FILE NUMBER: _____

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

MYRIAM MICHAIL

APPLICANT

— and —

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION, MARSHALL JARVIS, BRUNO MUZZI, FERN HOGAN, JOANNE SCHLEEN, SHELLEY MALONE, SHEILA BRESCIA;

LONDON DISTRICT CATHOLIC SCHOOL BOARD; AND

ONTARIO LABOUR RELATIONS BOARD

RESPONDENTS

ATTORNEY GENERAL OF CANADA and

ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

MEMORANDUM OF ARGUMENT OF THE APPLICANT

MYRIAM MICHAIL

Self-Represented Litigant

Pursuant to Section 40 (1) of the Supreme Court Act

September 26, 2019

VOLUME 1

MYRIAM MICHAIL

[redacted]

Self-Represented Applicant

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A Plea for Help, Equitable Remedies

Equity will not suffer a wrong to be without a remedy

OVERVIEW – Lacuna in Labour Law[1]

1. At the heart of our democracy is the *"commitment to social justice and equality"*[2]. This case is emblematic of a serious hidden lacuna in labour law and "raises a number of complex and novel administrative law matters of national importance"[3] that are central to our legal system as a whole, and that warrants consideration by this Court.
2. This matter is not just a case, it is a cause. It sheds light on an outrageous assault on the *Charter* rights and the *United Nations Human Rights* of millions of hard-working unionized Canadians:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", "having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person ... ".

3. This lacuna in the law perpetuates prejudice against this historically vulnerable group. Unions in Canada assert immense power over the lives of unionized employees, and although union officials are mandated to be the guardians of employee's rights, and hold tremendous power over their members, they are totally unaccountable and have transformed themselves into a superpower.
4. This case is emblematic of the consequences of this hidden[4] lacuna in the law. Trade unions, which have the mandate to support their members, would in case of escalation, usurp multiple fundamental rights of millions of unionized employees and stand vigorously with the employer against their members, even if the employer acted in bad faith and breached the *Charter of Rights and Freedoms*, the *Human Rights Code*, the *Collective Agreement* and the *Ontario Health and safety Act*, as in my case, which leaves Canadian employees who are represented by trade unions, vulnerable and with no recourse.
5. Therefore, I have launched a constitutional challenge to the OLRB decision and the constitutional validity, applicability or operability of the overbroad "right of carriage" in

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[1] Lacuna in Law Submission to the Superior Court May 18, 2017 **Tab 4 (3) para.** 114 to 210
[2] *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities **Tab 15** para.23
[3] *Lawyer for the union OECTA Mr. Paul Cavalluzzo's factum to the Superior Court June 2017*
[4] Correspondence with Muzzi re. Right of Carriage of individual grievance **Tab 4 (19)**

sections 45(1) and 116 of the *Labour Relations Act "LRA"* through eight questions, each with a claim for remedy under subsection 24 (1) of the Charter.

6. For the past five decades, and to date, these sections of the *LRA* allowed some union officials to trample on the human rights and *Charter*'s Rights of union members under s. 2(b), 7, 15(1), and 24(1).
7. The concerns raised in this case require a pragmatic and holistic assessment by the Supreme Court. This application will provide the Court with an opportunity to restore justice and "the respect and dignity commensurate with their status as a human being"[5] to unionized workers and to clarify where millions of unionized employees stand before the law.
8. Presently, the law bounces between considering the employee a full "party" when it comes to obligations; but, when it comes to their rights, that same employee is then considered "not a party", or a "third party", or "privy". This lack of consistency always disadvantaging the employee is evidence of systemic bias and discrimination.
9. I am seeking leave to this Court to appeal the *Ontario Court of Appeal "COA"* decision 2018 ONCA 857 of Feldman, Pardu and Roberts JJ.A, dated October 25, 2018 quashing my appeal of Grace J.'s decision, 2017 ONSC 3986 of an "urgency motion"[6] concluding that a previous Superior court decision was interlocutory, despite the fact that evidence presented that the process was a sham, it disposed of my rights and left me unable to continue the litigation.
10. Briefly, the context of this case involves my termination without cause, when I was a unionized employee and the betrayal and breach of fiduciary duty by my union. Union officials who are meant to represent me, seized control of the litigation process, leaving me vulnerable to their unlawful actions.
11. The ensuing litigation has been ongoing for nearly ten years, which I spent in agony trying to reclaim my dignity and rights as a Canadian who naively believed to be protected by the Constitution and the *Human Rights Code*, to find out that as a unionized worker I have had those rights revoked forever.
12. The arduous legal battle I am facing to reclaim my rights has been unsuccessful in the lower courts where I was faced with numerous illegal activities to obstruct my access to justice.

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[5] Arbitrator Lynk, 2004 O.L.A.A. No. 427, para. 12
[6] Leitch J. Order **Tab 2 (I)**

13. I am now turning to you, as Canadians' last bastion, with the hope that you will see the broader implications of my case. The protection of Canadian workers is cardinal. The tragedy is that the vast majority of unionized employees are unaware that they lose their fundamental constitutional and human rights by joining a union.

14. The Supreme Court will have to determine whether it was the legislature's intent when enacting section 45.1 of the *OLRA* to expand the exclusive bargaining rights of union officials and extend their authority and discretion to the point of suppressing the identity and autonomy of millions of unionized workers and strip their fundamental Constitutional and human rights to freedom of expression, the right to access to justice and equal protection of the law, or **is the intention of the legislature lost, and now relied on incorrectly to encourage the very behaviour it was meant to deter? Is provision 45(1) of the LRA unconstitutional or is it implemented in an unconstitutional manner**?

15. From a unionized employee who fell victim to these legal loopholes, this Court will now be provided with the context necessary to examine these issues fully, and to analyze the extent of their detrimental impact. What happened in my case is unconscionable:

    a. Union officials, in my case General Secretary Marshall Jarvis "Jarvis", and his assistant Bruno Muzzi "Muzzi", have the authority to deprive me of my constitutional right to access to justice, to equal protection of the law and an impartial decision-maker, by denying me the right to recourse to court to judicial review an Arbitration Award as guaranteed by s.15(1) of the *Charter*[7]. In Canada, a unionized worker will never be granted standing to request judicial review of an arbitration decision regardless of how deficient it is because, by law, a trade union has exclusive authority to act on behalf of the employee in litigating rights;

    b. I was deprived of my fundamental human rights under the *Code* and constitutional right under s. 2(b), 7 and 15(1) of the *Charter* to free will and auto-determination, access to justice and to equal protection of the law, where union officials Jarvis/Muzzi have the legal authority to sign an iniquitous settlement, including my testimony, on my behalf without my consent, violating my will and conscience, disposing of my human rights[8] and settling my case unjustly without providing me an opportunity to obtain relevant documents, evidence,

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[7] Judicial Review Submission to the OLRB **Tab 4 (13)**
[8] Settlement Submission to the OLRB **Tab 4 (14)**

or to defend myself and have the terms and conditions of this settlement imposed on me. The OLRB condoned this abhorrent practice stating at para. 32[9]:

> Moreover, the Board has consistently held that a trade union does not require the consent of an aggrieved bargaining unit member to settle a grievance: see, for example, *Del Fante*, [2008] O.L.R.D. No. 2293, at paragraph 25, and *NN*, [2015] O.L.R.D. No. 1812 at paragraphs 24 and 25.

c. Although case law sets out: "*freedom of opinion and freedom of expression are guaranteed to "everyone", employers and employees alike, irrespective of their labour practices and of their bargaining power.*"[10], this principle doesn't apply to unionized employees.

- Union officials have the authority to impose a "confidentiality clause", thereby assaulting the constitutional right to freedom of expression, to self-determination, to liberty and security of the person guaranteed under s. 2(b) and 7 of the *Charter*.
- I repeatedly informed my union and my employer that *"I will not accept any amount of money in exchange of my covering of wrongdoing"* nevertheless, I was blackmailed in an attempt to compel me to sign a "gag clause", which would cover fraud and wrongdoings, in exchange for receiving my *legitimate* entitlements.
- For unions and employers to collude to force vulnerable employees in need of income to act against their moral values or be deprived of their entitlements constitutes an abuse of power and amounts to legalized extortion which is illegal, immoral and in breach of s. 2(b) of the *Charter*.
- This unlawful practice is commended by the OLRB[11]:

  > Secondly, neither the School Board nor the union is duty bound to guarantee the applicant's Charter right to free expression. Anyone can ask another person voluntarily to refrain from or limit their right to express themselves. That is essentially what the School Board is doing here. [emphasis added]

- I disagree. This is not "what the School Board is doing". When I declined to sign the gag provision, the LDCSB continued their oppressive conduct, subjecting me to significant economic, psychological and emotional pressures. They have unlawfully deprived me of my *legitimate* severance and damages for being fired unjustly and in bad faith in October 2014 after 24 years of honest and exemplary work.

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[9] *Myriam Michail v OECTA*, 2017 CanLII 6507 (ON LRB) **Tab 2 (H)**
[10] *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities Tab 15 para.51
[11] *Myriam Michail v OECTA*, 2017 CanLII 6507 (ON LRB) **Tab 2 (H)**

d. Union officials bullied me to get me to sign a release provision, to "contract-out" my human rights and threatened to sign it on my behalf depriving me of my rights under s.7, 15(1) and 24(1) to seek legal recourse and the protection of the law.

e. I found out that union officials have the authority to endorse and impose on me a *Consent Award* that is a purely fabricated tale of calculated falsehoods that employer and union have concocted together with the goal of avoiding accountability and legal sanctions for personal and organizational wrongdoings, such "coercion constitute gross violations of the freedoms of opinion and expression or, at the very least, of the freedom of expression."[12]

f. I was deprived of my right to resolute advocacy during arbitration. OECTA's lawyer failed his fiduciary duty, was not candid with me and withheld crucial information from me. Legal counsel appointed to work on behalf of the unionized employee is typically employed to protect the union's best interest, and that same lawyer and his law firm would be standing and advocating against the same employee, and providing dishonest and deceitful legal opinions causing harm to the worker and in breach of the ethical standard of their profession;

g. Serious waste of millions of union members' and tax payers' dollars, would take place yet no one would be held accountable. More odious is that I, the victim got fired and left without income, and without recourse with employer and union officials that continue to backstab me, blackmailing me, withholding my severance and damages causing me loss and damage to my health, unless their unlawful demands are met in order to cover their wrongdoings.

h. I found out how Arbitration decisions are buried and hidden from the public and peer review, evidence ignored or even changed, and that arbitrators can choose whether or not to publish their decisions. This lack of transparency has opened the floodgates to many other issues within our judicial system;

i. I found out that although the Labour Relations Board (LRB) is the only venue for a unionized worker to seek justice when unjustly treated by the union, yet, for the last five decades, the OLRB has almost never made findings against a union, almost all Duty of Fair Representation "DFR" complaints are dismissed[13];

j. I am deprived of my *Charter* right under s.15(1), where unionized employees are denied the right to equal protection and benefit of the law:

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[12] *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities **Tab 15** para.39

[13] statistics and correspondence with the OLRB **Tab 4 (43)**

- where we are denied standing and deemed "not a party" in grievance arbitration, although, as in my case, I am the only one who lost my livelihood and suffered irreparable harm;
- where we are denied the right to judicial review of our own Arbitration Award, regardless of being the only one *"directly affected by the matter in respect of which relief is sought."* Under the disingenuous contention that we are not a party to the Arbitration process;
- where we are denied the right to recourse to courts to obtain remedy in the circumstances where our rights or freedoms, as guaranteed by *the Charter* or the *Code*, have been infringed upon and denied. In my case I am left abandoned by my union, without recourse, and with no "adequate alternative remedy" available;
- where as it currently stands, Parliament is able to abuse their legislative power by imposing privative provisions ousting the inherent jurisdiction of the court, being in direct breach of the *Constitution*, which deprives millions of Canadians of access to justice;
- Ironically, as a unionized employee, I will be faced with issue estoppel at the Human Rights Tribunal because I will be deemed a party/privy to the Arbitration process.

BACKGROUND

16. I am coming before this Court with clean hands as a self-represented litigant who lives with a disability.
17. **No lawyers agreed to take on my case:** Despite my extensive efforts, I was unable to secure legal representation. Lawyers are either "employer side" or "union side" where power and money reside. The underdog is left without representation.
18. I have devoted years of my life for this cause and worked to the best of my ability. I humbly submit that this matter does not call for expertise in Labour law as much as it calls for the integrity of our justice system, respect to human rights and the rule of law.
19. I take pride in being a teacher. I strongly believe that taking a stand to ensure that justice, truth and goodness prevail is everyone's responsibility. It is a civic and moral obligation that certainly need not be restricted to lawyers. With this in mind, I hope that my cause will receive the needed attention and consideration from this Court.
20. By way of background, I have a Master's Degree in French Literature[14]. In September 1991, I was hired to work as a teacher by the London District School Board "LDCSB" and signed an

[14] Michail's OCT credentials **Tab 4 (17)**

employment contract, a copy of which is attached[15]. I was a caring and dedicated teacher with an unblemished employment record for 24 years. I was well regarded by students, parents and colleagues[16]. After 20 years of teaching French and Religion in the Elementary and Secondary panels, in 2010, I required an accommodation due to a medical condition.

21. My need for accommodation was met with hostility and resistance by my employer and union. I now know through LDCSB's handwritten documents and a series of events that union officials and named respondents Jarvis, Muzzi, Malone, Brescia, Hogan and Schleen ("Jarvis et al") conspired with the employer to eliminate me from the workplace to avoid having to continue to accommodate me. A process they call *"backward design termination"*, and *"Myriam - Path of destruction"*[17] by provoking a fake "insubordination" allegation against me that would provide "just cause" to terminate me[18].
22. In October 2014, after failing to obtain "insubordination" and during the course of the Arbitration proceeding that resulted in the impugned July 2015 Award, the LDCSB fired me without cause[19], while on sick leave, with a list of fabricated allegations plagiarized and copied word for word from a 1999 "unpublished" Arbitration decision, *De Havilland Inc. v. CAW-Canada*[20].
23. The employer planned an investigation. OECTA has full knowledge that the McNair investigation report is flawed. The conclusions are erroneous and contrary to the facts and evidence[21]. As with the previous investigation[22], Mr. McNair was misled by the LDCSB.
24. OECTA's officials breached their fiduciary duty, smeared my reputation, and acted to my detriment causing the loss of my livelihood and irreparable harm to my health.
25. Although "A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being."[23] I was never allowed to defend myself. Instead of

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[15] Employment contract between Myriam Michail and the LDCSB **Tab 4 (16)**
[16] Excerpts from commendation and reference letters **Tab 4 (17)**
[17] Conspiracy submission to the Superior Court and the COA **Tab 4 (2)**
[18] handwritten documents of the conspiracy to harm **Tab 4 (22)**
[19] Letter of Dismissal of October 29, 2014 **Tab 4 (16)**
[20] *De Havilland Inc. v. CAW-Canada, Local 112* (1999), 83 L.A.C. para. 5, Authorities **Tab 17**
[21] OECTA's Letter regarding the McNair Investigation Report **Tab 4 (18)**
[22] Brown Second Arbitration Award **Tab 2 (C) p. 59, 60**
[23] *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities **Tab 15** para. 20

challenging this flagrant injustice, OECTA abandoned all my grievances[24] and blackmailed me to endorse an oppressive and iniquitous settlement[25].

HISTORY OF LITIGATION

26. The circumstances in this case are exceptional and crucial to this Application. The record amply shows that the Respondents made a procedural morass of this case. There were multiple breaches of due process at the Superior Court which rendered me unable to proceed.

A. First Arbitration Award August 2, 2013, Unpublished [Tab 2B]

27. Arbitrator Richard Brown concluded the employer's treatment of me had contravened the *Code* multiple times and awarded me $7,500 for injury to dignity, feelings and self-respect.

B. Second Arbitration Award July 23, 2015 "Brown Award" Unpublished [Tab 2C]

28. This Arbitrator Richard Brown's award is at the crux of the matter and provides the factual context to fully appreciate the systemic and institutional breaches of the *Charter* and the *Code*.
29. After a protracted process, Arbitrator Brown made findings of the tort of intentional infliction of mental suffering, reprisal, harassment and deceit by the directing minds of the LDCSB[26].
30. However, the Award contains numerous errors of law and of facts palpably wrong and on the face of the record, which if left, would lead to erroneous decisions in other legal forums[27].
31. I asked OECTA to judicial review the Award. The errors would be easily reversible in a judicial review process; Jarvis/Muzzi, refused my request, as such denying me justice. This lacuna in the law gives them total control over my constitutional rights and I am left without recourse.
32. OECTA abandoned my termination grievance[28] and two other human rights grievances[29]. Jarvis/Muzzi, bullied me to accept an iniquitous settlement that violates my constitutional rights under s. 2(b), 7 and 15(1) of the *Charter*[30].
33. When I refused to sign the settlement, Jarvis/Muzzi threatened that they will "exercise their prerogative" and "execute the settlement" by signing it on my behalf without my consent

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[24] Grievances **Tab 4 (20 & 21)**
[25] OECTA's letter to Michail of December 8, 2015 **Tab 4 (23)**
[26] Second Brown Award **Tab 2 (3) p. 3, 59, 60, 61, 62, 63, and 67**
[27] Judicial Review Submission to the OLRB of September 22, 2016 **Tab 4 (13)**
[28] Abandoned Dismissal Grievance **Tab 4 (20)**
[29] Other two Abandoned Human Rights Grievances **Tab 4 (21)**
[30] Settlement Submission to the OLRB tab **4 (14)**

forcing me to abide by the terms of the settlement trampling on several of my most fundamental rights guaranteed by the *Charter* and the *Code* and exposing me to serious harm.

34. To stop them from making this high-handed and dishonest move, I proceeded to the OLRB.

C. February 8, 2017, (Vice Chair Patrick Kelly) 2017 CanLII 6507 (ON LRB)[31].

35. The OLRB dismissed my DFR Application, as it has dismissed nearly every DFR Application in the last 50 years[32], and issued a decision that violates fundamental rights of all unionized employees under s.2 (b), 7, 15 (1) and 24 of the Constitution.
36. Vice-Chair Kelly acted without and/or beyond jurisdiction as an appellate court by acting as a screening body for the Divisional Court, deciding that the Arbitration Award should not proceed to judicial review. The OLRB does not have jurisdiction to review or override decisions of an arbitrator, the Divisional Court has that authority.
37. The OLRB's "Consultation" process fails to meet the minimum standards of natural justice and procedural fairness, bringing the administration of justice into disrepute. Vice-Chair Kelly:
    - refused to grant me a hearing despite the importance and complexity of the issues[33];
    - refused to consider material evidence claiming "delay"[34];
    - denied my right to disclosure and cross-examine witnesses rendering the process a nullity;
    - condoned human rights violations and breaches of the *Charter;*
    - made numerous critical findings, that constitute a direct violation of all unionized employees' rights guaranteed under s. 2(b), 7, 15(1), and 24 (1) of the Constitution.
    - allowed the same law firm and lawyer who represented me in the grievance arbitration for four years to act against me and bring forward inadmissible documents[35] and make false and unfounded accusations;
    - rendered a decision that is untenable at law. The countless errors would leave any reasonable person with the distinct impression that the outcome of the decision was predetermined.
38. It is important to the integrity of our courts that decisions rendered be factually accurate. Vice-Chair Kelly failed to provide a faithful account of the evidence. He distorted the facts, concealed

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[31] Superior Court Factum of May 18, 2017 **Tab 4 (6)** para. 64 to 114
[32] Statistics and correspondence with the OLRB **Tab 4 (43)**
[33] OLRB decisions August 19, 2016 **Tab 2 E para.56** & September 16, 2016 **Tab 2 F para.7**
[34] OLRB decision 2016 CanLII 55618 (ON LRB) of August 19, 2016, **Tab 2 E**
[35] Request for Reconsideration **Tab 4 (12) para.** 112-127,

crucial information that Jarvis/Muzzi et al breached their fiduciary duty, engaged in deceit, harassed and defamed me, and conspired with the employer causing me irreparable harm. He misquoted the evidence, stating that I was on a "*path of self-destruction*"; when the document submitted was "*Myriam- path of destruction*"[36]. This tampering with the wording, completely changes the weight of the evidence, shifts the blame onto me, and places me in a bad light.

D. SUPERIOR COURT OF JUSTICE, 2017 ONSC 3986, D. Grace J & L. Lynch J.

39. The procedure that took place at the Superior court in London was a mockery. It consisted of two vexatious and unlawful motions. On March 9, 2017 the officials at the Superior Court in London refused to accept or issue my Application Form 14 E under s. 6(2) of the *Judicial Review Procedure Act "JRPA"* and compelled me to file a "motion for leave to ask for leave".
40. At the hearing of this first vexatious motion, Leitch J., at the Respondents' request, prohibited me from filing the proper Application pursuant to provision 6(2) of the *JRPA*, instead ordered me to file a second motion/trial ONLY for "URGENCY", separate and apart from my original case. This process involved calling and cross-examining witnesses, inadmissible Affidavits and factums. Applications under s. 6(2) do not involve such steps[37].
41. It is vexatious and an abuse of process to allow the Respondents to take me on a costly tangent where I would fall into their trap and innocently waste time and resources cross examinng new witnesses without any discovery or production of documents in a judicial review Application. These "intervening steps" that "were timetabled" [38] were improper, vexatious, introduced chaos to the process and caused severe harm to my health and limited resources[39].
42. On June 19, 2017, at the hearing of this second "motion for urgency", Mr. Cavalluzzo, and Ms. Traynor, lawyers for the Respondents, were adamant that my case raises "issues that are important to the development of the law" and "given the number of complex and novel administrative law issues raised in the application" of broad "public importance", and must be heard by three judges at the Divisional Court since the Superior Court judges lack expertise to address the matter. Judge Duncan Grace also stated that provision 6(2) of the *JRPA* is not

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[36] Conspiracy Submission **Tab 4 (2)p.**

[37] *Brendon v. University of Western Ontario*, 1977 CanLII 1293 (ON SC) Authorities **Tab 7** para.11, 13, 14 & 15
Jan Wong v. The Globe and Mail Inc, 2014 ONSC 6372, Authorities **Tab 13 para 67-69**

[38] Leitch order and vexatious steps **Tab 2 (I)**

[39] Factum of May 18, 2017 **Tab 4 (6)**

enforceable when dealing with unionized employees, labour law and complex cases regardless of the urgency and the merits of their case. As such, despite his own finding of urgency and prejudice to my health[40], in his final decision he wrote: "[50] *I am of the view that interests of justice require that Ms. Michail's application for judicial review be heard by three justices"*

43. This was followed by an unpublished decision unjustly penalizing me with $ 10,000.00 in costs.

Criminal Obstruction of Justice - Abuse of Self Represented Litigant

44. What happened next is most troubling. Grace J. refused to transfer my file 624/17 and my accompanying documents including the Constitutional Challenge[41] to the Divisional Court, then tampered with it. Grace J. directed a court clerk to make a copy of my old Application dated March 9, 2017 that the Court had refused to issue. He used it to "create" a different file in my name. He removed the OLRB's incomplete Record of Proceedings from file 624/17 and placed it in the new file, without any record outlining the process that had taken place to "create" this new file. He sealed it, gave it a new file number "DV 25/17" and the original date of the Application was crossed out with a new date stamped on it, making it appear as if I had opened it on September 5, 2017[42]. History records of both files are concealed.The documents remaining in file 624/17 were rendered "no longer valid" thereby removed from the process.
45. On Monday January 29, 2018, I went to the Court to enter RSJ Arrell's order to transfer my file 624/17 to Hamilton[43] which had earlier availability than London and in an effort to avoid travelling to Toronto. When I reported to the court that file DV25/17 was opened in my name by Grace J., that I did not file this application and that documents were missing from my original file, I was told that this was impossible, and that the file was correct. I was yelled at, threatened with police and escorted out of the courthouse by two security officers. This event was traumatizing[44].
46. Furthermore, Grace J. and Leitch J. refused to release transcripts of my own hearings, which is peculiar, and constitutes an obstruction to the proper administration of justice where I am

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[40] Grace J. decision 2017 ONSC 3986 **Tab 2 J** para.50
[41] Constitutional Challenge documents **Tab 4 (1) and 4 (4)**
[42] Forged documents in File DV 25/17 **Tab 4 (34)**
[43] RSJ Arrell Order **Tab 4 (32)**
[44] Affidavit Ms. Patricia Bourke Sworn February 2, 1018 **Tab 4 (33)**

deprived of the evidence to determine the scope of the abuse[45] that occurred, to do a detailed review of the process and to define with clarity the legal deviations that occurred.

47. This matter of transcripts and audio/video recordings of proceedings is subject of another Application for Leave to Appeal **Supreme Court File # 38727[46].**

E. COURT OF APPEAL FOR ONTARIO "COA"

48. Pursuant to Rule 61.03.1.17 of the *Rules of Civil Procedure*, only the Court of Appeal has Jurisdiction to quash Judge Grace's final decisions and restore file 624/17 that he declared "dismissed" and "no longer valid". My appeal sought the following remedies:
    - to quash Grace J.'s final decision on the motion for urgency;
    - to void the impugned file DV 25/17 and the forged Application dated September 5, 2017;
    - to order the OLRB Record of Proceedings be returned to the original file 624/17; and
    - to restore my file 624/17 that is declared "dismissed and no longer valid" to its original active state to allow me to proceed with the Judicial Reviews and the Constitutional Challenge.
49. I also requested that for the sake of justice, the COA make the decisions that ought to or could have been made by Grace J. pursuant to provision 134 (1) "Powers on Appeal" of the *CJA*, and pursuant to provision 6 (2) of the *CJA* to allow for the judicial review of two inter-related decisions and the Constitutional Challenge of the two provisions triggered by the OLRB decision:
    A. The judicial review of the Brown Award of July 2015 in the form of certiorari[47] for the Court to quash only the offending part of the order and to correct the errors of law in the face of the record which, if not corrected would cause a failure of justice; and
    B. Quash the February 8, 2017 OLRB[48] decision which contains multiple palpable *Charter* infringements of the constitutional and human rights of all unionized workers.

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[45] Factum of May 18, 2017 **Tab 4 (6) para 1, 12, 14, 17, 18, 19.**
[46] Application for Leave to Appeal of June 24, 2019 SCC File # 38727 **Tab 4 (5)**

[47] Brown & Beatty 1:5310: On an application for certiorari, if a decision is found to be illegal it will be quashed by the reviewing court, as if it had never been made and need not be followed. However, the reviewing court may also sever the order and quash only the offending part of the order, provided the balance of the order can stand on its own. Alternatively, the reviewing court may simply vary the decision of the original tribunal.

[48] OLRB Decision **Tab 2 H**

50. At the COA, I was subjected to further vexatious conducts to deny me access to justice and to obstruct the adjudication of my case including Mr. Marentic, the Registrar, denying me my right to file my Appeal and mailing me back my Notice. The back and forth that occurred between the court, myself, and the Respondents, in order to have my Notice of Appeal filed caused an unreasonable delay, prejudice to my health and drained my limited resources.

First Vexatious 2.1 Request Filed by Paul Cavalluzzo on Behalf of OECTA[49]

51. On August 3, 2018 Mr. Cavalluzzo on behalf of OECTA filed a vexatious 2.1 request based on false contentions, fact twisting, and incomplete and misleading information.

Motion for Relief from Compliance & Production of Transcripts, Paciocco J.A. - Hearing M49554 (C65674) – "unpublished" Decision September 4, 2018[50]

52. Paciocco J.A. showed bias and improper interference with the process to obstruct justice when at the hearing on August 30, 2018, he directed the Respondents to file a motion to quash my appeal. Upon receiving directions from Paciocco J. this motion was immediately filed by the LDCSB, heard and granted.

53. In breach of the rules of natural justice and procedural fairness Paciocco, J.A. denied my fair request for relief from compliance under r.61.09(4)[51] and refused to have documents transferred. I was compelled to proceed without my evidence, rendering the process a nullity.

54. Paciocco J.A. exceeded his jurisdiction by making inaccurate findings in matters that were not in front of him[52] stating that the vexatious motion was "*procedural to regularize process*".

55. In contempt to the constitutional principle of open justice, Paciocco J. refused to publish his decision despite my numerous requests. It remains hidden from public scrutiny.

Motion M49616 to Appeal of Judge Paciocco's Unpublished Decision[53]

56. In disregard to my pleas for justice and due process. Judge Feldman refused to hear my motion M49616 to appeal Paciocco's J.A. decision[54].

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[49] Cavalluzzo, OECTA vexatious 2.1. request and my Response **Tab 4 (27)**
[50] Judge Paciocco's "unpublished" decision **Tab 2 (L)**
[51] Motion M49554 (C65674) for Relief from Compliance and Production of Evidence **Tab 4 (9)**
[52] Factum of Motion to Quash M49554 (C65674) **Tab 4 (8)**
[53] Factum Appeal of Paciocco J. Decision **Tab 4 (10)**
[54] Email to COA re. Motion M49616 **Tab 4 (3) &** COA Response, refusing to hear my Motion **Tab**

2018 ONCA 857 Motion to Quash[55], November 23, 2018 (Feldman, Pardu and Roberts, JJ.A.)

57. This process was a nullity. The COA had no intention of addressing my Appeal. I was compelled to proceed without the evidence, and allotted only 10 minutes to argue my case depriving me of natural justice and procedural fairness.

58. The pro-forma hearing to quash my Appeal as per Paciocco's J.A. direction was held on October 18, 2018 and the decision was issued on October 25, 2018.

59. Feldman, Pardu and Roberts JJ.A. swiftly quashed my appeal, endorsing the false contention that the process that took place at the Superior Court was an application under provision 6(2) of the *JRPA* when they had comprehensive material evidence of abuse of process and improper conduct in having me file two vexatious motions, Respondents calling witnesses and filing Affidavits filled with perjury[56]. There wasn't even an issued Application as per the *Rules of Civil Procedures*.

60. Despite full knowledge that I have been unable to proceed to the Divisional Court since August 2017 due to Judge Grace's refusal to transfer my file and his tampering with my file, Feldman, Pardu and Roberts JJ.A. minimized the seriousness of the concerns brought to their attention, referencing my allegations in para. [3] that there have been:

> a number of administrative problems at the court office since the order of Grace J., resulting in problems with the Divisional Court file for her judicial review application in both the London office, and in the Hamilton office where another file was commenced.

David Brown J.A. Decision - 2018 ONCA 950 - November 23, 2018 [Tab 2 N]

61. A simple request for transcripts of my own proceeding has uncovered an untenable situation where Canadians' constitutional rights to freedom of expression, open justice, and the need to preserve the public's trust in our courts were trampled upon by our judges and s.136 of the CJA.

62. I brought a motion in compliance with rule 17 of the *Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario*[57], seeking orders exempting me from the requirement that I provide undertaking not to publish audio recordings of earlier motion hearings, directing publication of decision on the court's website and permitting me to challenge the constitutional validity of portions of s. 136 of *CJA*. Brown J.A. dismissed the motion for lack of jurisdiction.

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[55] Factum Motion to Quash **Tab 4 (8)**
[56] Factum of May 18, 2017 Superior Court **Tab 4 (6)**
[57] Explanation of Rule 17 **Tab 4 (30)**

Second 2.1 Request Spearheaded by the AGC & Filed by LDCSB

63. On November 30, 2018, I inadvertently received an email, in which AGC's lawyer Jacob Pollice instigates the Respondents to file a second r. 2.1 request to have my "latest appeal summarily dismissed"[58]. On January 2, 2019, Ms. Traynor, obliged and advanced a request on behalf of the Respondents to have the Motion appeal M49883 dismissed in the form of a r. 2.1 request[59].

64. This request was ultimately rejected by the court with an appreciation and thank you note from the COA's Registrar Mr. Marentic[60] and without any accountability for the vexatious requests.

Motion Switching

February 7, 2019, I discovered that the following fraudulent actions have taken place:

* **Removal of my perfected motion M49883** – My Motion M49883 to Appeal David Brown's J.A. decision on Motion M49750, dated November 23, 2018- was mysteriously removed from the hearing list and
* its **replacement with an old motion, M49616** (the appeal of Paciocco's J.A. decision that the court refused to hear back in September 2018, and
* **the change of the status of motion M49883 to "not perfected" although it was perfected** and left idle since November 28, 2018.

65. **February 8, 2019:** I reported this fraud to Justice Lauwers. He ordered M49616 "off the table" and reinstated M49883[61], but refused to investigate.

Rouleau, Miller, Fairburn JJ.A. Decision April 24, 2019 ONCA 319 [Tab 2P]

66. In Motion M49883 I appealed Brown J.A. decision. I requested to video record the hearing of the motion. Rouleau, Miller and Fairburn JJ.A. refused.

67. Rouleau, Miller and Fairburn JJ.A. agreed with me that Brown J.A. did have jurisdiction to decide my motion; however, they simultaneously ruled that he did not have jurisdiction to answer the questions regarding the constitutional validity of s. 136 of the *CJA*.

68. Again, this matter is the subject of another Application for Leave to Appeal **SCC File 38727**[62].

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[58] Email exchange between AGC's lawyer Jacob Pollice and Respondents **Tab 4 (28)**
[59] R.2.1 second request **Tab 4 (29)**
[60] Letter from Mr. Marentic **Tab 4 (31)**
[61] Lauwers J.A. Decision **Tab** 2 O
[62] Application for Leave to Appeal of June 24, 2019 SCC File # 38727 **Tab 4 (5)**

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

A. Constitutional Questions (See Tab 4 (1))

69. The constitutional questions were raised at the Superior Court and the COA but both competent Courts declined jurisdiction and dismissed my Appeal to avoid dealing with the matter.

70. This is a challenge to s.45(1) and 116 of the OLRA granting unlimited exclusive rights to union officials, subjugating millions of Canadians under a false presumption that they have no contractual relationship with the employer and that they are not "party" to the *Collective Agreements* between unions and employers.

71. These eight constitutional questions were triggered by the OLRB's decision that contains multiple *Charter* infringements, in total contempt to employees' dignity, autonomy and interests.

Question 1: Access to Justice. No Standing [Tab 4 (4.1)]

72. Does the impugned s. 45(1) of the OLRA, denying five million unionized workers standing in arbitration and the right to recourse to court, violate their constitutional right to "equal protection of the law" guaranteed by s. 24 (1) and s. 15(1) of the *Charter*[63] regardless of them being "directly affected by the matter in respect of which relief is sought"?

73. Where do unionized employees stand? Are they a "party" to the Collective Agreement or not? Can obligations be imposed while rights are denied, leaving millions of workers "without remedy"[64] and in legal limbo? If employees are not party to the Collective Agreement, why are they bound by its terms?

74. **Do employees have a contractual status[65], and if not, does this leave the contract that they sign with their employer a nullity[66]?**

75. Is it Constitutional to extend the "right of carriage" to individual *Charter* rights and Human Rights claims allowing a cabal of trade union officials, without accountability, to usurp the legal rights of millions of unionized employees guaranteed by s. 24 (1) and s. 15(1) of the *Charter*?

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[63] *Vallabh v. Air Canada and Unifor Local 2002*, 2019 ONSC 4016 Authorities **Tab** 18
Migneault v. New Brunswick (Board of Management), 2016 NBCA 52 Authorities **Tab 20**

[64] LeBel J. in *Noël v. Société d'énergie de la Baie James* 2001 SCR 207 Authorities Tab 11 para.69

[65] *Migneault v. New Brunswick (Board of Management)*, 2016 NBCA 52 Authorities **Tab 20** para. 8, 10 & 12

[66] Michail's Employment Contract with LDCSB **Tab 4 (15)**

Question 2: Loss of Autonomy: Signing Settlement Without Consent [Tab 4 (4.2)]

76. Does the impugned s. 45(1) of the *OLRA* granting the right to union officials to sign a settlement on behalf of a union member, disposing of their constitutional and human rights and depriving them of their fundamental right to make their own decisions, infringe their rights under s. 2(b), 7, 15(1) and 24 (1) of the *Charter*?
77. If the employee/victim refuses to endorse an unlawful settlement, as in my case, is it constitutional that the employee be denied access to Courts and be left without recourse and remedy?

Question 3: Compelled Speech: Coercion to Endorse a False Consent Award [Tab 4 (4.3)]

78. Does the impugned s. 45(1) of the *OLRA* authorizing union officials to blackmail union members to endorse a Consent Award that is untruthful and/or to endorse a consent Award by signing it on their behalf constitute a serious violation of their Constitutional rights under s. 2(b), 7 and 15 (1) of the *Charter*?
79. If the employee refuses to endorse the false account of facts, as in my case, is it constitutional that the employee be denied access to Courts and be left without recourse and remedy?

Question 4: Assault on Free Speech: Imposing a Confidentiality Provision [Tab 4 (4.4)]

80. Does the impugned s. 45(1) of the *OLRA* authorizing union officials to impose a confidentiality provision on their members in order to cover wrongdoing, compromising the public interests and placing them in a precarious situation by exposing them to the risk of liquidated damages, violate the worker's right to freedom of speech under S. 2(b) and the employee's right to self-determination, to liberty and security of their person and their right not to be deprived thereof except in accordance with the principles of fundamental justice under s.7 of the *Charter*?

Question 5: Access to Justice: Imposing a Legal Release Provision [Tab 4 (4.5)]

81. Does the impugned s.45(1) of exclusive representation by the union in the *LRA*, allowing union officials to impose a legal release provision on their members violate their rights under s.15(1) and 24(1) of the *Charter*?
82. Does the impugned s. 45(1) of the *OLRA* allowing union officials to "sign on behalf of the member" and/or to coerce their members to sign a release provision for themselves, violate

s.2(b) of the *Charter* violate our 2(b) *Charter* rights and constitute conflict of interest[67], as in my case, where I was coerced to state:

> 21.The Grievor acknowledges that by signing these Minutes of Settlement, she confirms that she has carefully read and understands them, and enters into them voluntarily, without pressure from any person, having been fully and fairly represented by OECTA throughout.
>
> The Grievor agrees to sign the Final Release and Indemnification attached as Schedule "B".

Question 6: Initiate a Legal Procedure, Without the Member's Knowledge [Tab 4 (4.6)]

83. Does the impugned s.45 (1) giving union officials the right to initiate a legal procedure, an individual grievance without the member's knowledge or consent infringe their rights under s. 7 and s. 15(1) of the *Charter*, depriving them of their right to make their own decision and to the protection of the law?

Question 7: Open Justice: Refusal to Report/Publish Arbitration Awards [Tab 4 (4.7)]

84. Should Arbitrators/ judges abuse their discretion and be allowed to refuse to report/publish decisions in total disregard to our open justice fundamental principle and the right of the public to be informed? What recourse does the public have?

Question 8: Access to Justice v. Privative Provision [Tab 4 (4.8)]

85. Does the impugned s.116 of the *OLRA* combined with S. 45 (1) constitute an assault on unionized employees' right of recourse to court and the equal protection of the law guaranteed by s. 15(1) and 24 (1) of the *Charter*?

Section 1 Test

86. If the impugned provisions violate the constitutional rights of millions of Canadians under s. 2(b), 7, 15(1) and 24(1) of the *Charter*, can it be demonstrably justified in a free and democratic society as required by s.1 of the *Charter*?
87. Are the objectives of the impugned legislation of pressing and substantial nature to override multiple constitutionally protected rights? Or is it grossly disproportionate and overbroad?

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[67] The Quebec Commission concluded in *Commission scolaire de la Rivière-du-Nord c. Brouillette* 2013 QCCRT 0579, 2013 CarswellQue 14915, para.7 (139) that a settlement which included a release of the union's liability put the union in a conflict of interest when it advised the complainant to accept the settlement stating: *«En outre, par la présence d'une quittance et d'une renonciation envers lui, le syndicat se trouvait en conflit d'intérêts, ce qui aggrave la situation.»*

B. QUESTIONS OF NATIONAL IMPORTANCE

88. This case would also provide the Court with the opportunity to address the following questions:

1. How can a unionized employee obtain severance and damages for multiple breaches of their human rights and bad faith dismissal, as in my case? How will I be able to obtain the money owed to me since October 29, 2014 when prohibited from access to Courts of Justice?
2. What constitutes a final decision[68]? Can Judge Grace's decision which is *res judicata* be deemed interlocutory, although the courts have viewed that the finality of a decision does not turn on the fact that other issues remain outstanding, but in terms of whether the order finally determines the right of a party to claim relief ***in this litigation*****?**
3. Is Provision 6(2) of the *JRPA* ineffective as declared by Grace J. in complex cases and not applicable to unionized employees regardless of the urgency and the merits of their case?
4. Do judges have the right:
   - To refuse to transfer a file to the Divisional Court in breach of s. 6(3) of the *JRPA*?
   - To "create" files with forged Applications, making it appear as if a litigant had opened it?
   - To violate the principle of open court by refusing to publish decisions?
   - To violate the principle of open court and the litigant's constitutional right to access to evidence and a fair legal process by denying access to transcripts of one's own hearings?
5. What recourse do Canadians have when faced with such injustices, obstruction of justice and abuses of process in our courts as in my case?
6. Do union officials hold the power to squash our democracy, the legal system of Canada, supersede the Constitution and violate Human Rights?
7. Why are union officials given total control over members' fundamental constitutional and human rights, turning a cabal of union officials into an abusive super power?
8. Why are union officials above the law and unaccountable for wrongdoing and negligence?
9. When the union is wrong or negligent, why is remedy denied to the member?
10. Why is the law prohibiting access to justice, leaving millions of workers without remedies?

[68] Factum to Quash Tab **4 (8)**

PART III – STATEMENT OF ARGUMENT

A. FURTHER ERRORS IN LAW AT THE COURT OF APPEAL

89. Feldman, Pardu and Roberts JJ.A. erred in law by declining jurisdiction and ruling that the Superior Court's decision is interlocutory. My submission was completely disregarded[69]

90. Feldman, Pardu and Roberts JJ.A. ignored the evidence and erred in relying on an inaccurate interpretation of the *Hendrickson* decision. The interpretation they adopted in assessing the finality of a decision has been repeatedly overtaken by the same Court in numerous cases:

> *Amalgamated Transit Union,* para. 17, 18, 19, 20, 23, 24, 27, 29, 30 and footnote 2
> *Buck Brothers Ltd v Frontenac Builders Ltd.* 1994 para. 7-10, 16, 17, 22 to 25
> *Coutts v. Canadian Imperial Bank of Commerce* 1984 para. 4
> *Ontario Human Rights Commission v. Ontario Teachers' Federation,* 1994 para. 3
> *Stoiantsis v. Spirou,* 2008 ONCA 553. para. 25, 26, 27
> *Leo Alarie & Sons Ltd. v. Ontario,* para. 4, 5, 6, 9

B. A DIVISIONAL COURT PROCEEDING WOULD BE A NULLITY

91. The Respondents falsely allege that the proceeding that Grace J. ruled on is a s.6(2) of the *JRPA*, and that the Judicial Review was "*properly transferred to the Divisional Court in Hamilton*" in order to obstruct justice and cover up their misconduct and abuse of process.[70]

92. The only Application under s. 6(2) of the *JRPA* is the forged Application dated and issued September 5, 2017, which I did not commence. Feldman, Pardu and Roberts JJ.A. in their October 25, 2018 decision, 2018 ONCA 857[71] at paragraph [3] acknowledge the presence of:

> "a number of administrative problems at the court office since the order of Grace J., resulting in problems with the Divisional Court file for her judicial review application in both the London office, and in the Hamilton office where another file was commenced.".

93. Although I informed Feldman, Pardu and Roberts JJ.A. that I called upon the Honourable Regional Senior Judge Harrison Arrell and Administrative Judge Milanetti, for assistance and directions[72] and that RSJ Arrell had requested that I cease from writing to him regarding my matter since he has no jurisdiction[73]; they still abdicated their responsibility and wrote:

> [8] it is for the Divisional Court and its administration to assist the appellant, a self-represented litigant, to bring forward her judicial review application.

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[69] Factum Motion to Quash **Tab 4 (8)**
[70] Appendix A to the Factum of Motion to quash **Tab 4 (8)**
[71] COA Decision **Tab 2 (M)**
[72] Letter to RSJ Arrell and Administrative Judge Milanetti of May 9, 2018 **Tab 4 (36)**
[73] Correspondence from RSJ Arrell **Tab 4 (37)**

94. Nevertheless, after I received notification from the Divisional Court in Hamilton that my JR application will be dismissed due to delay. In a state of despair, I again called upon RSJ Arrell on May 1st, 2019[74], to assist me as per Feldman, Pardu and Roberts JJ.A. directions.

95. Unfortunately, my letter remains unanswered. I have neither heard from the Divisional Court regarding the status of my file, nor from RSJ Arrell. As predicted, I am left in limbo, without recourse in a serious miscarriage of justice. I have been unable to proceed since June 2017.

96. I now have two files, neither of which is valid. The first file in Hamilton is the dismissed file that carries no weight and cannot be used to further litigation, is tampered with and missing the OLRB Record of Proceedings. The second impugned file in London was fraudulently opened by Grace J. of the Superior Court in London with the forged Application dated September 5, 2017 and the OLRB incomplete Record of Proceedings[75].

97. Proceeding at the Divisional Court with the fraudulent file or the incomplete one would render the process a nullity. I have been battling since August 2017 to restore my original file 624/17.

98. I have called upon the Guardians of the Public Interests, including the Canadian Judicial Council, the Attorney General of Canada[76], my MPP Ms. Peggy Settler[77] and the Ombudsman[78], I was either ridiculed, treated harshly, or had my concerns dismissed.

99. I was flabbergasted when Mr. Norman Sabourin of the CJC responded by intimidating me in an effort to silence me stating[79]

> I am of the view that your complaint falls within the scope of Section 5(a) and constitutes an abuse of the complaint process.

100. I cannot endorse the impugned file DV 25/17 and the forged application, I refuse to be part of a criminal offence under the *Criminal Code* 368(1) or to participate in a travesty of justice.

C. CONTRACTUAL RELATIONSHIP

101. I am denied access to justice and faced with a disingenuous claim that there is no contract between me and my employer the LDCSB and that the only contractual relationship is the Collective Agreement between the OECTA and the LDCSB, to which I am not a party. As such,

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[74] Correspondence to RSJ Arrell and Administrative Judge Milanetti May 1st, 2019 **Tab 4 (38)**
[75] Emails with Superior Court clerk re. opening a new file in my name as per Grace J. directions **Tab 4 (35)**
[76] Response from AGC **Tab 4 (40)**
[77] Correspondence with MPP Peggy Settler **Tab 4 (41)**
[78] Correspondence with Ombudsman **Tab 4 (42)**
[79] Correspondence with Mr. Norman Sabourin **Tab 4 (39)**

the probationary and permanent contracts I signed with the LDCSB in 1991 and 1993 must be declared a nullity[80].

102. Ironically, my employer listed "*Frustration of Contract*" among the reasons for my dismissal[81]. Meanwhile, labour law insists that there is no individual contract.

103. In any employment relationship, imposing obligations while denying rights would be illegal and abusive. Unfortunately, this is the current reality in Canadian labour law although it is trite that "*A contract cannot impose the burden of an obligation on one who is not a party to it*."[82]

Journey of a unionized Employee who Refused to Sign an Iniquitous Settlement

104. Section **96(7) Effect of settlement** of the OLRA states:

> Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1).

105. I was in shock when at an intimidating meeting on December 1st, 2015, Jarvis threatened that "the association would exercise its prerogative and potentially sign on and agree to the settlement". This was followed on December 8, 2015, by a letter[83] repeating the threat along with more mental and psychological abuse in the form of false allegations and facts twisting.

106. I replied to the letter asking for clarification from Jarvis and Cavalluzzo on what signing on my behalf would entail if I was bound by the settlement. They refused to answer my questions.

107. It is abhorrent that this practice is legal in Canada allowing unionized employees to be subjected to significant economic, psychological and emotional abuse to compel them to consent to iniquitous settlements.

108. The OLRB condones the psychological and emotional abuse of vulnerable employees and the intentional infliction of mental suffering, brazenly claiming that these are not "coercive means":

> [32] … Nor was the Association in breach of section 74 by applying pressure on the applicant to come to terms with the School Board. That too is a normal part of the process

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[80] Michail's Contract with LDCSB **Tab 4 (15)**
[81] Michail's Dismissal letter **Tab 4 (16)**
[82] *Posluns v. Toronto Stock Exchange and Gardiner*, 1964 CanLII 199 (ON SC)
[83] OECTA letter of December 8, 2015 to Michail **Tab 4 (23)**

> of settlement. The Association has not adopted coercive means in order to obtain the applicant's agreement.... Moreover, the Board has consistently held that a trade union does not require the consent of an aggrieved bargaining unit member to settle a grievance: see, for example, *Del Fante*, [2008] O.L.R.D. No. 2293, at paragraph 25, and *NN*, [2015] O.L.R.D. No. 1812 at paragraphs 24 and 25. [Emphasis added]

109. Thankfully, a few adjudicators continue to have the courage to protect the underdog's human rights. In *Ma v. University of Toronto,* 2015 HRTO 1551[84], Vice Chair Sheri Price writes:

> Certainly, I agree with the [employer] that finality in settlements is important. However, a settlement is not final and binding upon a party unless it is also voluntary. This is axiomatic. It is precisely because a settlement represents the voluntary agreement of the parties that it will be upheld and enforced.

110. LDCSB's lawyer Traynor, disagrees with this opinion. In an Article published on February 9, 2017[85], she calls upon judges of the Divisional Court to issue a decision that would preclude unionized employees from pursuing their quasi-constitutional rights under the *Code* "*where an intransigent employee refuse to agree to the settlements negotiated by their unions*" as in my case.

111. I disagree with the characterization. I refused to sign the settlement offered because it silenced me and required me to cover up fraud and wrongdoings of both OECTA and the LDCSB who failed to protect the public interests and wasted tax payers' money that is meant to be spent on the education of our children.

112. Furthermore, the legal system, school boards and unions are all funded by public money, taxpayers' money and unionized employees' money which entitles them to openness in all aspects of the legal process, awareness of violations and full disclosure of how the money is spent. Just as important, any aspect of confidentiality would prevent the public from knowing about a serious systemic wrongful conduct in unions.

113. Ms. Traynor is advocating for employers who want to silence employees they have wronged.

D. CUMULATIVE DELETERIOUS IMPACT OF IMPUGNED DECISIONS

114. The rule of law is the only vehicle we have to protect the human rights and the dignity of a person. The legal process must implement the principle of equality under the law and the means of redress when those rights are breached. The *Universal Declaration of Human Rights* states:

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[84] *Ma v. University of Toronto,* 2015 HRTO 1551 Authorities **Tab 29**

[85] Elizabeth Traynor Article of February 9, 2017 **Tab 4 (44)**

> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law

115. The cumulative deleterious impact of the following landmark decisions in tandem with the impugned provisions of the *OLRA* have crushed unionized employees, assaulted and usurped their rights, and left them powerless under the yoke of a cabal of unaccountable union officials:

I. *Canadian Merchant Service Guild v. Gagnon et al.* 1984 CanLII 18 (SCC), *p. 527*

Union Officials: Exclusive Representatives - Master-Tyrants – Legal Guardians

116. This 1984 decision constituted the most repulsive assault on unionized employees' Human Rights and *Charter* rights under section 7, 15(1) turning union officials from "representatives" to "legal guardians":

> 38 The following principles, concerning a union's duty of representation in respect of a grievance, emerge from the case law and academic opinion consulted. …
>
> 2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion. [emphasis added]

117. How can millions of Canadians be simply stripped of their dignity and rights? Although the Oakes test was introduced two years later, this decision still failed to consider the stringent justification required under s. 1 of the *Charter*.

118. Despite the obligations that: *"The union's decision must not be arbitrary, capricious, discriminatory or wrongful"*. 35 years later, this decision has failed to prevent oppression and injustice, and has allowed for a legal loophole to be exploited by unions and Labour Boards.

119. A union is an organization that acts as the exclusive representative of a particular group of employees to collectively bargain wages, hours, and conditions of employment. The "*union exclusive right of representation*" was never meant to give licence to union officials to act as legal guardians, trampling on the dignity and autonomy of Canadians.

120. The "*union exclusive right of representation*" must remain limited to negotiating the terms of the *Collective Agreement* to promote fair wages, proper working conditions, and to prevent workplace related accidents and injury including occupational diseases.

Individual Teacher Grievance vs Unit Executive Grievance[86]

121. A fundamental distinction must be made between a union grievance in a dispute regarding applying or interpreting the *Collective Agreement* and individual grievances. While situations

[86] Collective Agreement Article 6: Union Executive Grievances & Teachers Grievances P.62 of this Memo

necessitating compromises may arise regarding wages and work conditions, this concept cannot be applicable to individual grievances where the employer trampled on the rights of an individual employee under the *Collective Agreement*, the *Code* or the *Charter*.

> **Teacher Grievance**
> 6.02 A teacher grievance under this Agreement shall be defined as any difference or dispute between the Board and any teacher which relates to the interpretations, application or administration of this Agreement.
>
> **Unit Executive Grievance**
> 6.03 A Unit Executive Grievance is defined as a difference or dispute of this Agreement which concerns a number or all of the teachers relating to the interpretation, application or administration of this Agreement.

122. Both union officials and their lawyers are aware that this situation is fundamentally wrong therefore, they make every effort to conceal this ugly reality from the members and mislead them to believe that they have control of their own litigation. When back in November 2014, in my lack of knowledge and understanding of Labour Law, and while sick I inquired about who "has all the rights to it" (I now know it is called "right of carriage"):

> Please confirm that the fact that the Grievance will be filed as an OECTA grievance vs My own Grievance does not impose any restrictions on me. I am wondering of the fact that it is OECTA Grievance would means that OECTA ONLY has all the rights to it
> If this is the case I would like it changed to be my own
> I would appreciate a response, I asked David this morning but he directed me to you

123. OECTA and their lawyers had the obligation to be candid with me and inform me that in fact I have NO rights because they usurped them. They did not. My question was evaded by OECTA's lawyer and union officials. I was provided with a deceitful response misleading me to believe that I have "all the rights" to my own case when Muzzi wrote to me:

> Myriam, as we did with your other grievances: your name will be on this grievance. Since it is difficult for you to get to the Unit office, Joanne will sign on your behalf. This is what we did for the previous grievances (#4) and (#3).

124. It was in November 2015, that I realized how deceitful Jarvis/ Muzzi and their lawyers had been when I was prohibited from access to Courts to Judicial review the Brown Arbitration Award, and my dismissal grievance[87] and the two human rights grievance #3 and #4[88] were abandoned.

125. Only then did I realize the frightening reality that I was under the control of Jarvis/Muzzi, and they had betrayed me. I was left at an impasse where I either had to accept the unlawful

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[87] Abandoned Dismissal Grievance of November 2014 **Tab 4 (21)**
[88] Abandoned Grievances of February and August 2014 **Tab 4 (22)**

settlement usurping my fundamental rights[89] or be left without remedies, deprived of all my rights and entitlements.

126. In situations like mine where arbitration is no longer a viable option, where a unionized employee is not confident that the Arbitrator would be independent or impartial since it is the employer and the union that choose the Arbitrator. The employee should have access to a just and transparent court system as a guaranteed constitutional right to every Canadian under s.15(1) of the *Charter*.

127. It is important for this distinction of grievances to be made in order to establish clear limitations to ensure that there is no grey area where union officials can cross boundaries and usurp members' rights.

128. It is simply unconscionable that Unionized employees as in my case be under the yoke of union officials, who are unaccountable, have no recourse to court and be left without remedy.

129. In short, I respectfully submit that the principle of "*exclusive right of representation*" and the "*exclusive right of carriage*" are appropriate for Unit Executive grievances, but constitute a severe violation of multiple *Charter* Rights when applied to Individual Grievances.

II. ***Gendron v. Supply and Services Union of the Public Service Alliance of Canada, 1990, 110 (SCC)***

130. In 1990, came the Gendron decision established that a union is entitled to pursue one set of interests to the detriment of others. This unlawful principle has been badly exploited by union officials and Labour Boards to the detriment of innocent Canadians for decades.

131. Instead of admitting that the concept of "exclusive right of carriage" in individual grievances is improper due to conflict of interest, it allowed union officials to oppress and usurp unionized employees' rights under s.7 and 15(1) of the *Charter*.

132. The argument that unions' decisions to advance one set of interests over the another in case of individual grievance is unconscionable and immoral and should never have been tolerated. This argument allows union officials to interfere in the proper administration of justice.

133. Most abhorrent is the requirement that the worker/victim, whose health is often damaged as in my case, must establish that union officials failed their DFR, acted in bad faith, contrary to their interest, and that their actions had a negative impact on them prior to being allowed access to

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[89] Settlement Submission to the OLRB **Tab 4 (14)**

justice. For the last five decades, worker/victim were never successful at the OLRB because LRBs just don't find that unions failed their DFR and access to justice is blocked for all of us[90].

134. At the OLRB, Mr. Cavalluzzo, brazenly stated "*the question is not whether the union is right or wrong*", that his legal opinion "*doesn't have to be correct or adequate*", but "*all what matters is that they turned their mind to the issue*". This statement clearly shows that OECTA knew that no matter what they had done regarding my situation, right or wrong, good or bad, they had turned their mind to the issue so the OLRB would find in their favour.

135. The process, if reviewed will show that the Respondents and their lawyers engaged in repeated abuse of process and vexatious conduct, breached the ethical standards of the legal profession, colluded to implement what they call the "*path of destruction*" of an honest employee and wasted hundreds of thousands of tax payers' and union members' money without being held accountable.

General Secretary Marshall Jarvis

136. Marshall Jarvis was the General Secretary of OECTA during my settlement discussions. Jarvis played a major role in the intimidation and harassing tactics used against me and the mental, psychological and emotional abuse I endured.

137. An article published in the Toronto Sun on January 25, 2015[91], during the period of my arbitrations, shows that Jarvis' conduct has been a subject of concern to OECTA's executives who voted not to renew his contract. However, Jarvis was able to defeat the Executives and remain in his position.

138. Jarvis' practice of retaliating against others is known leaving dissent teachers in fear as the article reports:

> *All the people I spoke to were concerned Jarvis would discover their names and retaliate.*

139. As it stands, the General Secretary oversees a membership of 45,000 teachers, and controls hundreds of millions of dollars. With such an immense power given to one individual, there must be set boundaries and set standards to which those in positions of power must abide by and be held accountable to.

140. I have paid a very high price. 10 years of my life were spent in pain, suffering, stress and anxiety without any wrongdoing on my part, for refusing to sign confidentiality and release and refusing

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[90] OLRB Statistics from 2000 to 2015 **Tab 4 (43)**

[91] Toronto Sun Article of January 25, 2015 regarding Marshall Jarvis **Tab 4 (45)**

to submit to OECTA/Jarvis et al and LDCSB unlawful demands to cover for their fraud and wrongdoings in detriment to public interests.

141. The harmful impact of the *Gagnon* and *Gendron* decisions is reflected in many decisions across the country. In an affront to the fundamental principle that ***Equity will not suffer a wrong to be without a remedy,*** in 2009, the PSLRB oppressively declared[92]:

> Even had the complainants proven to me that the respondents were wrong in not representing their grievances and then in refusing to refer them to adjudication, I would not then find that the respondents violated the Act because respondents have the right to be wrong (see *Jakutavicius v. Public Service Alliance of Canada*, 2005 PSLRB 70 (CanLII)). Rather, the complainants would have to prove that the respondents acted in bad faith or in an arbitrary or discriminatory manner. The case law is clear on that point (see Canadian Merchant Service Guild v. Gagnon et al.,1984 CanLII 18 (SCC), [1984] 1 S.C.R.509; and Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057,1990 CanLII 110 (SCC), [1990] 1 S.C.R.1298).

142. It is exceedingly troubling that the law allows union officials to have the "right to be wrong" without ever being held accountable. The system is allowing for fraud, deceit, and illegal conduct, without providing a venue for remedy[93]. Many questions need to be answered:

- Why are union officials unaccountable for wrongdoing and negligence?
- When the union is wrong or negligent, why is remedy denied to the member?
- Why are union officials given total control over members' fundamental constitutional and human rights?
- How can the law allow for innocent hard-working Canadians to be left without recourse?

Labour Relations Boards

143. LRBs are an arm of the Government and unions. The Government gave them exclusive jurisdiction and are the only recourse for unionized employees, as stated by Nordheimer J.[94]:

> [9] I can find no error in the analysis or result reached by the motion judge. Mr. Ali does not have standing to seek judicial review of the arbitrator's award. If Mr. Ali is of the view that the Union failed to properly and adequately put his case before the arbitrator, his remedy was to seek relief from the Ontario Labour Relations Board.

144. Success rate of DFR complaints is next to nil[95]. LRBs **almost never** rule in favour of employees, make findings of bad faith against union officials or hold them accountable for wrongdoing. Does Judge Nordheimer not know that Mr. Ali has no chance of receiving remedy at the OLRB?

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[92] *Paradis and Martineau v. Union of Solicitor General Employees et al.* 2009 PSLRB 133
[93] Request for Reconsideration submission to the OLRB **Tab 4 (12)**
[94] *Ali v. United Food and Commercial Workers Canada, Local 175, 2014 ONSC 7318* Authorities **Tab** 26
[95] OLRB Statistics **Tab 4 (43)**

145. In my case Jarvis et al were confident that the system would allow them to get away with fraud, deceit, betrayal and all illegal conduct and that they would never be held accountable or required to provide remedy[96].

146. Being the only body allowed to hold union officials accountable, they have let Canadians down and failed their mandate. It is well known in the legal community that a DFR complaint is a mockery and a useless legal process, it is a near impossible hurdle, as stated by many lawyers *"no one wins those", "a process that will lead you to nowhere, and your employer will be rejoicing sitting there watching and laughing while you engage in another battle with your Union", "Don't waste your time, OLRB will dismiss".*

147. It is disingenuous and a continuation of victimization to offer an injured employee a sham process at LRBs as the only pathway to access justice resulting in severe irreparable harm to unionized workers for decades.

148. The OLRB process is deficient and does not meet the minimum standards of procedural fairness and the principles of fundamental justice required for any legal proceeding as evident in my case. Rather than ensuring justice is being served, for the last five decades, all cases are dismissed with the same mantra[97] as in my case, where Vice-Chair Kelly unequivocally states:

> [9] On a more realistic note, the Board has also said in John Demitriades, 1997 CanLII 15510 (ON LRB): "I am unaware of any case in which this Board has concluded that a refusal to judicially review an arbitration award constitutes a breach of the duty of fair representation".

149. This most reprehensible practice of exonerating unions, imposing an insurmountable and irrelevant obstacle of proving malicious intention and bad faith in order to obtain protection of the law, that even when proven as in my case[98], the complaint would still be dismissed, is unfair, oppressive and constitutes a legalized denial and obstruction of justice for unionized employees.

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[96] Request for Reconsideration submission to the OLRB **Tab 4 (12)**

[97] *Margaret Getsfield v. Service Employees International Union Local 1 Canada,* 2013 CanLII 49591,
Tang v United Food and Commercial Workers Canada, 2015 CanLII 57776,
Fred Raininger v International Brotherhood of Electrical Workers, 2016
Cecil Cooray v Ontario Public Service Employees Union, 2015 CanLII 81542
Ajay Misra v Canadian Union of Public Employees, (CUPE) Local 79, 2016 CanLII 6803
Myriam Michail v Ontario English Catholic Teachers' Association, 2017 CanLII 6507
Koscik v Ontario Public Service Employees Union, 2013 CanLII 84290 (ON LRB)
Watson v. Toronto Civic Employees' Union, Local 416, 2006 CanLII 25985 (ON LRB)

[98] Conspiracy Submission to the Superior Court of May 18, 2017 **Tab 4 (2) para.** 10 to 90

150. Furthermore, LRBs should not act as a screening body for the Divisional Court, and be a mechanism to obstruct justice causing prejudice to unionized employees.

III. *Weber v. Ontario Hydro* (1995), 125 D.L.R. (4th) 583

151. With unions having the "exclusive right of carriage" of all disputes, the Weber decision expanded the power of union officials to include fundamental constitutional and human rights of unionized employees in another outrageous assault on our s.15(1) *Charter* rights. Not only has it ousted courts' jurisdiction making Arbitration the sole forum for dispute resolution that arise from the "collective agreement, either expressly or inferentially", but most troubling, it gave the same cabal of union officials exclusive and overbroad control over constitutional and human rights of millions of unionized Canadians who are left powerless and in "real deprivation of ultimate remedy".

152. My case provides the necessary context and tangible evidence to the Supreme Court to see how Canadians are left without recourse and not based on false hypothetical and abstract arguments.

IV. *Noël v. Société d'énergie de la Baie James*, [2001] 2 SCR 207, 2001 SCC 39

153. This 2001 ruling of the Supreme Court further usurped our rights under s. 7 and 15(1) of the *Charter* by stating:

> [62] While judicial review by the superior courts is an important principle, it cannot allow employees to jeopardize this expectation of stability in labour relations in a situation where there is union representation. Allowing an employee to take action against a decision made by his or her union, by applying for judicial review where he or she believes that the arbitration award was unreasonable, would offend the union's exclusive right of representation and the legislative intent regarding the finality of the arbitration process, and would jeopardize the effectiveness and speed of the arbitration process. [Emphasis added]

154. Judicial review is not just an "important principle", it is a constitutional right.

155. It is absurd and oppressive to claim that the protection of the constitutional rights of millions of Canadians would

> offend the union's exclusive right of representation and the legislative intent regarding the finality of the arbitration process, and would jeopardize the effectiveness and speed of the arbitration process.

156. This system flies in the face of our democracy and the integrity of our judicial system. As it stands, we have a two-tiered system in Canada. One for unionized workers being an oppressive and tyrannical regime that crushes the individual and has total disregard the *Charter* and *Universal Human Rights Declaration,* and one for everyone not a member of a trade union.

157. The ruling of the Supreme Court of Canada in *Noël v. Société d'énergie de la Baie James*[99]:

> 10 Robert J.A., dissenting, would have allowed the appeal and recognized the appellant's interest. He accepted that apart from exceptional situations that did not exist in that case, the grievance still belongs to the union, which has carriage of it during the arbitration process, to the exclusion of the employee. However, a fundamental distinction would have to be made between an employee's interest in the arbitration case initiated for the purpose of applying and interpreting the collective agreement and the interest that would enable him or her to invoke the superintending and reforming power of the Superior Court to have the legality of the arbitrator's decision determined.

Finality v. Justice

158. To shield unjust decisions that would never survive an honest judicial review with "finality" brings the administration of justice into disrepute. "Finality" should never obstruct the search for truth. "Finality" is achieved when Justice is restored, otherwise finality becomes tyranny. Furthermore, "Effectiveness and Speed" are intrinsic elements of a just and transparent process and not vice versa, "justice delayed is justice denied".

159. On March 24, 2017, Arbitrator Richard Brown acknowledged the current oppressive and unconstitutional status of unionized employees where he candidly wrote to me:

> The court will reject your application, without considering its merits, because you lack standing as a grievor to bring such an application. Only a union or employer has standing to challenge an arbitration award via judicial review[100].

160. It is troubling that the legal community takes no issue with the fact that the grievor's application will be dismissed, without considering its merits.

161. Furthermore, the OLRB decision dealt with *Charter* questions of central importance to the legal system and are not within the specialized expertise of the OLRB[101]. A judicial review applying the correctness standard to the decision, is warranted.

V. Woldetsadik v. Yonge Street Hotels, 2012 ONSC 1580 / Jan Wong, 2014 ONSC 6372

162. In *Groia v. Law Society of Upper Canada*, 2018 SCC 27 at paragraph 72, Judge Maldover referred to "*the importance of resolute advocacy*" as "*a key component of the lawyer's commitment to the client's cause, a principle of fundamental justice under s.7 of the Canadian Charter of Rights and Freedoms*" and "*forceful partisan advocacy facilitates truth-seeking*".

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[99] *Noel v. Société d'énergie de la Baie James, [2001] 2 SCR 207, 2001 SCC 39* Authorities **Tab 11**

[100] Arbitrator Brown email of March 24, 2017 **Tab 4 (24)**

[101] Request for Reconsideration Submission to the OLRB **Tab 4 (12)** Para. 1

163. Yet, in *Woldetsadik v. Yonge Street Hotels* Pepall J. who now sits at the COA states:

> [8] it is well established that a union, let alone its counsel, is not required to take instructions from the grievor with respect to how to present a grievance at arbitration.[102]

164. As such, the individual grievor is deprived of the right to "resolute advocacy". The lawyer is not the grievor's lawyer and has no fiduciary duty or duty of candour to the employee[103].

165. In fact, Paul Cavalluzzo, whose firm was representing me for five years, is now standing against me in the same case, making false allegations, twisting facts and manipulating the truth to exonerate his lucrative clients Jarvis/Muzzi.

166. In ***Jan Wong v. The Globe and Mail Inc,* 2014 ONSC 6372**, Nordheimer J. who also now sits at the COA, corroborated Pepall opinion stating:

> [29] This bifurcated role is even more evident in the labour relations context because, in that context, counsel's client is not the grievor, it is the union. Consequently, it falls to the union to decide how the proceeding should be advanced in terms of its overall responsibility, not just to the grievor, but to the other members of the union. This point has been made in a number of cases … [Emphasis added]

167. It is appalling to claim that individual human rights need to be assaulted since it is for *"the union to decide how the proceeding should be advanced in terms of its overall responsibility, not just to the grievor, but to the other members of the union*". No good can emanate for the collective from the violation of the constitutional and human rights of any member. Depriving one person of their human rights is detrimental to all.

> Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.[104]

E. SOS FOR URGENT REFORM
DELETERIOUS IMPACT OF THE IMPUGNED PROVISIONS

168. Equality rights are at the core of the *Charter* and are intended to ensure that everyone is treated with the same respect, dignity and consideration. *"Every individual is equal before and under the law and has the right to the equal protection of the law without discrimination"*.

169. As it stands, this provision of the *Charter* should be completed to show: *unless the individual is a unionized employee, whose individual rights were lost when they were forced to join a*

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[102] *Woldetsadik v. Yonge Street Hotels,* 2012 ONSC 1580 (CanLII),
[103] Conspiracy Submission (Lack of Loyalty in Legal Representation) **Tab 4 (2) para.** 91 to 113
[104] Martin Luther King Jr., Letter from the Birmingham Jail

union as a condition to gain employment; therefore, have union officials as legal guardians and masters.

170. In *Doré* [105] Judge Abella wrote "the protection of *Charter* guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it." Justice must be served to all equally, as the system should prevail in its duty to uphold the rule of law and the Constitution of our country without discrimination.

171. *Charter* rights are guaranteed to every Canadian equally. As it stands, we have a caste system where unionized workers are not worthy of the same *Charter* rights. The two tiered-system is an assault on our fundamental values of equality under the law in a free and democratic society. Dickson C.J. stated[106]:

> In interpreting and applying the *Charter* I believe that the courts must be cautious to ensure that it does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons. ... I cannot fault the Legislature for determining that the protection of the employees ought to prevail.
>
> ... The main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship.... It is an attempt to infuse law into a relation of command and subordination.

172. To usurp multiple Constitutional and Human Rights of a historically vulnerable group, in exchange for some employment rights is a patent absurdity morally, legally and politically.

173. Unionized Employees should not be deprived of their right to access to justice and free will as Karakatsanis J. wrote[107]:

> [49] ... Section 7 protects a sphere of personal autonomy involving "inherently private choices" ... However, such choices are only protected if "they implicate basic choices going to the core of what it means to enjoy individual dignity and independence".

174. As outlined in the Canadian Encyclopedic Digest — Charter of Rights and Freedoms— Legal Rights-(ii) — Right to Life, Liberty and Security of Person:

> **§530** ... However, liberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance.

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[105] *Doré v. Barreau du Québec,* [2012] SCC12 at paragraph 4
[106] *Slaight Communications Inc. v. Davidson*, [1989] 1 SCR 1038 See Authorities **Tab 15**
[107] *Association of Justice Counsel v. Canada (Attorney General),* 2017 SCC 55

Privative Provisions AKA "Judicial Review Proof Decisions" v. Truth Seeking

175. Section 116 of the *LRA*, which denies judicial review to decisions of the OLRB, is unconstitutional and, combined with s. 45(1) constitutes an egregious assault on unionized employees' right of recourse to court and the equal protection of the law guaranteed by s. 15(1) and 24(1) of the *Charter*.

176. **Privative provisions** thwart the Courts from fulfilling its fundamental purpose to ensure the proper administration of justice. If Finality is the Golden Standard and Judicial Review is a harm as claimed by Privative Provisions Advocates, why do we still have Appellate Courts and the Supreme Court? Would our Judicial system be eventually limited to Boards and Tribunals?

177. **Privative provisions** prevent the Courts from knowing about a systemic wrongful conduct among Arbitrators, unions, employers and Labour Boards and from performing their duty and obligation to enforce the law and protect the public.

178. **Privative provisions are passed in bad faith.** By infringing on the inherent jurisdiction and the constitutional responsibility of the courts under s. 96 of the *CJA*, administrative tribunals become oppressive super powers. No privative clause should ouster the inherent jurisdiction of the court to judicially review the decisions of arbitrators and LRB. Sadly, privative provisions are becoming common, although they remain in direct breach of the Constitution. To "read them down" so the sections become constitutional is unfair. Privative clause should not supersede the Constitution and foreclose a challenge. The court need to exercise its jurisdiction to intervene where the outcome of the decision departs from what is constitutional and just.

179. **Privative provisions** trumped truth seeking and justice and shielded iniquitous decisions. They are used to cover a multitude of sins. They are an assault on our judicial system that has truth seeking for foundation. Conversely, if arbitrators and vice chairs are considered infallible, their decisions kept secret and beyond review by mere mortals, why do decisions by judges of the lower courts subject to appeal?

180. As articulated in Dunsmuir and confirmed in *Wilson v Atomic Energy*[108]: "*The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government*"[109].

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[108] *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29. Authorities **Tab** para. 28 and 29

[109] *Dunsmuir v. New Brunswick*, 2008 SCC 9 para. 28 and 31

181. Furthermore, s. 96 of the *CJA*, supersedes the *LRA*, and protects Canadians' rights under s.15 of the *Charter.* The denial of basic procedural safeguards in legal proceedings through privative clauses directly violates s. 15 of the *Charter,* and cannot be justified as a morally, legally or politically valid objective. This section of the *Charter* emphasizes that all individuals are equal before the law, and have equal protection and benefit before the law.

Systemic Bias Against Employees

182. Sadly, even Courts almost never make finding against an OLRB decision[110]. All Applications for Judicial Review are dismissed with boilerplate statements similar to the one found in Varma v. Canada:

> "The Board is protected by a strong privative clause found in section 22 of the *Canada Labour Code.* ... We have not been persuaded that the Board acted in a patently unreasonable manner in determining the issues the way it did."[111]

183. I respectfully submit that this rational is detrimental to our country, Justice is about the search for the truth. The entitlement to the "highest degree of deference," based on an "expertise" pretense, regardless of the deficiency of the decision, is oppressive. Combined with the subjective and ambiguous "reasonableness" standard, Courts have for decades ruled in favour of either the OLRB, trade unions, employers or arbitrators and showed prejudice against employees.

184. In *Rodrigues v. Ontario*[112], Borins J.A confirms "*The Tribunal's decisions are subject to a strongly worded privative clause. They can only be overturned if they are clearly irrational.*" It is scandalous that a "clearly irrational" is now the standard by which we establish justice. Truth seeking is no longer a concern.

185. How "irrational" does a decision have to be before Appellate Court would intervene to ensure that justice prevails? In fact, this argument is "clearly irrational" and troubling.

186. The power granted under s. 45(1) of the *LRA* only grants the authority to the union to be the exclusive "bargaining agent" of members in the union, to negotiate collective bargain agreements that benefit the body as a whole, but those union officials are not granted the

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[110] OLRB Statistics **Tab 4 (43)**

[111] *Varma v. Canada (Labour Relations Board),* 2000 CanLII 14981 (FCA) Authorities **Tab4 (28)**Para. 9-10

[112] *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719 (CanLII),

authority to remove procedural safeguards under the disguise of "right of carriage" to obtain stability in the workforce.

187. Union leaders should not be given carte blanche to trample on our *Constitution* and *Human Rights Code*. The right of carriage cannot supersede the supreme law of Canada, and should be in compliance with the Constitution as per s.52, where there is conflict, *"any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."*

188. The *Charter*'s rights to liberty and security of the person ought to protect vulnerable employees from being coerced by labour law legislation and union officials, to sign settlements that are prejudicial to them or be left without recourse. There must be limitations to ensure that tyranny and injustice do not invade our democracy.

189. Depriving millions of Canadians of their legal rights under s.15(1) of the *Charter* is detrimental to our democracy. In 2013, Justice Abella noted that "*the main consideration must be the impact of the law on the individual or the group concerned.*"[113] and added:

> 434 The state bears the burden of establishing justification on a balance of probabilities. The state must demonstrate (1) a sufficiently important objective to justify an infringement of a Charter right, (2) a rational connection between that objective and the means chosen by the state, (3) that the means are minimally impairing of the right at issue, and (4) that the measure's effects on the Charter-protected right are proportionate to the state objective: R. v. Oakes, [1986] 1 S.C.R. 103 (S.C.C.)

190. Simply put, there is no justification for the denial of individual grievors' appeal rights. Although LRBs are deemed specialized administrative tribunals, they do not have specialized knowledge regarding human rights, constitutional law and principles of natural justice; therefore, they should not have an unsupervised monopoly on the administration of justice. As stated by LaForest J.

> *The jurisprudence of this Court, along with others, is clear on the purpose behind statutory arbitration of collective agreements -- it is to provide for the speedy resolution of disputes over the administration of a collective agreement with minimal judicial intervention; ... More generally, administrative tribunals exist to allow decisions to be made by a specialized tribunal with particular expertise in a relevant area of law; ... What, then, is the expertise of a labour arbitrator? Undoubtedly it is the interpretation of collective agreements, and the resolution of factual disputes pertaining to them. [Emphasis added.]*[114]

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[113] *Quebec (Attorney General) v. A.*, 2013 SCC 5
[114] *Dayco (Canada) Ltd. v. CAW-Canada*, 1993 CanLII 144 (SCC)

191. In Andrews[115], McIntyre J. stated emphatically:

> It is clear that the purpose of s. 15 is to ensure equality in the formulation and application of the law. The promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration.

192. In the matter of an inquiry into the conduct of the Honourable Theodore Matlow in 2008, the Majority reasons of the Canadian Judicial Council states:

> [57] ... Preserving public trust and confidence is essential, for without them, another bedrock principle of our Parliamentary democracy – the rule of law – would be imperiled.

193. In order for the *LRA* to maintain a law that violates the rights of five million Canadians under s. 2(b), 7, 15 (1) and 24 of the *Charter*, the Attorney General and the Respondents must show that the law can be saved under s.1 of the Constitution in a free and democratic society, and pass the Oakes test[116] which requires that the objective of the law must relate to a societal concern that is "pressing and substantial" and that (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the right in question; and (3) there is proportionality between the deleterious and salutary effects of the law.

194. There is no discernable objective that may be described as pressing and substantial to justify overriding numerous *Charter*-protected rights to freedom and equality. I submit that there is no evidence of harm to the employer or the union that is manifestly superior to the evidence of the existence of severe and numerous deleterious effects of s. 45 (1) on the employees left oppressed, subjugated, mistreated and without recourse.

195. The false assumption that *Reasonableness, deference and privative provisions* are necessary *"To ensure efficiency, expertise, and independence"* left our fate to the whim and *"the idiosyncratic view of the adjudicator"*[117] and allowed injustice to prevail.

196. I respectfully submit that the deleterious effects do not outweigh the law's benefits. The arguments provided are subjective. The denial of the rights to auto determination, legal rights, freedom of speech, freedom of conscious are not rationally connected to any stated objective and its harmful effects on our country outweigh the stated benefits of the limitation.

197. There is no discernable objective that may be described as pressing and substantial to justify overriding numerous *Charter*-protected rights to freedom and equality. The object of the

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[115] *Andrews v. Law Society (British Columbia)*, 1989 CarswellBC 701, [1989] 1 S.C.R. 143 Tab **4 (21)**
[116] *R. v. Oakes*, 1986 SCR 103 Authorities **Tab 16** para. 70, 73, 74, 75
[117] Judge Abella in *Wilson v. Atomic Energy of Canada Ltd.* 2016 SCC 29. Para. 39

Charter is to recognize and protect the inherent dignity and the equal rights of every person, unionized or not. As expressed in *R. v. Big M Drug Mart Ltd.*[118]: "aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter*'s protection".

198. Under the proportionality analysis, there is no rational connection between the objective of protection of the fundamental rights and freedoms of every person in Ontario and the assault on the fundamental rights and freedoms of all unionized employees under the OLRA s. 45(1).

199. There is no proportionality between the deleterious effect of the denial of the rights of every individual employee and the spirit and intent of the *Charter* and the *Code*. The deleterious effects of provision 45(1) are obvious and severe and there is no salutary effect that can derive from denying fundamental rights and the protection of the law to hard working employees and abandoning them without recourse, a serious failure of justice that cannot be saved or justified by section 1 of the Constitution.

PART IV – ORDER SOUGHT CONCERNING COSTS

200. It is my understanding that when advancing a novel legal argument even if ultimately rejected by the court costs would not be awarded to the other parties.

201. Given the lack of natural justice and procedural fairness, and the miscarriage of justice that I am experiencing[119], I am requesting no costs against me.

202. "A court of equity will not reward bad behavior"[120]. Granting costs to any of the Respondents "would effectively be endorsing wrongful actions" and "reward bad behavior". The Respondents' unlawful actions caused a miscarriage of justice and drained my limited resources. These tactics and the threat of cost are known to serve as a means of wearing the aggrieved party out. They deter Canadians from recourse to courts and deflect criticism of the system. I have been living in fear of reprisal with grossly excessive costs.

203. I respectfully request that the court award me costs as it deems justifiable.

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[118] *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 paragraph 117
[119] 2017 Cost submission to the Superior Court **Tab** 4 (11) and Letter to RSJ Arrell **Tab 4** (36)
[120] *Servello v Servello,* 2014 ONSC 5035 (SCJ) at para 117

PART V – ORDER OR ORDERS SOUGHT

204. As it stands the administration of justice is brought into disrepute and I am left in total despair. Relentless efforts are made to obstruct my case from being brought to justice.

205. I respectfully submit that this Constitutional challenge must come to light. The concurrent interests of over 4.83 million unionized employees in our country are at the heart of this case. Burying our heads in the sand, keeping the status quo and ignoring this frightening reality, would result in worse implications for the public and our democracy.

206. For the sake of our democracy and unionized employees across Canada, I am calling upon the highest court in our country to grant leave to appeal the decision of the Ontario Court of Appeal, 2018 ONCA 857, dated October 25, 2018 and address the Constitutional challenge attached.

All of which is respectfully submitted this 26th day of September, 2019.

[redacted]
Myriam Michail
Self-Represented Litigant

PART VI- TABLE OF AUTHORITIES

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Canadian Encyclopedic Digest
Constitutional Law
X — Constitution Act, 1982
1 — Charter of Rights and Freedoms
(e) — Legal Rights
(ii) — Right to Life, Liberty and Security of Person

§528 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[1] Principles of fundamental justice do not require that an individual benefit from the most favourable procedure; instead they require that the procedure be fair.[2]

§529 The principles of fundamental justice found in the basic tenets of our legal system.[3] They may be distilled from the legal principles which have historically been reflected in the law of this and other similar states.[4] The principles must be capable of being articulated with some precision; they must be more than broad generalizations about ethical or moral beliefs.[5]

§530 Liberty does not mean unconstrained freedom.[6] Freedom of the individual to do what he or she wishes must be subjected to numerous constraints for the common good. The state has the right to impose many types of restraints on individual behaviour, and not all limitations will attract Charter scrutiny. However, liberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance.[7]

§531 The liberty interest is engaged when state compulsions or prohibitions affect fundamental life choices.[8] There can be no doubt that the right to liberty includes the right to conceive a child with the person of a woman's choice.[9]

§532 The principles of fundamental justice include procedural fairness.[10] The "most important factors in determining the procedural content of fundamental justice in a given case are the nature of the legal rights at issue and the severity of the consequences to the individuals concerned".[11] Section 7 "must be interpreted purposively, bearing in mind the interests it was designed to protect".[12] The Supreme Court of Canada has frequently asserted the need to interpret the principles of fundamental justice within the "specific context in which section 7 is being asserted".[13]

§533 A determination of whether section 7 has been infringed consists of three main stages: (a) whether there is a real or imminent deprivation of life, liberty, and security of the person or a combination of those interests; (b) identifying and defining the relevant principle or principles of fundamental justice; and (c) whether the deprivation has occurred in accordance with the relevant principles or principles.[14] In theory, if a breach of section 7 is found, the analysis then turns to a consideration of section 1 of the Charter, as it is true for all other sections of the Charter. However, the Supreme Court of Canada has repeatedly noted that a breach of section 7 can only be saved by section 1 in extraordinary situations.[15] Thus, the analysis is really confined to a consideration of the section itself.[16]

§534 Section 7 of the Charter requires a two-step analysis to determine whether legislation or other state action infringes a protected Charter right: (i) is there an infringement of the right to "life,

liberty and security of the person"; and (ii) if so, is the infringement contrary to the principles of fundamental justice.[17] A section 7 analysis must be a contextual one.[18]

§538 The proposition that the "harm principle", the idea that conduct must not attract imprisonment absent clear harm to a person other than the person performing the conduct, is a principle of fundamental justice is not valid. To be considered a principle of fundamental justice, the principle must be founded on a broad social consensus which says that the principle is an essential element of the criminal law and the administration of justice cannot function fairly and properly without resort to and consideration of the principle. It must also provide an articulable standard of measurement by which an impartial observer could determine whether or not the principle was being satisfied.[24]

§538.1 Proportionality is a fundamental principle of sentencing, but proportionality during sentencing is not a principle of fundamental justice for the purpose of determining whether a deprivation of liberty violates section 7 of the Charter.[25]

§545 The entitlement of an accused person to production either from the Crown or third parties is a constitutional right.37 Breach of this right entitles the defendant to a remedy under section 24(1) of the Charter. Remedies range from one or several adjournments to a stay of proceedings. To require a defendant to show that the conduct of his or her defence was prejudiced would foredoom any application for even the most modest remedy where the material has not been produced. It would require a defendant to show how the defence would be affected by the absence of material which has not been seen.38

§547 A principle of fundamental justice must fulfil the following criteria: (1) it must be a legal principle that provides meaningful content for the section 7 Charter guarantee while avoiding adjudication of public policy matters; (2) there must be a significant societal consensus that the principle is "vital or fundamental to our societal notion of justice"; and (3) the principle must be capable of being identified with precision and applied to situations in a manner that yields predictable results.[44] The principles are grounded in Canada's legal traditions and understanding of how the state must deal with its citizens. They are regarded as essential to the administration of justice.[45]

§551 The principles of fundamental justice both reflect and accommodate the nature of the common law doctrine of abuse of process. Although the focus of the common law doctrine of abuse of process has traditionally been more on the protection of the integrity of the judicial system whereas the focus of the Charter has traditionally been more on the protection of individual rights, the overlap between the two has now become so significant that there is no real utility in maintaining two distinct analytic regimes.[54]

§554 Section 7 has a broader ambit than just criminal matters.[61] Section 7 rights can at least extend beyond the sphere of criminal law where there is "state action which directly engages the justice system and its administration".[62] The interests protected by section 7 should be broadly defined.[63]
CED Constitutional Law X.1.(e).(ii)
Constitutional Law | X — Constitution Act, 1982 | 1 — Charter of Rights and Freedoms | (e) — Legal Rights | (ii) — Right to Life, Liberty and Security of Person

PART VII-STATUTORY PROVISIONS

CONSTITUTION ACT, 1982
LOI CONSTITUTIONNELLE DE 1982

Rights and freedoms in Canada **1.** The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	**Droits et libertés au Canada** **1.** La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
Fundamental freedoms **2.** Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	**Libertés fondamentales** **2.** Chacun a les libertés fondamentales suivantes : a) liberté de conscience et de religion; b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
LEGAL RIGHTS **Life, liberty and security of person** **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**GARANTIES JURIDIQUES** **Vie, liberté et sécurité** **7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
Treatment or punishment **12.** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.	**Cruauté** **12.** Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.
EQUALITY RIGHTS **Equality before and under law and equal protection and benefit of law** **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic	**DROITS A L'EGALITE** **Égalité devant la loi, égalité de bénéfice et protection égale de la loi** **15.** (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur,

origin, colour, religion, sex, age or mental or physical disability.	la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
Enforcement of guaranteed rights and freedoms **24.** (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	**Recours en cas d'atteinte aux droits et libertés** **24.** (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.
Primacy of Constitution of Canada **52.** (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.	**Primauté de la Constitution du Canada** **52.** (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

LABOUR RELATIONS ACT, 1995
LOI DE 1995 SUR LES RELATIONS DE TRAVAIL

Recognition provisions **45** (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.	**Stipulations sur la reconnaissance** **45** (1) Chaque convention collective est réputée stipuler que le syndicat partie à la convention est reconnu comme le seul agent négociateur des employés compris dans l'unité de négociation qui y est définie.
Board's orders not subject to review **116** No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings. 1995, c. 1, Sched. A, s. 116.	**La décision de la Commission n'est pas susceptible de révision** **116** Sont irrecevables devant un tribunal les demandes en contestation ou en révision des décisions, ordonnances, directives ou déclarations de la Commission ou les instances visant la contestation, la révision, la limitation ou l'interdiction de ses activités, par voie notamment d'injonctions, de jugement déclaratoire, de brefs de certiorari, mandamus, prohibition ou quo warranto.
48(18) Effect of arbitrator's decision The decision of an arbitrator or of an arbitration board is binding,	**48(18) Effet de la décision de l'arbitre** La décision de l'arbitre ou du conseil d'arbitrage lie :

(a) upon the parties;	a) les parties;
(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;	b) dans le cas d'une convention collective entre un syndicat et une association patronale, les employeurs à qui s'applique la convention collective et qui sont visés par la décision;
(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and	c) dans le cas d'une convention collective entre un conseil de syndicats et un employeur ou une association patronale, les membres ou les affiliés du conseil et l'employeur ou les employeurs, selon le cas, à qui s'applique la convention collective et qui sont visés par la décision;
(d) upon the employees covered by the agreement who are affected by the decision, and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision.	d) les employés à qui s'applique la convention et qui sont visés par la décision, et ces parties, employeurs, syndicats et employés se conforment à la décision.
48(19) Enforcement of arbitration decisions Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may file in the Superior Court of Justice a copy of the decision, exclusive of the reasons therefore, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such.	**Exécution des décisions arbitrales** (19) Si la partie, l'employeur, le syndicat ou l'employé ne s'est pas conformé à une condition de la décision rendue par l'arbitre ou le conseil d'arbitrage, la partie, l'employeur, le syndicat ou l'employé visé par la décision peut déposer, dans la forme prescrite, à la Cour supérieure de justice, une copie du dispositif de la décision. À compter du dépôt, la décision est consignée de la même façon qu'un jugement ou une ordonnance de cette Cour et devient exécutoire au même titre.
74. Duty of fair representation by trade union, etc. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.	**Obligation du syndicat d'être impartial dans son rôle de représentant** **74** Le syndicat ou le conseil de syndicats, tant qu'il conserve la qualité de représenter les employés compris dans une unité de négociation, ne se comporte de façon arbitraire ou discriminatoire, ni fait preuve de mauvaise foi dans la représentation d'un employé compris dans l'unité de négociation, qu'il soit membre ou non du syndicat ou d'un syndicat qui fait partie du conseil de syndicats, selon le cas.

96(5) Burden of proof On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.	**Fardeau de la preuve** (5) Pour les besoins d'une enquête de la Commission sur une plainte visée au paragraphe (4), selon laquelle une personne s'est vu refuser un emploi, a été congédiée, a fait l'objet de discrimination, de menaces, de contrainte, d'intimidation, ou a été traitée d'une façon contraire à la présente loi dans son emploi, ses possibilités d'emploi ou ses conditions d'emploi, le fardeau de la preuve que l'employeur ou l'association patronale n'a pas enfreint la présente loi revient à ces derniers.
96(7) Effect of settlement Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1).	**96 (7) Effet de l'accord** Le règlement d'une instance prévue par la présente loi, que ce soit grâce aux démarches de l'agent des relations de travail ou autrement, mis par écrit et signé par les parties ou par leurs représentants, les lie et doit être respecté selon ses conditions, qu'il s'agisse du syndicat, du conseil de syndicats, de l'employeur, de l'association patronale, de l'employé ou d'une autre personne. Une plainte fondée sur le fait qu'une personne qui a consenti au règlement ne le respecte pas, est réputée une plainte au sens du paragraphe (1). 1995, chap. 1, annexe A, par. 96 (7).
ONTARIO REGULATION 94/07 **GENERAL** **Filing of arbitration awards** **1.** (1) Every arbitrator shall, within 10 days after issuing an award, file a copy with the Minister. O. Reg. 94/07, s. 1 (1). (2) A record of all awards filed under subsection (1) shall be maintained. (3) Any person is entitled to a copy of an award filed under subsection (1), on request and on payment of the following fee:	**RÈGLEMENT DE L'ONTARIO 94/07** **DISPOSITIONS GÉNÉRALES** **Dépôt des sentences arbitrales** **1.** (1) L'arbitre dépose une copie de sa sentence auprès du ministre dans un délai de 10 jours. (2) Il est tenu un dossier de toutes les sentences déposées en application du paragraphe (1). (3) Toute personne qui en fait la demande et verse les droits suivants a le droit d'obtenir la copie d'une sentence déposée en application du paragraphe (1) :

1. For a copy of every award filed in a one-year period, $4,400. 2. For a copy of an award, 50 cents per page, if the person has not paid the fee described in paragraph 1.	1. 4 400 $ pour la copie de toutes les sentences déposées au cours d'une période d'un an. 2. 50 cents par page pour la copie d'une sentence si la personne n'a pas versé les droits indiqués à la disposition

HUMAN RIGHTS CODE R.S.O. 1990, CHAPTER H.19
CODE DES DROITS DE LA PERSONNE

Preamble Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations; And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province; And whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;	**Préambule** Attendu que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde et est conforme à la Déclaration universelle des droits de l'homme proclamée par les Nations Unies; Attendu que l'Ontario a pour principe de reconnaître la dignité et la valeur de toute personne et d'assurer à tous les mêmes droits et les mêmes chances, sans discrimination contraire à la loi, et que la province vise à créer un climat de compréhension et de respect mutuel de la dignité et de la valeur de toute personne de façon que chacun se sente partie intégrante de la collectivité et apte à contribuer pleinement à l'avancement et au bien-être de la collectivité et de la province; Et attendu que ces principes sont confirmés en Ontario par un certain nombre de lois de la Législature et qu'il est opportun de réviser et d'élargir la protection des droits de la personne en Ontario;
PART I **FREEDOM FROM DISCRIMINATION** **Employment** **5** (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. **Harassment in employment** (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender	**PARTIE I** **ÉGALITÉ DES DROITS** **Emploi** **5** (1) Toute personne a droit à un traitement égal en matière d'emploi, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'identité sexuelle, l'expression de l'identité sexuelle, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou un handicap. **Harcèlement au travail** (2) Tout employé a le droit d'être à l'abri de tout harcèlement au travail par son employeur ou le mandataire de celui-ci ou un autre employé pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'orientation sexuelle, l'identité

identity, gender expression, age, record of offences, marital status, family status or disability.	sexuelle, l'expression de l'identité sexuelle, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou un handicap.
Reprisals **8** Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.	**Représailles** **8** Toute personne a le droit de revendiquer et de faire respecter les droits que lui reconnaît la présente loi, d'introduire des instances aux termes de la présente loi et d'y participer, et de refuser de porter atteinte à un droit reconnu à une autre personne par la présente loi, sans représailles ni menaces de représailles.
Application by person **34** (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2, (a) within one year after the incident to which the application relates; or (b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5. **Late applications** (2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5. **Where application barred** (11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if, (a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or	**Présentation d'une requête par une personne** **34** (1) La personne qui croit qu'il y a eu atteinte à l'un ou l'autre de ses droits reconnus dans la partie I peut présenter une requête au Tribunal en vue d'obtenir une ordonnance visée à l'article 45.2 : a) soit dans l'année qui suit l'incident auquel se rapporte la requête; b) soit dans l'année qui suit le dernier incident d'une série d'incidents. **Requêtes tardives** (2) Une personne peut présenter une requête en vertu du paragraphe (1) après l'expiration du délai qui y est prévu si le Tribunal est convaincu que le retard s'est produit de bonne foi et qu'il ne causera de préjudice important à personne. **Requêtes interdites** (11) La personne qui croit qu'il y a eu atteinte à un de ses droits reconnus dans la partie I ne peut pas présenter une requête en vertu du paragraphe (1) à l'égard de ce droit dans l'un ou l'autre des cas suivants : a) une instance civile a été introduite devant un tribunal judiciaire, dans laquelle elle demande que soit rendue une ordonnance en vertu de l'article 46.1 à l'égard de l'atteinte

(b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c 30, s. 5. **Final determination** (12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired.	alléguée, et elle n'a pas été décidée de façon définitive ou retirée; b) un tribunal judiciaire a rendu une décision définitive sur la question de savoir s'il y a eu atteinte au droit ou la question a été réglée.
Dismissal in accordance with rules **45.1** The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.	**Rejet d'une requête conformément aux règles** **45.1** Le Tribunal peut rejeter une requête, en tout ou en partie, conformément à ses règles, s'il estime que le fond de la requête a été traité de façon appropriée dans une autre instance.
Vicarious liability **Acts of officers, etc.** **46.3** (1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.	**Actes des dirigeants, etc.** **46.3** (1) Pour l'application de la présente loi, à l'exception des paragraphes 2 (2) et 5 (2), de l'article 7 et du paragraphe 46.2 (1), lorsqu'un dirigeant, un employé ou un mandataire d'une personne morale, d'un syndicat, d'une association commerciale ou professionnelle, d'une association non dotée de la personnalité morale ou d'une organisation patronale fait ou omet de faire quoi que ce soit dans l'exercice de son emploi, cette action ou cette omission est réputée commise par l'organisme en question.

Criminal Code

366(1) Forgery Every one commits forgery who makes a false document, knowing it to be false, with intent (a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not, or (b) that a person should be induced, by the belief that it is genuine, to do or to refrain	**366(1) Faux** Commet un faux quiconque fait un faux document le sachant faux, avec l'intention, selon le cas : a) qu'il soit employé ou qu'on y donne suite, de quelque façon, comme authentique, au préjudice de quelqu'un, soit au Canada, soit à l'étranger;

from doing anything, whether within Canada or not.	b) d'engager quelqu'un, en lui faisant croire que ce document est authentique, à faire ou à s'abstenir de faire quelque chose, soit au Canada, soit à l'étranger.
366(2) Making false document Making a false document includes (a)altering a genuine document in any material part; (b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or (c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.	**366(2) Faux document** Faire un faux document comprend : a) l'altération, en quelque partie essentielle, d'un document authentique; b) une addition essentielle à un document authentique, ou l'addition, à un tel document, d'une fausse date, attestation, sceau ou autre chose essentielle; c)une altération essentielle dans un document authentique, soit par rature, oblitération ou enlèvement, soit autrement.
367. Punishment for forgery Every one who commits forgery (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or (b) is guilty of an offence punishable on summary conviction.	**367. Peine** Quiconque commet un faux est coupable : a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans; b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.
368(1) Use, trafficking or possession of forged document Everyone commits an offence who, knowing or believing that a document is forged, (a) uses, deals with or acts on it as if it were genuine; (b) causes or attempts to cause any person to use, deal with or act on it as if it were genuine; (c) transfers, sells or offers to sell it or makes it available, to any person, knowing that or being reckless as to whether an offence will be committed under paragraph (a) or (b); or (d) possesses it with intent to commit an offence under any of paragraphs (a) to (c).	**368(1) Emploi, possession ou trafic d'un document contrefait** Commet une infraction quiconque, sachant ou croyant qu'un document est contrefait, selon le cas : a) s'en sert, le traite ou agit à son égard comme s'il était authentique; b) fait ou tente de faire accomplir l'un des actes prévus à l'alinéa a), comme s'il était authentique; c) le transmet, le vend, l'offre en vente ou le rend accessible à toute personne, sachant qu'une infraction prévue aux alinéas a) ou b) sera commise ou ne se souciant pas de savoir si tel sera le cas; d) l'a en sa possession dans l'intention de commettre une infraction prévue à l'un des alinéas a) à c).
368(1.1) Punishment Everyone who commits an offence under subsection (1)	**368(1.1) Peine** Quiconque commet une infraction prévue au paragraphe (1) est coupable :

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or (b) is guilty of an offence punishable on summary conviction.	a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans; b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

JUDICIAL REVIEW PROCEDURE ACT

LOI SUR LA PROCEDURE DE REVISION JUDICIAIRE

Application to Divisional Court **6** (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).	**Requête à la Cour divisionnaire** **6** (1) Sous réserve du paragraphe (2), la requête en révision judiciaire est présentée à la Cour divisionnaire. L.R.O. 1990, chap. J.1, par. 6 (1)
Application to judge of Superior Court of Justice 6(2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990	**Requête à un juge de la Cour supérieure de justice** 6(2) Une requête en révision judiciaire peut être présentée à la Cour supérieure de justice avec l'autorisation d'un de ses juges. L'autorisation peut être accordée à l'audition de la requête lorsque le juge est amené à croire que l'affaire est urgente et que le délai requis pour présenter une requête à la Cour divisionnaire causera vraisemblablement un déni de justice.
Transfer to Divisional Court (3) Where a judge refuses leave for an application under subsection (2), he or she may order that the application be transferred to the Divisional Court.	**Renvoi à la Cour divisionnaire** (3) Lorsqu'un juge refuse l'autorisation de présenter la requête prévue au paragraphe (2), il peut ordonner que la requête soit renvoyée à la Cour divisionnaire.
Appeal to Court of Appeal (4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the Superior Court of Justice disposing of an application for judicial review pursuant to leave granted under subsection (2).	**Appel à la Cour d'appel** (4) Avec l'autorisation de la Cour d'appel, il peut être interjeté appel devant la Cour d'appel d'une ordonnance finale de la Cour supérieure de justice qui décide d'une requête en révision judiciaire à la suite d'une autorisation accordée en vertu du paragraphe (2).

RULE 2.1 GENERAL POWERS TO STAY OR DISMISS IF VEXATIOUS, ETC.

STAY, DISMISSAL OF FRIVOLOUS, VEXATIOUS, ABUSIVE PROCEEDING

Order to Stay, Dismiss Proceeding

2.1.01 (1) The court may, on its own initiative, stay or dismiss a proceeding if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

Summary Procedure

(2) The court may make a determination under subrule (1) in a summary manner, subject to the procedures set out in this rule.

(3) Unless the court orders otherwise, an order under subrule (1) shall be made on the basis of written submissions, if any, in accordance with the following procedures:

1. The court shall direct the registrar to give notice (Form 2.1A) to the plaintiff or applicant, as the case may be, that the court is considering making the order.
2. The plaintiff or applicant may, within 15 days after receiving the notice, file with the court a written submission, no more than 10 pages in length, responding to the notice.
3. If the plaintiff or applicant does not file a written submission that complies with paragraph 2, the court may make the order without any further notice to the plaintiff or applicant or to any other party.
4. If the plaintiff or applicant files a written submission that complies with paragraph 2, the court may direct the registrar to give a copy of the submission to any other party.
5. A party who receives a copy of the plaintiff's or applicant's submission may, within 10 days after receiving the copy, file with the court a written submission, no more than 10 pages in length, responding to the plaintiff's

RÈGLE 2.1 POUVOIRS GÉNÉRAUX DE SURSIS OU DE REJET POUR CAUSE DE NATURE VEXATOIRE OU AUTRE

SURSIS OU REJET D'UNE INSTANCE FRIVOLE, VEXATOIRE OU CONSTITUANT UN RECOURS ABUSIF

Ordonnance de sursis ou de rejet d'une instance

2.1.01 (1) Le tribunal peut, de son propre chef, surseoir à une instance ou la rejeter si elle semble, à première vue, être frivole ou vexatoire ou constituer par ailleurs un recours abusif au tribunal.

Procédure sommaire

(2) Le tribunal peut rendre une décision en vertu du paragraphe (1) d'une manière sommaire, sous réserve de la procédure énoncée dans la présente règle.

(3) Sauf ordonnance contraire du tribunal, une ordonnance prévue au paragraphe (1) est rendue sur la base d'observations écrites, le cas échéant, conformément à la procédure suivante :

1. Le tribunal enjoint au greffier de donner au demandeur ou au requérant, selon le cas, un avis (formule 2.1A) l'informant que le tribunal envisage de rendre l'ordonnance.
2. Le demandeur ou le requérant peut, au plus tard 15 jours après avoir reçu l'avis, déposer au tribunal des observations écrites, de 10 pages au plus, en réponse à l'avis.
3. Si le demandeur ou le requérant ne dépose pas d'observations écrites conformes à la disposition 2, le tribunal peut rendre l'ordonnance sans autre avis au demandeur ou au requérant ou à toute autre partie.
4. Si le demandeur ou le requérant dépose des observations écrites conformes à la disposition 2, le tribunal peut enjoindre au greffier de donner une copie des observations à toute autre partie.
5. La partie qui reçoit une copie des observations du demandeur ou du requérant peut, au plus tard 10 jours après avoir reçu la copie, déposer au tribunal des observations écrites, de 10

or applicant's submission, and shall give a copy of the responding submission to the plaintiff or applicant and, on the request of any other party, to that party.

(4) A document required under subrule (3) to be given to a party shall be mailed in the manner described in subclause 16.01 (4) (b) (i), and is deemed to have been received on the fifth day after it is mailed.

Copy of Order

(5) The registrar shall serve a copy of the order by mail on the plaintiff or applicant as soon as possible after the order is made.

Request for Order

(6) Any party to the proceeding may file with the registrar a written request for an order under subrule (1).

Notification of Court by Registrar

(7) If the registrar becomes aware that a proceeding could be the subject of an order under subrule (1), the registrar shall notify the court.

STAY, DISMISSAL OF FRIVOLOUS, VEXATIOUS, ABUSIVE MOTION

Order to Stay, Dismiss Motion

2.1.02 (1) The court may, on its own initiative, stay or dismiss a motion if the motion appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

(2) Subrules 2.1.01 (2) to (7) apply, with necessary modifications, to the making of an order under subrule (1) and, for the purpose,

(a) a reference to the proceeding shall be read as a reference to the motion; and

(b) a reference to the plaintiff or applicant shall be read as a reference to the moving party. O. Reg. 43/14, s. 1.

Prohibition on Further Motions

(3) On making an order under subrule (1), the court may also make an order under rule 37.16 prohibiting the moving party from making further motions in a proceeding without leave.

pages au plus, en réponse à celles du demandeur ou du requérant et en donne une copie au demandeur ou au requérant et, à la demande de toute autre partie, à celle-ci.

(4) Tout document qui doit être donné à une partie en application du paragraphe (3) est envoyé par la poste de la manière prévue au sous-alinéa 16.01 (4) b) (i) et est réputé avoir été reçu le cinquième jour qui suit son envoi par la poste.

Copie de l'ordonnance

(5) Le greffier signifie une copie de l'ordonnance par la poste au demandeur ou au requérant dès que possible après qu'elle a été rendue.

Demande d'ordonnance

(6) Toute partie à l'instance peut déposer auprès du greffier une demande écrite en vue d'obtenir une ordonnance prévue au paragraphe (1).

Obligation du greffier d'aviser le tribunal

(7) S'il apprend qu'une instance pourrait faire l'objet d'une ordonnance prévue au paragraphe (1), le greffier en avise le tribunal.

SURSIS OU REJET D'UNE MOTION FRIVOLE, VEXATOIRE OU CONSTITUANT UN RECOURS ABUSIF

Ordonnance de sursis ou de rejet d'une motion

2.1.02 (1) Le tribunal peut, de son propre chef, surseoir à une motion ou la rejeter si elle semble, à première vue, être frivole ou vexatoire ou constituer par ailleurs un recours abusif au tribunal.

(2) Les paragraphes2.1.01(2) à (7) s'appliquent, avec les adaptations nécessaires, au prononcé d'une ordonnance prévue au paragraphe (1) et, à cette fin :

a) la mention de l'instance vaut mention de la motion;

b) la mention du demandeur ou du requérant vaut mention de l'auteur de la motion.

Interdiction de présenter d'autres motions

(3) Lorsqu'il rend une ordonnance en vertu du paragraphe (1), le tribunal peut également rendre une ordonnance en vertu de la règle 37.16 interdisant à l'auteur de la motion de présenter d'autres motions dans une instance sans autorisation.

STAY, DISMISSAL OF PROCEEDING IF NO LEAVE UNDER COURTS OF JUSTICE ACT **Order for Stay, Dismissal** **2.1.03** (1) If the court determines that a person who is subject to an order under subsection 140 (1) of the Courts of Justice Act has instituted or continued a proceeding without the order having been rescinded or leave granted for the proceeding to be instituted or continued, the court shall make an order staying or dismissing the proceeding. **Request for Order** (2) Any party to the proceeding may file with the registrar a written request for an order under subrule (1). **Copy of Order** (3) An order under subrule (1) may be made without notice, but the registrar shall serve a copy of the order by mail on every party to the proceeding for whom an address is provided in the originating process as soon as possible after the order is made.	**SURSIS OU REJET DE L'INSTANCE EN L'ABSENCE D'UNE AUTORISATION PRÉVUE PAR LA LOI SUR LES TRIBUNAUX JUDICIAIRES** **Ordonnance de sursis ou de rejet** **2.1.03** (1) S'il décide qu'une personne qui fait l'objet d'une ordonnance prévue au paragraphe 140 (1) de la Loi sur les tribunaux judiciaires a introduit ou poursuivi une instance sans que l'ordonnance ait été annulée ou que l'autorisation d'introduire ou de poursuivre l'instance ait été accordée, le tribunal rend une ordonnance de sursis ou de rejet de l'instance. **Demande d'ordonnance** (2) Toute partie à l'instance peut déposer auprès du greffier une demande écrite pour obtenir une ordonnance prévue au paragraphe (1). **Copie de l'ordonnance** (3) Une ordonnance prévue au paragraphe (1) peut être rendue sans préavis. Toutefois, le greffier en signifie une copie par la poste à toutes les parties à l'instance à l'égard desquelles une adresse est indiquée dans l'acte introductif d'instance dès que possible après que l'ordonnance a été rendue.
4.05 Issuing and Filing of Documents **Issuing Documents** **4.05(1)** A document may be issued on personal attendance in the court office by the party seeking to issue it or by someone on the party's behalf unless these rules provide otherwise.	**4.05 Délivrance et Dépôt des Documents** **Délivrance des documents** **4.05 (1)** Le document peut être délivré si la partie qui demande sa délivrance, ou son représentant, se présente en personne au greffe, sauf disposition contraire des présentes règles.
RULE 38 APPLICATIONS — JURISDICTION AND PROCEDURE **38.03** **Urgent application** (3.1) An urgent application may be set down for hearing on any day on which a judge is scheduled to hear applications, even if a lawyer estimates that the hearing is likely to be more than two hours long.	**RÈGLE 38 REQUÊTES — COMPÉTENCE ET PROCÉDURE** **38.03** **Requête urgente** (3.1) Une requête urgente peut être inscrite en vue de son audition n'importe quel jour où un juge est censé entendre des requêtes, même si un avocat estime que l'audience est susceptible de durer plus de deux heures.
Relief from Compliance **61.09(4)** If it is necessary to do so in the interest of justice, a judge of the appellate court	**Dispense** **61.09(4)** Si cela est nécessaire dans l'intérêt de la justice, un juge du tribunal d'appel peut

may give special directions and vary the rules governing the appeal book and compendium, the exhibit book, the transcript of evidence and the appellant's factum.	donner des directives particulières et modifier les règles régissant le cahier et recueil d'appel, le dossier des pièces, la transcription des témoignages et le mémoire de l'appelant.
RULE 68 PROCEEDINGS FOR JUDICIAL REVIEW **HOW COMMENCED** **68.01** (1) An application to the Divisional Court or to the Superior Court of Justice for judicial review under the Judicial Review Procedure Act shall be commenced by notice of application, and where the application is to the Divisional Court the notice of application shall be in Form 68A. **68.01(2)** If the application is made to the Divisional Court and is not commenced at a regional centre, the local registrar in the place where it is commenced shall forthwith transfer a copy of the notice of application and of any material filed in support of the application to the court office in the regional centre of the region where the application is to be heard, and all further documents in the application shall be filed there.	**RÈGLE 68 INSTANCE RELATIVE À LA RÉVISION JUDICIAIRE** **INTRODUCTION DE L'INSTANCE** **68.01** (1) La requête en révision judiciaire présentée à la Cour divisionnaire ou à la Cour supérieure de justice en application de la *Loi sur la procédure de révision judiciaire* est introduite par un avis de requête. L'avis de requête à la Cour divisionnaire est rédigé selon la formule 68A. **68.01(2)** Si la requête est présentée à la Cour divisionnaire et n'est pas introduite à un centre régional, le greffier local du lieu où elle est introduite transmet sans délai une copie de l'avis de requête, ainsi qu'une copie des documents à l'appui, le cas échéant, au greffe du centre régional de la région où doit avoir lieu l'audition de la requête. Les documents ultérieurs relatifs à la requête sont déposés à ce greffe. R.R.O. 1990, Règl. 194, par. 68.01 (2).

Courts of Justice Act R.S.O. 1990, c. C.43
Loi sur les tribunaux judiciaires

6(1) Court of Appeal jurisdiction An appeal lies to the Court of Appeal from, (b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19(1)(a) or an order from which an appeal lies to the Divisional Court under another Act;	**6 (1) Compétence de la Cour d'appel** Est du ressort de la Cour d'appel, l'appel : b) d'une ordonnance définitive d'un juge de la Cour supérieure de justice, à l'exception de celle visée à l'alinéa 19 (1) a) ou d'une ordonnance qui fait l'objet d'un appel qui est du ressort de la Cour divisionnaire aux termes d'une autre loi;
6(2) Combining of appeals from other courts The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal.	**6(2) Jonction des appels** La Cour d'appel a compétence pour entendre et juger un appel qui est du ressort de la Cour divisionnaire ou de la Cour supérieure de justice, si un autre appel relatif à la même instance est du ressort de la Cour d'appel et est porté devant cette dernière.
6(3) Same (3) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2).	**6(3) Idem** Pour l'application du paragraphe (2), la Cour d'appel peut, sur motion, déférer à la Cour d'appel l'appel qui a déjà été introduit à la Cour divisionnaire ou à la Cour supérieure de justice.
134. (1) Powers on appeal Unless otherwise provided, a court to which an appeal is taken may, (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from; (b) order a new trial; (c) make any other order or decision that is considered just.	**134 (1) Sauf disposition contraire, le tribunal saisi d'un appel peut :** a) rendre l'ordonnance ou la décision que le tribunal dont il y a appel aurait dû ou pu rendre; b) ordonner un nouveau procès; c) rendre toute ordonnance ou toute décision qu'il estime juste.
134(2) Interim orders On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal.	**134(2) Ordonnances provisoires** Le tribunal auquel a été présentée une motion en autorisation d'interjeter appel ou qui est saisi d'un appel peut, à la suite d'une motion, rendre l'ordonnance provisoire qu'il estime juste de façon à empêcher qu'une partie subisse un préjudice en attendant que l'appel soit décidé.

134(3) Power to quash On motion, a court to which an appeal is taken may, in a proper case, quash the appeal.	**134(3) Pouvoir d'annuler l'appel** Le tribunal saisi d'un appel peut, à la suite d'une motion, annuler l'appel lorsque les circonstances de l'espèce le justifient.
134(4) Determination of fact Unless otherwise provided, a court to which an appeal is taken may, in a proper case, (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside; (b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; and (c) direct a reference or the trial of an issue, to enable the court to determine the appeal.	**134(4) Déductions factuelles** Sauf disposition contraire, le tribunal saisi d'un appel peut, pour statuer sur l'appel : a) faire des déductions factuelles à partir de la preuve, pourvu qu'elles soient compatibles avec les conclusions de fait qui n'ont pas été écartées; b) recueillir d'autres éléments de preuve par affidavit, transcription des interrogatoires oraux, interrogatoire devant le tribunal ou de toute autre façon qu'il ordonne; c) ordonner le renvoi ou l'instruction d'une question en litige.
134(5) Scope of decisions The powers conferred by this section may be exercised even if the appeal is as to part only of an order or decision, and may be exercised in favour of a party even though the party did not appeal.	**134(5) Portée des décisions** Les pouvoirs que confère le présent article peuvent être exercés bien que l'appel ne porte que sur une partie de l'ordonnance ou de la décision. Ils peuvent être exercés en faveur d'une partie qui n'a pas interjeté appel.
134(6) New trial A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred.	**134(6) Nouveau procès** Le tribunal saisi d'un appel ne doit pas ordonner un nouveau procès en l'absence d'un préjudice grave ou d'une erreur judiciaire.
134(7) Same Where some substantial wrong or miscarriage of justice has occurred but it affects only part of an order or decision or some of the parties, a new trial may be ordered in respect of only that part or those parties.	**134(7) Idem** Si le préjudice grave ou l'erreur judiciaire n'a d'incidence que sur une partie de l'ordonnance ou de la décision ou sur certaines des parties au litige, le nouveau procès ne peut être accordé que relativement à cette partie de l'ordonnance ou de la décision ou à ces parties au litige.

Collective Agreement

September 1, 2012 - August 31, 2014

AGREEMENT

Between

LONDON DISTRICT CATHOLIC SCHOOL BOARD
(Hereinafter called the Board)

And

ONTARIO ENGLISH CATHOLIC TEACHERS ASSOCIATION
REPRESENTING THE TEACHERS EMPLOYED BY THE BOARD
IN JUNIOR KINDERGARTEN TO GRADE 12
AND
CONTINUING EDUCATION
(Hereinafter called the Association)

ARTICLE 1: DEFINITIONS

1.01 Continuing Education Program - means a continuing education course or class established in accordance with the Act and its accompanying regulations that requires that the course or class be taught by a teacher.

1.02 Continuing Education Teacher - means a teacher, as defined in Article 1, employed to teach a continuing education course or class established in accordance with the Act and its accompanying regulations for which membership of the teacher in the Ontario College of Teachers is required.

1.03 Final Signing - shall mean the date on which the last party has signed the Agreement following approval by the Board and ratification by the teachers.

ARTICLE 6: GRIEVANCE AND ARBITRATION

6.01 It is the mutual desire of the Board and O.E.C.T.A. that all complaints and grievances shall be adjusted as quickly as possible.

Teacher Grievance

6.02 A teacher grievance under this Agreement shall be defined as any difference or dispute between the Board and any teacher which relates to the interpretations, application or administration of this Agreement.

Unit Executive Grievance

6.03 A Unit Executive Grievance is defined as a difference or dispute of this Agreement which concerns a number or all of the teachers relating to the interpretation, application or administration of this Agreement.

Teacher Grievances

6.04 The following procedure shall be adhered to in processing grievances:

Step I:

(a) In the event of a grievance by any teaching employee he or she shall take the matter up with the Board within and not after thirty (30) working days, after the teacher became aware or ought to have become aware of the incident or circumstances giving rise to the grievance.

(b) The teacher shall take the matter up with the Executive Officer of Human Resources Services or designate by submitting a concise statement of the facts complained of and the redress sought and asking for a meeting with the Executive Officer of Human Resources Services or designate to discuss the matter.

(c) The Executive Officer of Human Resources Services or designate shall arrange such meeting within seven (7) working days of receipt of the letter of grievance and shall give his/her decision or answer to the grievance within seven (7) working days after the meeting. The answer shall be in writing.

(d) A teacher may, if he or she wishes, be accompanied to the meeting with the Executive Officer of Human Resources Services or designate by a member of the O.E.C.T.A. Executive. If a satisfactory settlement is not reached under Step I, the teacher may within seven (7) working days of the decision in Step I take the grievance up with the Director of Education by application in writing to that official.

Step II:

6.05 (a) The teacher shall take the matter up with the Director of Education by submitting a concise statement of the facts complained of and the redress sought and asking for a meeting with the Director of Education to discuss the matter.

(b) The Director of Education shall arrange such meeting within seven (7) working days of receipt of the letter of grievance.

(c) A teacher may, if he or she wishes, be accompanied to the meeting with the Director of Education, by a member of the O.E.C.T.A. Executive.

(d) Within seven (7) working days of such meeting, the Director of Education shall forward the decision on the matter in writing to the O.E.C.T.A. Unit President and to the teacher. If the grievance remains unresolved after Step II, the teacher may take the matter to the Unit Executive for their consideration with respect to Arbitration.

Unit Executive Grievances

6.06 (a) In the event of a Unit Executive grievance, the President shall take the matter up with the Director of Education within, and not after forty-five (45) days from the time the executive became aware of the incident or circumstances giving rise to the grievance.

(b) The President of the O.E.C.T.A. Unit shall take up the matter with the Director of Education by submitting a concise statement of the facts complained of and the redress sought and asking for a meeting with the Director of Education to discuss the matter.

(c) The Director of Education shall within seven (7) working days of receipt of the application arrange a meeting to consider the grievance.

(d) The President may, if he/she wishes, be accompanied to the meeting with the Director of Education, by a member of the O.E.C.T.A. Executive.

(e) Within seven (7) working days of such meeting, the Director of Education shall forward his/her decision on the matter in writing to the O.E.C.T.A. Unit President.

Arbitration

6.07 (a) If a grievance is not settled under 6.04, 6.05 or 6.06 the Unit Executive of O.E.C.T.A. may within ten (10) working days of receipt of the Director of Education's letter, refer the grievance to a Board of Arbitration.

(b) The Board of Arbitration shall be composed of a single arbitrator. The arbitrator shall be jointly chosen by the O.E.C.T.A. Unit Executive and the Board.

(c) The decision of the Arbitration Board shall be binding to both parties.

(d) Each party shall share equally the cost of the Arbitration Board.

(e) The Arbitration Board shall limit its actions to an interpretation of this Agreement and its application and administration and shall not change its provisions, or substitute any new provisions.

(f) If either party to this Agreement fails to agree on the appointment within fifteen (15) working days, the appointment shall be made by the Minister of Labour upon the written request of either party.

Expedited Arbitration

6.08 (a) Notwithstanding the procedure above, either party may request access to expedited arbitration under Section 49 of the Ontario Labour Relations Act, 1995.

(b) No such request in clause 6.08(a) shall be made beyond the time limits to refer the grievance to arbitration.

Extension of Time Limits

6.09 At any stage of the grievance procedure, the limits imposed upon either party may be extended, in writing, by mutual agreement of all parties.

Canadian Code of Conduct for Trial Lawyers Involved in Civil Actions Involving Unrepresented Litigants

9. No Imposition of Undue Disadvantage on the Unrepresented Litigant

- A trial lawyer must not attempt to derive benefit for his or her client at trial with an unrepresented litigant from the fact that the litigant is unrepresented, and a trial lawyer should avoid imposing unnecessary disadvantage, hardship, or confusion on the unrepresented litigant.
- A trial lawyer should be aware of his or her duty to the court in considering reasonable requests for adjournments or waivers of procedural formalities when there is no real prejudice to the rights or interests of the client.
- A trial lawyer has an obligation not to set traps which could not be reasonably anticipated by an unrepresented litigant and which would have the effect of eliminating or diminishing the unrepresented litigant's rights. There is no obligation, however, to provide an unrepresented litigant with additional indulgences over those that would be given to a represented party.
- A trial lawyer is entitled to raise proper and legitimate technical and procedural objections but should not take advantage of technical deficiencies in the pleadings, procedural steps, or presentation of the case against an unrepresented party that do not go to the merits of the case or the legitimate rights and interests of the client.

The Law Society of Upper Canada Code of Professional Conduct

Chapter 2

- **Integrity**
  2.1-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients[121], tribunals, the public and other members of the profession honourably and with integrity[122].

- **Honesty and Candour**
  3.2-2 When advising clients, a lawyer shall be honest and candid.

- **Dishonesty, Fraud, etc. by Client or Others**
  3.2-7 A lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct or instruct a client or any other person on how to violate the law and avoid punishment. [Amended - October 2014]

  3.2-7.1 A lawyer shall not act or do anything or omit to do anything in circumstances where he or she ought to know that, by acting, doing the thing or omitting to do the thing, he or she

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[121] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established

[122] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about their lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

is being used by a client, by a person associated with a client or by any other person to facilitate dishonesty, fraud, crime or illegal conduct. [New - April 2012]

- **Dishonesty, Fraud, etc. when Client an Organization**
  3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows that the organization has acted, is acting or intends to act dishonestly, fraudulently, criminally or illegally, shall do the following, in addition to their obligations under rule 3.2-7:

  a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the conduct is, was or would be dishonest, fraudulent, criminal, or illegal and should be stopped;

  b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the conduct was, is or would be dishonest, fraudulent, criminal, or illegal and should be stopped; and

  c) if the organization, despite the lawyer's advice, continues with or intends to pursue the wrongful conduct, withdraw from acting in the matter in accordance with rules in Section 3.7.

- **Incriminating Physical Evidence**

  5.1-2 A lawyer shall not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence or otherwise act so as to obstruct or attempt to obstruct the course of justice.

  5.1-2 When acting as an advocate, a lawyer shall not

  (e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct,

  (f) Knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority,

  (g) Knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal,

  The Lawyer as Witness Submission of Evidence[123]

  5.2-1 A lawyer who appears as advocate shall not testify or submit their own affidavit evidence before the tribunal unless

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[123] Commentary: [1] A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination, or challenge. The lawyer should not in effect appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect to receive special treatment because of professional status.

a) permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or

b) the matter is purely formal or uncontroverted. [Amended - October 2014]

The Canadian Bar Association Code of Professional Conduct under "Impartiality and Conflict of Interest":

11. A lawyer who has acted for a client in a matter should not thereafter act against him (or against persons who were involved in or associated with him in that matter) in the same or any related matter, or place himself in a position where he might be tempted or appear to be tempted to breach the Rule relating to Confidential Information. ...

12. For the sake of clarity the foregoing paragraphs are expressed in terms of the individual lawyer and his client. However it will be appreciated that the term "client" includes a client of the law firm of which the lawyer is a partner or associate whether or not he handles the client's work. [Emphasis added.]

Thomas J. in Henson v. Ontario Hydro Corp. 1995 CarswellOnt 1026 writes:

70 It is also fundamental that a lawyer who has acted for an individual in a matter should not thereafter act against her in the same or any related matter.

71 Although the Union was undoubtedly responsible for the fees of the Law Firm, and the Union could "call the shots" in the grievance process, it is my view that a reasonable person would conclude that the Law Firm was representing Henson in processing her grievance through the vehicle of the Union.