

CJ-10-404604

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ASSOCIATION OF JUSTICE COUNSEL

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be fixed by the registrar, at 10AM, at 361 University Ave, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 9/2010

Issued by Sopawio M. Sagaria
Registrar
Local registrar

Address of
court office: 393 University Avenue
Toronto ON M5G 1E6

TO: Attorney General of Canada
Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

APPLICATION

1. The Applicant makes application for:
 - (a) A declaration that the *Expenditure Restraint Act*, S.C. 2009, c.2, s.393 (“*ERA*”) is inconsistent with s.2(d) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”), and is of no force or effect to the extent of the inconsistency;
 - (b) A declaration that ss.16, 17, 24, 27, 34, 56, 57, and 59 of the *ERA* are inconsistent with s.2(d) of the *Charter* in whole or in part, and are of no force or effect to the extent of the inconsistency;
 - (c) A declaration that the *ERA* substantially interferes with the right of the Applicant and its members to bargain collectively under s.2(d) of the *Charter*, and that such infringement is not saved under s.1 of the *Charter*;
 - (d) A declaration that the Applicant and its members are lawfully entitled to bargain collectively and freely over their remuneration from May 10, 2006, without being restricted by the provisions of the *ERA*;
 - (e) In the alternative, a declaration that the *ERA*, and in particular ss. 16(a), (b), and (c), are inconsistent with s.2(d) of the *Charter*, and are therefore of no force or effect, to the extent that they have retroactive effect on the Applicant and its members prior to December 8, 2008;
 - (f) A declaration that the *ERA* substantially interferes with the right of the Applicant and its members to bargain collectively, by preventing them from bargaining freely to establish an appropriate baseline level of remuneration before the imposition of restraints on future increases;

- (g) In the further alternative, a declaration that s.16(a) of the *ERA* is of no force or effect in that it has a unique retroactive effect on the Applicant and its members, and thereby infringes s.2(d) of the *Charter* in a manner that cannot be justified under s.1;
- (h) Costs of the application; and
- (i) Such further relief as counsel may advise and this Honourable Court may deem just.

2. The grounds for the application are:

- (a) The Applicant was certified as the bargaining agent for 2,700 members of the Law Group employed by the Department of Justice, including the Federal Prosecution Service (which later became the Public Prosecution Service of Canada) and other federal government agencies, on April 28, 2006;
- (b) The Applicant gave notice to bargain on behalf of its members to Treasury Board pursuant to the *Public Service Labour Relations Act* on May 10, 2006;
- (c) Except for a small group of employees formerly represented by another union, the employees represented by the Applicant have never been subject to a collective agreement that addresses their terms and conditions of employment as members of the Law Group;
- (d) No collective agreement between the Applicant and Treasury Board was concluded prior to the enactment of the *ERA*;
- (e) No monetary proposal was made by Treasury Board to the Applicant until April 2008;

- (f) In September 2008 Treasury Board referred all outstanding issues in bargaining between the Applicant and Treasury Board to arbitration, pursuant to the terms of the *PSLRA*;
- (g) The *ERA* was given first reading in the House of Commons on or about December 8, 2008, and came into effect on or about March 12, 2009;
- (h) The *ERA* substantially interferes with the right of the Applicant and its members to free collective bargaining as guaranteed by s.2(d) of the *Charter*, in a manner that cannot be justified under s.1;
- (i) Subject to certain exceptions, the *ERA* provides for retroactive restraint measures back to April 1, 2006, for represented groups that did not have a collective agreement or arbitral award in place prior to December 8, 2008, in respect of increases to take effect between April 1, 2006 and December 8, 2006;
- (j) Employees represented by the Applicant are the only group of employees subject to these retroactive restraint measures back to the 2006 – 2007 fiscal year;
- (k) Employees represented by the Applicant are the only represented group of employees subject to the *ERA*, whose terms and conditions of employment have not previously been collectively bargained or established by an independent arbitration process;
- (l) The effect of the *ERA* is that the Applicant and its members could not bargain collectively over salary, nor could salary be set by the arbitration board at an appropriate level that replicated the results of collective bargaining;
- (m) The salaries of employees represented by the Applicant have effectively remained frozen in real terms since 2006;

- (n) Other groups of federal government employees were exempted from the application of the *ERA*, or certain of its provisions, and were able to retain or bargain salary increases far in excess of those permitted for the Applicant and its members by the *ERA*;
- (o) The distinctions drawn by the *ERA*, on its face and in its application, are irrational and cannot be justified under s.1 of the *Charter*;
- (p) Such further grounds as counsel may advise and this Honourable Court may accept;

3. The following documentary evidence will be used at the hearing of the application:

- (a) Affidavit of Marco Mendicino, sworn June 8, 2010; and
- (b) Such further evidence as counsel may advise and this Honourable Court may accept.

Date: June 9/2010

Paliare Roland Rosenberg Rothstein LLP
Barristers & Solicitor
Suite 501, 250 University Avenue
Toronto, Ontario
M5H 3E5

Andrew K. Lokan (LSUC #31629Q)
ph.: (416) 646-4324
fax: (416) 646-4323

Lawyers for the Applicant

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Paliare Roland Rosenberg Rothstein LLP
250 University Ave, Suite 501
Toronto, ON M5H 3E5

Andrew K. Lokan (LSUC #31629Q)
ph.: (416) 646-4300
fax: (416) 646-4323

Lawyers for the Applicant