CUMULATIVE DELETERIOUS IMPACT OF IMPUGNED DECISIONS

1. 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:

> 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

2. 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

3. 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. …
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> 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]

4. 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*.

5. 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.

6. 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.

7. 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[1]

8. 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 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.

9. 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

10. 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:

> 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).

11. It was in November 2015, that I realized how deceitful OECTA had been when I was prohibited from access to Courts to Judicial review the Brown Arbitration Award, and my dismissal grievance and the two human rights grievance #3 and #4 were abandoned.

12. Only then did I realize the frightening reality that I was under the control of union bosses, and they had betrayed me. I was left at an impasse where I either had to accept the unlawful settlement

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

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

13. 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*.
14. 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.
15. 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.
16. 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)***

17. 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.
18. 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*,
19. 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.
20. 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 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[2].

[2] OLRB Statistics from 2000 to 2015

21. 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.

22. 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.

23. As it stands, the General Secretary of OECTA 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.

24. 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 to submit to unlawful demands to cover for wrongdoings in detriment to public interests.

25. 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[3]:

> 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).

26. 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 illegal conduct, without providing a venue for remedy. 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?

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[3] *Paradis and Martineau v. Union of Solicitor General Employees et al.* 2009 PSLRB 133

- 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

27. 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.[4]:

> [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.

28. Success rate of DFR complaints is next to nil[5]. 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?

29. 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"*.

30. 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.

31. 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[6] as in my case, where Vice-Chair Kelly unequivocally states:

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[4] *Ali v. United Food and Commercial Workers Canada, Local 175, 2014 ONSC 7318* Authorities **Tab** 26

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

[6] *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)

> [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".

32. 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[7], the complaint would still be dismissed, is unfair, oppressive and constitutes a legalized denial and obstruction of justice for unionized employees.

33. 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**

34. 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".

35. My case provides the necessary context and tangible evidence to 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**

36. 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]

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

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

38. 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.

39. 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.

40. The ruling of the Supreme Court of Canada in *Noël v. Société d'énergie de la Baie James*[8]*:*

> 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

41. 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".

42. 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.

43. 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.

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

44. 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[9]. 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

45. 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"***.**

46. 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.[10]

47. 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[11].

48. In fact, Paul Cavalluzzo, whose firm was representing me for five years, is now standing against me in the same case.

49. 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]

50. 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.[12]

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[9] Request for Reconsideration Submission to the OLRB **Tab 4 (12)** Para. 1
[10] *Woldetsadik v. Yonge Street Hotels*, 2012 ONSC 1580 (CanLII),
[11] Conspiracy Submission (Lack of Loyalty in Legal Representation) **Tab 4 (2) para.** 91 to 113
[12] Martin Luther King Jr., Letter from the Birmingham Jail