

Court File No.

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

ASSOCIATION OF JUSTICE COUNSEL

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(Pursuant to Rule 25 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the Applicant, Association of Justice Counsel, hereby applies for leave to appeal to the Court, pursuant to s.40(1) of the *Supreme Court Act*, R.S.C., 1985, c. S-26, from the judgment of the Court of Appeal for Ontario, Court File No. C54656, made August 7, 2012, and for an order granting leave to appeal or any further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. The Court of Appeal for Ontario erred by finding that the *Expenditure Restraint Act*, S.C. 2009, c. 2 (“*ERA*”), had not substantially interfered with the collective bargaining rights of the Applicant and its members, as protected under s.2(d) of the *Charter of Rights and Freedoms* (“*Charter*”);

2. In finding that the *ERA* did not violate s.2(d) of the *Charter*, the Court of Appeal for Ontario unduly narrowed the scope of protection for collective bargaining, *inter alia* by:
 - (a) failing to consider the purpose or effect of the *ERA* and instead focusing on the negotiations that the Applicant had with the employer prior to the introduction of the legislation;
 - (b) in this way, effectively requiring two independent breaches of s.2(d) of the *Charter*, by both the legislature and the employer;
 - (c) failing to consider the decisions of the Committee on Freedom of Association of the International Labour Organisation;
3. The instant case has far-reaching implications and raises issues of national importance;
4. There are inconsistent decisions in the lower courts on the constitutionality of the *ERA*, and the lower courts and governments across Canada would benefit from the guidance of this Court on the issues that arise.

Dated at Toronto this 9th day of October, 2012.

Signed by

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Avenue West, 35th Floor
Toronto, ON M5V 3H1

Andrew K. Lokan
Ph.: 416.646.4324
Fax: 416.646.4301
Email: andrew.lokan@paliareroland.com

Lawyers for the Applicant

Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Henry S. Brown, Q.C.
Ph.: 613.233.1781
Fax: 613.563.9869
Email: henry.brown@gowlings.com

**Ottawa Agent for the Lawyers for
the Applicant**

TO: THE REGISTRAR

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

Dale Yurka

Kathryn Hucal

Ph.: 416.954.8110 / 416.954.0625

Fax: 416.973.5004

Email: dale.yurka@justice.gc.ca

kathryn.hucal@justice.gc.ca

Counsel for the Attorney General of Canada

NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.