appeal than at trial, contrary to *R. v. Varga* (1994), 18 O.R. (3d) 784 (C.A.). This same submission was rejected by the appeal judge. There is no basis to conclude that he erred in doing so, as the application record does not include the transcripts and materials that he cited in rejecting the submission.

[27] For these reasons, I deny leave to appeal on the first proposed question of law.

Proposed question (ii): Does *Hodgson* modify the test for entering a conviction on appeal?

[28] Mr. Katmarian contends that, in the wake of *Hodgson*, it is essential in the public interest and for the due administration of justice that this court clarify the circumstances in which it is appropriate for appellate courts to substitute a conviction for an acquittal, and that this case is an appropriate one in which to do so.

[29] Mr. Katmarian has persuaded me that he has met the threshold for granting leave under s. 131 so that the court can address this issue, with some tailoring of the question he has proposed.

[30] At the outset of his analysis, the appeal judge noted that, if he granted the Commission's appeal of Mr. Katmarian's acquittal on the fraud charge and set it aside, he was empowered under s. 121(b)(ii) of the *Provincial Offences Act* to enter a finding of guilt rather than ordering a re-trial. Citing this court's decision in *Riesberry*, at para. 37, he said, in order to do this, he must find that:

(1) The trial judge made an error of law; and

(2) The accused would have been found guilty but for the error of law as long as the trial judge had made the necessary findings of fact for each element of the offence.

[31] Elaborating on the second criterion, the appeal judge stated:

> The appeal court must find, to a reasonable degree of certainty, that the verdict of acquittal would not necessarily have been the same had the error not occurred. The appellate court need not be satisfied that the verdict would have been different, but the burden is a heavy one: *R. v. Hodgson*, 2024 SCC 25 at para. 36.

[32] This statement arguably understates the burden on the prosecution in an acquittal appeal based on *Hodgson*, para. 36 of which reads in full as follows:

> Even if the Crown is able to point to an error of law, acquittals are not overturned lightly (see *R. v. Cowan*, 2021 SCC 45, at para. 46). The Crown must also convince the appellate court, to a reasonable degree of certainty, that the verdict of acquittal would not necessarily have been the same had the error not occurred (*Graveline*, at para. 15; *R. v. Sutton*, 2000 SCC 50, [2000] 2 S.C.R. 595, at para. 2). While the Crown

> need not persuade the appellate court that the verdict would necessarily have been different, its burden in this respect is a very heavy one (see *Graveline*, at paras. 14-15 and 19, quoting *R. v. Morin*, [1988] 2 S.C.R. 345, at p. 374; see also *Sutton*, at para. 2).

[33] More importantly for our purposes, the criteria for substituting a conviction for an acquittal on appeal are arguably different in the context of a prosecution under the *Provincial Offences Act* than under the *Criminal Code,* R.S.C. 1985, c. C-46*.* In *Hodgson*, the Supreme Court's analysis was informed by the limitation on the Crown's right to appeal acquittals to questions of law alone in s. 676(1)(a) of the *Criminal Code*. There is no such limitation on the prosecution's right to appeal an acquittal in the *Provincial Offences Act*. Moreover, where a prosecutor's appeal under the *Provincial Offences Act* is successful, an accused's right to a second appeal is subject to the very high threshold in s. 131. This leaves open the possibility that a conviction on appeal will not be subject to any appellate review.

[34] The Commission argues that *Hodgson* does not change the analysis, set out in *R. v. Graveline*, 2006 SCC 16, [2006] 1 S.C.R. 609, and *R. v. Morin*, [1988] 2 S.C.R. 345, that underlies an appellate court's decision about whether a re-trial is needed. These decisions were again made in the context of the appeal regime in the *Criminal Code*, however.

[35] I conclude that it is essential in the public interest and for the due administration of justice for this court to determine the impact of *Hodgson* in the context of a *Provincial Offences Act* prosecution, and that, in the special

circumstances of this case, leave to appeal on this issue should be granted on that question.

[36] In light of this conclusion, I need not consider Mr. Katmarian's broader argument that "special leave" should be granted, irrespective of the specific criteria in s. 131, because otherwise he will have no ability to seek appellate review of his conviction and hence would be deprived of his day in court.

Disposition

[37] Leave to appeal is granted on the following question:

> Does *R. v. Hodgson*, 2024 SCC 25, 494 D.L.R. (4th) 501, modify the test for entering a conviction on appeal in the context of a prosecution under the *Provincial Offences Act*?

"S. Gomery J.A."