

AJC will seek leave to appeal OCA decision to the Supreme Court

The Governing Council (GC) of the Association of Justice Counsel has instructed counsel to seek leave to appeal the [Ontario Court of Appeal \(OCA\) decision](#) on the Expenditure Restraint Act (ERA) Charter Challenge to the Supreme Court of Canada.

The GC decision was taken after giving serious consideration to several factors, including:

- The first instance [decision of the Superior Court of Ontario](#) in which Justice Grace found that the ERA constituted a substantial interference with the collective bargaining rights of the AJC's members;
- [The Ontario Court of Appeal decision](#) which did not focus upon the ERA itself, but rather on the process of "negotiations" that preceded its introduction;
- The fact that AJC's ERA Charter Challenge has national implications, not just for the 2,700 federal Crown counsel who are directly affected, but also for the 400,000 employees covered by the ERA.

In its interpretation of the OCA decision, the AJC has expressed serious concerns that, if left unchallenged, the decision would allow a government employer to insulate lengthy periods of legislative interference with collective bargaining from any constitutional challenge, simply by meeting with the affected unions in advance of the legislation.

In his decision Justice Grace found that salary was an item of central significance and that the legislation interfered with a meaningful process of collective bargaining by making it impossible to negotiate freely over salary for the restraint period of five years. The OCA decision went in the opposite direction acknowledging that the ERA had the effect of taking wages off the table and making the wage settlement "a foregone conclusion", but held that this was constitutionally irrelevant.

For more information on the ERA Charter Challenge, you can visit the [ERA Charter Challenge page](#) on the AJC web site.