

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

Notice of Application for Leave to Appeal

Filed by Myriam Michail

Self-Represented Applicant

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

TAKE NOTICE that **Myriam Michail** applies for leave to appeal to the Court, under Section 40 (1) of the *Supreme Court Act*, from the judgment of the Court of Appeal of Ontario, file 65674 M49592 made October 25, 2018, in Docket M49592(C65674) 2018 ONCA 857 and for an order for costs, and for any further or other order that the Court may deem appropriate;

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

1. 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 ...”.
2. 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.

3. This case is emblematic of the consequences of this hidden¹ 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.
4. 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 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.
5. For the past five decades, and to date, these sections of the *LRA* allowed 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).
6. 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”² to unionized workers and to clarify where millions of unionized employees stand before the law.
7. 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.
8. I am seeking leave to this Court to appeal the *Ontario Court of Appeal “COA” decision 2018 ONCA 857* of Feldman, Pardu and Roberts J.J.A, dated October 25, 2018 quashing my appeal of Grace J.’s decision, *2017 ONSC 3986* of an “urgency motion”³ concluding that a previous

¹ Correspondence with Muzzi re. Right of Carriage of individual grievance **Tab 4 (19)**

² Arbitrator Lynk, 2004 O.L.A.A. No. 427, para. 12

³ Leitch J. Order **Tab 2 (I)**

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.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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?**
14. 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*⁴. 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 rights⁵ and settling my case unjustly without providing me an opportunity to obtain relevant documents, evidence, 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. 32⁶:

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.*”⁷, 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*.

⁴ Judicial Review Submission to the OLRB **Tab 4 (13)**

⁵ Settlement Submission to the OLRB **Tab 4 (14)**

⁶ *Myriam Michail v OECTA*, 2017 CanLII 6507 (ON LRB) **Tab 2 (H)**

⁷ *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities Tab 15 para.51

- This unlawful practice is commended by the OLRB⁸:

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.
- 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."⁹
- 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.

⁸ *Myriam Michail v OECTA*, 2017 CanLII 6507 (ON LRB) **Tab 2 (H)**

⁹ *Slaight Communications Inc. v. Davidson* [1989] 1 SCR 1038, Authorities **Tab 15 para.39**

- 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 dismissed¹⁰;
- 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:
- 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.

STATEMENT OF THE QUESTIONS IN ISSUE

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

15. 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.

¹⁰ statistics and correspondence with the OLRB Tab 4 (43)

16. 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.
17. 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)]

18. 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*¹¹ regardless of them being “directly affected by the matter in respect of which relief is sought”?
19. 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”¹² and in legal limbo? If employees are not party to the Collective Agreement, why are they bound by its terms?
20. **Do employees have a contractual status¹³, and if not, does this leave the contract that they sign with their employer a nullity¹⁴?**
21. 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*?

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

22. 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*?

¹¹ *Vallabh v. Air Canada and Unifor Local 2002*, 2019 ONSC 4016 Authorities **Tab 18**

Mignault v. New Brunswick (Board of Management), 2016 NBCA 52 Authorities **Tab 20**

¹² *LeBel J. in Noël v. Société d'énergie de la Baie James* 2001 SCR 207 Authorities **Tab 11** para.69

¹³ *Mignault v. New Brunswick (Board of Management)*, 2016 NBCA 52 Authorities **Tab 20** para. 8, 10 & 12

¹⁴ *Michail's Employment Contract with LDCSB* **Tab 4 (15)**

23. 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)]

24. 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*?

25. 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)]

26. 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)]

27. 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*?

28. 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 interest¹⁵, as in my case, where I was coerced to state:

¹⁵ 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.*»

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)]

29. 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)]

30. 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)]

31. 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

32. 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*?
33. 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?


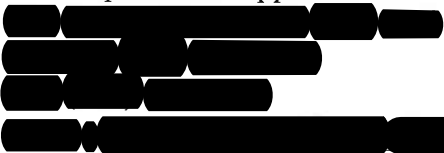
B. QUESTIONS OF NATIONAL IMPORTANCE


34. 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 decision¹⁶? 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?

Dated at London, Ontario this 26th day of September, 2019.

SIGNED BY


 MYRIAM MICHAÏL
 Self-Represented Applicant


 to Quash Tab 4 (8)