

Court File No. **C57714**

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

Applicants
(Appellants)

- and -

**ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents
(Respondents in Appeal)

COURT OF APPEAL FOR ONTARIO
FILED / DÉPOSÉ

OCT 04 2013

REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of
Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under the
Canadian Charter of Rights and Freedoms

NOTICE OF APPEAL

THE APPELLANTS Jennifer Tanudjaja, Janice Arsenault, Ansar Mahmood, Brian Dubourdieu and the Centre for Equality Rights in Accommodation, APPEAL to the Court of Appeal from a judgment of Justice Thomas Lederer of the Ontario Superior Court of Justice, dated September 6, 2013 and made at Toronto.

THE APPELLANTS ASK that the judgment of the Ontario Superior Court of Justice be set aside and judgment be granted as follows:

- i) The appeal be allowed;
- ii) This Honourable Court substitute its own decision for that of the Ontario Superior Court of Justice;

- (a) by issuing an order dismissing the motions to strike the application, and
 - (b) by issuing an order allowing the Application to proceed;
 - (c) in the alternative, by issuing an order allowing the Application to proceed and granting leave to amend the Notice of Application in accordance with directions of the Court;
- ii) Such further and other relief as counsel may advise and this Court may consider just and appropriate.

THE GROUNDS OF APPEAL are as follows:

1. The Ontario Superior Court of Justice erred in failing to dismiss the motions to strike the application on the basis of delay;
2. The Ontario Superior Court of Justice erred in its application of the legal test on a motion to strike an application;
3. The Ontario Superior Court of Justice erred in its interpretation and application of section 7 of the *Canadian Charter of Rights and Freedoms* and accordingly erred in finding that the section 7 claim had no reasonable chance of success;
4. The Ontario Superior Court of Justice erred in its interpretation and application of section 15 of the *Canadian Charter of Rights and Freedoms* and accordingly erred in finding that the section 15 claim had no reasonable chance of success;
5. The Ontario Superior Court of Justice erred in finding that Canada's international human rights obligations are not relevant to considering the proper application of sections 7 and 15 in this case;
6. The Ontario Superior Court of Justice erred in finding that the matters raised in the application are not justiciable;

7. The Ontario Superior Court of Justice erred in finding that the Charter does not impose positive obligations on governments to address the effects of homelessness where the effects contravene Charter-protected rights;
8. The Ontario Superior Court of Justice erred in finding that the remedies proposed in the application are beyond the Court's jurisdiction; and
9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) The Court of Appeal's jurisdiction over this matter is established by s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C43;
- (b) This matter originated as an application before the Ontario Superior Court of Justice under Rule 14 of the Ontario Rules of Civil Procedure;
- (c) The Order appealed from is a final order of the Superior Court of Justice and is not an order referred to in s. 19(1)(a) of the *Courts of Justice Act*; and
- (d) This is not a matter on which leave to appeal is required.

October 4, 2013

**ADVOCACY CENTRE FOR
TENANTS ONTARIO**
425 Adelaide St. W., Suite 500
Toronto, ON M5V 3C1
Tracy Heffernan (LSUC #37482C)
Tel: 416-597-5820
Fax: 416-597-5821

PETER ROSENTHAL
Barrister
367 Palmerston Blvd
Toronto, ON M6G 2N5
Peter Rosenthal (LSUC # 330440)
Tel: 416-978-3093
Fax: 416-657-1511

- 4 -

FAY FARADAY
Barrister & Solicitor
860 Manning Ave.
Toronto, ON M6G 2W8
Fay Faraday (LSUC #37799H)
Tel: 416-389-4399
Fax: 647-776-3147

Counsel for the Applicants (Appellants)

TO: DEPARTMENT OF JUSTICE
Ontario Regional Office
The Exchange Tower
130 King St. W., 34th Flr.
Toronto, ON M5X 1K6

Gail Sinclair / Michael Morris
Tel: 416-954-8109 / 416-973-9704
Fax: 416-952-4518

**Counsel for the Respondent,
the Attorney General of Canada**

AND TO: THE ATTORNEY GENERAL OF ONTARIO
Constitutional Law Division
7th Floor, 720 Bay Street
Toronto, ON M6G 2K1

Janet E. Minor / Shannon Chace
Tel: 416-326-0131 / 416-326-4137
Fax: 416-326-4015

**Counsel for the Respondent,
the Attorney General of Ontario**

