On the Sault Dock-et: Court of Appeal for Ontario updates test for leave to appeal

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What is the test for leave to appeal in civil matters to the Court of Appeal for Ontario?

The guiding principles were laid down over fifty years ago in the seminal decision of *Sault Dock*.[1] Under the *Sault Dock* test, a proposed appeal must raise an "arguable" question "of general interest to the public or a broad segment of the public". *Sault Dock* identified several kinds of questions that might merit granting leave, while also recognizing that there may be "special circumstances" that would warrant granting leave to facilitate error correction.

In the recent decision of *Knauff v Ontario (Human Rights Tribunal)*, 2026 ONCA 653 a five-judge panel of the Court of Appeal confirmed that *Sault Dock* remains the governing test, while providing an updated framework for the test. The two components of the updated framework are arguability and public importance, both of which were central to the *Sault Dock* test. Under the updated framework, these two components must be assessed separately; there is no longer a distinct category of "special circumstances" for error correction; the same test applies regardless of the nature of the jurisdiction exercised by the Divisional Court (original or appellate); and the concept of "public importance" remains an expansive one.

Key takeaways

- *Knauff* provides helpful guidance to parties, regardless of whether they are bringing or responding to a motion for leave to appeal.
- *Knauff* confirms that the *Sault Dock* test remains the governing test for leave to appeal but provides an updated framework to evaluate whether the two components of arguability and public importance have been satisfied. *Knauff* also confirms that the same framework applies whether the Divisional Court was exercising original or appellate jurisdiction.
- *Knauff* confirms that "public importance" is not a closed list. Matters of public importance can arise in many circumstances, such as evolving areas of law with unsettled legal issues and questions relating to the "behaviour of corporations and their directors" that are subject to the Ontario *Business Corporations Act*.
- It remains to be seen whether the updated framework will result in leave being granted more often (or in different kinds of cases), or whether *Knauff* simply

codified a framework that the Court of Appeal was already applying. A review of the Court of Appeal's decisions from the preceding 12 months demonstrates that the Court of Appeal granted leave to appeal from decisions of the Divisional Court in a range of legal areas beyond the realm of traditional "public law".[2]

Background

Over the last fifty years, motions seeking leave to appeal to the Court of Appeal from decisions of the Divisional Court have been governed by the *Sault Dock* test. Under the *Sault Dock* test, a proposed appeal needed to raise an issue that was both "arguable" and of "public importance" in order to satisfy the Court of Appeal that leave ought to be granted. *Sault Dock* provided several non-exhaustive categories of arguable cases, such as "the interpretation of a statute or Regulation of Canada or Ontario including its constitutionality" and "the interpretation, clarification or propounding of some general rule or principle of law". *Sault Dock* also recognized a residual category of other cases where leave might be appropriate, including those where the Divisional Court made a clear error.

In the decades after it was decided, *Sault Dock* did not receive material consideration in the caselaw because the Court of Appeal does not typically provide reasons when deciding leave to appeal motions. However, in December 2024, a panel of the Court of Appeal in *West Whitby* expressed concern about whether *Sault Dock* was being properly interpreted, especially in light of changes to the legal landscape over the last five decades, and questioned whether the *Sault Dock* categories were being interpreted too rigidly.[3] In another decision issued two weeks later, a different panel of the Court of Appeal in *Davis* stated that *Sault Dock* continued to govern, absent a decision of a five-judge panel, and that *West Whitby* was merely a "helpful discussion and application" of the existing *Sault Dock* framework.[4] In *West Whitby*, the Divisional Court exercised original jurisdiction while in *Davis* the Divisional Court exercised appellate jurisdiction—but neither decision referred to that difference as a relevant factor in discussing the framework.

In light of the decisions in *West Whitby* and *Davis*, the party seeking leave to appeal in *Knauff* asked the Court of Appeal to assemble a five-judge panel to reconsider *Sault Dock*.

The Court of Appeal's decision

In *Knauff,* a unanimous five-judge panel affirmed that "the essential message of *Sault Dock* should be maintained". In reaching this conclusion, the Court provided an "updated framework" for how the *Sault Dock* test is applied. Simply put, under this updated framework, there must be a question of law or mixed law and fact that is "arguable" and of "public importance". These two central components — "arguability" and "public importance" — must be considered sequentially.

Arguability focuses on whether there is a real, arguable question of law or mixed law and fact at issue. A proposed appeal may face difficulty in satisfying this component if, for instance, it is about a purely factual question,[5] involves a decision that attracts a high degree of deference on appeal or is moot. Notably, *Knauff* recognizes that: "Even where the Divisional Court has correctly identified and applied the existing law, an arguable

question may still arise if that law, or the general principles that underlie it, should be reconsidered, expanded, qualified, clarified or changed."

Public Importance is only considered if a proposed appeal raises a question that is arguable. There is no closed list of questions that qualify as being of "public importance". *Knauff* affirms that although questions of public law "often fit this description," matters of public importance "are not limited to that field." Simply put, the "broader the category of persons affected by the resolution of the legal issue involved, and the more fundamental the interest that is affected, the more the question has the quality of public importance." A related dimension is the legal importance of a question, *i.e.*, whether it "goes to the development, progress, coherence, stability and predictability of the law, and thus the law's ability to deliver justice in Ontario".

In addition to explaining how these components relate to one another and how they are to be applied, *Knauff* provides two important clarifications to *Sault Dock*. First, it clarifies that the source of the Divisional Court's jurisdiction, *i.e.*, whether the Court was exercising original or appellate jurisdiction, does not change the leave analysis. The same framework applies in both cases. Second, there is no longer a special category of residual circumstances where leave may be appropriate. Rather, if the Divisional Court has made a clear error, this is something to be considered within the confines of the public importance component.

In applying the revised framework, the Court of Appeal dismissed Mr. Knauff's motion for leave to appeal. The Court concluded that his motion did not satisfy the arguability component because the Divisional Court had applied "the well-established and undisputed test for mootness" and exercised its discretion not to hear his judicial review application despite it being moot.

Footnotes

[1] *Re Sault Dock Co. Ltd. and City of Sault Ste. Marie*, 1972 CanLII 572 (ON CA).

[2] See e.g. *Lagana v. 2324965 Ontario Inc.*, 2025 ONCA 607 (concerning the limitation period applicable to a shareholder's entitlements to audited financial statements); *One York Street Inc. v. 2360083 Ontario Limited*, 2026 ONCA 176 (concerning waiver of solicitor-client privilege); *Shafiq v. Ramsay*, 2026 ONCA 517 (concerning the *Residential Tenancies Act*); *Sakab Saudi Holding Company v. Al Jabri*, 2026 ONCA 586 (concerning the applicability of solicitor-client privilege to trust ledgers and the crime-fraud exception); *Jakupovic v. Intact Insurance Company*, 2026 ONCA 651 (concerning statutory accident benefits in the context of automobile insurance).

[3] *West Whitby Landowners Group Inc. v. Elexicon Energy Inc.*, 2024 ONCA 910. Laura M. Wagner, Teagan Markin and Patrick J. Leger of BLG acted as counsel for Elexicon Energy Inc. in *West Whitby*.

[4] *Davis v. Aviva General Insurance Company*, 2024 ONCA 944 at paras. 10, 13.

[5] Section 6(1)(a) of the *Courts of Justice Act*, RSO 1990, c C.43, s 6 only permits appeals from the Divisional Court to the Court of Appeal on "on a question that is not a question of fact alone".

By

Adrian Pel, Scott Kennedy, Teagan Markin, Laura M. Wagner

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
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1200 Waterfront Centre
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Montréal
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Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

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