File No.: CV-10-403688

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

and

the ATTORNEY GENERAL OF CANADA and the ATTORNEY GENERAL OF ONTARIO
Respondents
(Responding Parties on Motion)

FACTUM OF THE RESPONDENT, the ATTORNEY GENERAL OF ONTARIO (Motions Seeking Leave to Intervene, returnable March 7, 2013)

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INDEX

INDEX

File No.: CV-10-403688

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PART I – OVERVIEW

1. The underlying Application asserts that Canada and Ontario's alleged failure to implement effective strategies "to reduce and eliminate homelessness and inadequate housing" violates the *Charter*. The Applicants' contention is that ss. 7 and 15 impose a positive obligation on the state to rectify inequality by providing a minimum level of economic security in the form of housing.

2. The Attorneys General of Canada and Ontario have moved to strike the Application under Rule 21, on the basis that the Applicants' claim is not justiciable. This issue is a narrow legal one relating to the appropriate role and institutional competence of the court.

3. Fourteen different organizations, represented by nine counsel and organized into five coalitions, seek to intervene as friends of the court in this preliminary motion, in support of the Applicants. None of the proposed interveners meets the test for intervention, as they are unable to demonstrate an ability to make a useful contribution to the resolution of the discrete issue before this court on the motion to strike.

4. The Applicants are represented by a team of three qualified counsel, experienced in public litigation, who will be responding to the Attorneys' General motion. This is not a situation where court lacks a "full adversarial context" and requires the assistance of *amicus curiae* to ensure all salient issues are addressed.

5. Second, the proposed interveners lack expertise germane to the narrow issue before the court. The moving parties do not possess expertise in respect of the Rules of Civil Procedure, the adequacy of pleadings or the principle of justiciability. Knowledge pertaining to housing rights under domestic and international law is inapposite to the issue on the motion to strike.

6. Third, the proposed interveners' materials do not disclose a distinct perspective on the justiciability of the Applicants' claim, but provide, instead, argument in support of the constitutional challenge on the merits. These submissions are directed at the wrong legal question, and in any event simply duplicate the Applicants' position, as articulated in the Amended Notice of Application. A " 'me too' intervention provides no assistance."

7. Fourth, the proposed interveners do not have a direct interest in the outcome of the motion. The interest they assert is an interest in avoiding an adverse precedent. The moving parties' concern pertains to the detrimental impact a successful motion to strike could have on their ability to raise similar or related constitutional and international law claims in the future. A purely jurisprudential interest in the outcome of a proceeding is speculative, and is insufficient to establish a basis for intervention.

8. Certain proposed interveners assert that their experience as public interest groups advocating for legislative change illustrates a real and substantial interest in this proceeding. The moving parties' experience in seeking changes in government housing policy does not support a claim that they will be able to make a useful contribution to the resolution of the instant motion to strike.

9. Fifth, additional considerations count against intervention in this motion. The public interest weighs in favour of preventing repetitive material that is irrelevant to the discrete issue before the court on a motion to strike from occupying valuable hearing time, and depleting limited court resources. In addition, in the event the Applicants require assistance to respond to the issues raised in the motion to strike, leave to intervene is unnecessary to avail of such aid. As the Applicants have yet to file their written submission in response to the motion, it remains open for them to consult with the proposed interveners as they see fit. There is no reason to believe such assistance would not be forthcoming from the moving parties, where the interests of the proposed interveners and the Applicants are aligned, and the institutional applicant, the

Centre for Equality Rights in Accommodation, has shared a working relationship/membership with three of the proposed interveners.

PART II – FACTS

10. The Applicants are four individuals who state they are either "inadequately housed" or homeless and the Centre for Equality Rights in Accommodation ["CERA"]. On May 26, 2010 the Applicants commenced an Application in this Court alleging that the governments of Canada and Ontario have breached the Applicants' rights under *Charter* ss.7 and 15 by failing to eradicate homelessness and provide the Applicants, and others like them, with adequate housing. That Application was subsequently revised by service of an Amended Notice of Application ["Amended Notice"] on November 15, 2011.

11. The Respondents are the Attorney General of Canada ["Canada"] and the Attorney General of Ontario ["Ontario"]. The Respondents have each moved to strike the Amended Notice as disclosing no reasonable cause of action, pursuant to Rules 14.09 and 21.01(1)(b), on June 11, 2012 [collectively the "motion to strike"]. Ontario also relies on s.106 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43. The motion to strike is returnable May 27, 2013.

12. Pursuant to an earlier schedule arranged among counsel, Canada and Ontario served their facta respecting the motion to strike on December 5, 2012, and January 16, 2013, respectively. The factum of the Applicants on the motion to strike will be served on April 8, 2013, in accordance with the directions of the case management judge seized of this matter.

13. Fourteen different organizations [the "proposed interveners" or "moving parties"] currently seek leave to intervene in the Respondents' motion to strike. The proposed interveners are:

- Amnesty International ["AI"] and the International Network for Economic, Social & Cultural Rights ["ESCR-Net"]; [the "AI Coalition"]
- David Asper Centre for Constitutional Rights; [the "Asper Centre"]
- ARCH Disability Law Centre, The Dream Team, Canadian HIV/AIDS Legal Network and HIV/AIDS Legal Clinic Ontario [the "ARCH Coalition"].
- The Charter Committee on Poverty Issues ["CCPI"], Pivot Legal Society, the Income Security Advocacy Centre, and Justice for Girls; [the "CCPI Coalition"], and;
- ACORN Canada, the Federation of Metro Tenants' Associations, and Sistering; [the "ACORN Coalition"].

14. The proposed interveners seek leave to intervene as friends of the court, pursuant to R.13.02 of the Rules of Civil Procedure. Their requests for leave are restricted to the forthcoming motion to strike, returnable May 27, 2013. On this motion the proposed interveners do not seek leave to intervene in the application on the merits, in the event it proceeds.

Asper Centre Notice of Motion, para (a), Asper Centre Motion Record, p 1
AI Coalition Notice of Motion, paras (a), (s), AI Coalition Motion Record, pp 1, 6
ARCH Coalition Notice of Motion, paras (a), (l), ARCH Coalition Motion Record, Tab 1, pp 1-2, 5
CCPI Coalition Notice of Motion, paras 1, 17, CCPI Motion Record, pp 1, 8
ACORN Coalition Notice of Motion, paras (a), (j), ACORN Coalition Motion Record, Tab 1, pp 1, 5
Rules of Civil Procedure, RRO 1990, Reg 194, Rule 13.02

PART III – ISSUES AND LAW

15. The issue raised on this motion is whether each of the proposed interveners ought to be granted leave to intervene in the Respondents' motion to strike, considering:

a) the nature of the case;
b) the issues which arise; and
c) the likelihood of the proposed intervener being able to make a useful contribution to the resolution of the matter without causing injustice to the parties.

***Peel (Regional Municipality) v Great Atlantic and Pacific Co of Canada Ltd,* [1990] OJ No 1378 at para 10 (CA) ("*Peel v A&P*")**

SECTION A: GENERAL SUBMISSIONS RESPECTING INTERVENTION

The Test for Intervening as a Friend of the Court

16. The onus is on a proposed intervener who seeks leave to intervene as a friend of the court under R. 13.02 to demonstrate that the court's ability to determine the issue would be enhanced by the intervention. The decision whether to grant leave is a highly discretionary one. The over-arching principle a court must consider in determining whether to grant leave to intervene was articulated by Chief Justice Dubin in *Peel v. A&P:*

> Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the **nature of the case**, the **issues which arise** and the likelihood of the applicant being able to make **a useful contribution to the resolution of the appeal without causing injustice** to the parties. [emphasis added]

***Peel v A &P, supra*, at para 10; *R v Roks*, 2010 ONCA 182 at para 5; *M v H*, [1994] OJ No 2000 at para 48 (CA); R 13.02, *supra*; See also, *Halpern v Toronto (City) Clerk*, [2000] OJ No 4514 at para 6 (Div Ct)**

17. In constitutional cases, certain factors inform the court's analysis as to the likelihood of the applicant being able to make a "useful contribution to the resolution" of the matter, namely whether:

a. the applicant has a real, substantial and identifiable interest in the subject matter of the proceedings;
b. the applicant has an important perspective distinct from the immediate parties; or
c. the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base.

***Attorney General of Ontario v Dieleman et al*, [1993] OJ No 2587 at para 14 (Gen Div); *Bedford v Canada (AG) (2009)*, 98 OR (3d) 792 at para 2 (CA)**
See also: *Jones v Tsige (2011)*, 106 OR (3d) 721 at para 25 (CA); *Issasi v Rosenzweig*, 2011 ONCA 198 at para 18

18. Intervention by third parties adds to the costs and complexity of litigation, regardless of agreements to restrict submissions. As Epstein J. observed, it "always constitutes an inconvenience that ought not to be imposed on the parties except under compelling circumstances".

***M v H, supra,* at para 55; *Dalton v Hutton*, [2003] NJ No 28 at para 32 (SC)**

19. The appropriate role of the court, in determining whether the proposed intervener will make a useful contribution to the proceeding, is to weigh any such contribution against the resulting delay or prejudice to the parties.

> Regardless of whether the proposed intervention is sought under rule 13.01 or rule 13.02, the court's focus should be on determining whether the contribution that might be made by the intervenors is sufficient to counterbalance the disruption caused by the increase in the magnitude, timing, complexity and costs of the original action.

***M. v. H. supra,* at para 37; *Halpern, supra*, at para 20 (Div Ct)**

20. Proposed interveners must be able to offer something more than the repetition of another party's argument or a slightly different emphasis on arguments addressed squarely by the parties. "The 'me too' intervention provides no assistance."

***Jones, supra,* at paras 29, 38; *Stadium Corp of Ontario Ltd v Toronto,* [1992] OJ No 1574 at paras 14-15 (Div Ct) (rev'd on other grounds at CA); *McIntyre Estate v Ontario (AG),* [2001] OJ No 3206 at paras 12, 30 (CA); *R v Finta,* [1990] OJ No 2282 at para 9 (CA); *M v H, supra,* at para 48; *Halpern, supra,* at paras 18, 32 (Div Ct); *Canadian Union of Public Employees (Airline Division) v Canadian Airlines International Ltd.* [2000] FCJ No 220, at para 12 (FCA) ("CUPE"); *Dalton, supra,* at para 47; *Oakwell Engineering Ltd v Enernorth Industries Inc,* [2006] OJ No 1942 at para 11 (CA); *Fairview Donut Inc v TDL Group Corp* [2008] OJ No 4720, at para 5 (SC)**

(1) The Nature of the Case

21. The underlying Application asserts that Canada and Ontario's alleged failure to implement effective strategies "to reduce and eliminate homelessness and inadequate housing"

violates the *Charter*. The premise of the Application is that ss. 7 and 15 place a positive obligation on government to provide a minimum level of economic security, in the form of legislation, policies and programs to eliminate inadequate housing and homelessness.

> **Amended Notice of Application, paras (b)-(d), 34, Attorneys' General Joint Motion Record, pp 3, 12; *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being schedule B to the *Canada Act 1982 (UK),* c 11, ss 7, 15 ["*Charter*"]**

22. Although the court has indicated that a "relaxed" application of the test for intervention applies in *Charter* cases, this approach is inapplicable in this proceeding. The rationale for the relaxed standard is to provide the court with a range of perspectives that may be relevant to the *ultimate* determination of whether a *Charter* violation is established, and cannot be justified under s.1 due to the presence of other less restrictive alternatives. In this case, however, the proposed interveners do not seek intervention on the merits of the *Charter* challenge—their application to intervene relates only to the motion to strike, where the sole issue to be determined is whether the Application discloses a reasonable cause of action. The existence of a *Charter* violation, and whether such a violation may be demonstrably justified in accordance with s.1, only becomes ripe for determination in the event this court determines that the matter ought to proceed. In the result, the rationale which informs a relaxed application of the test for intervention in *Charter* cases is inapposite.

> ***Ethyl Canada Inc v Canada (AG),* [1997] OJ No 4225 at para 4 (Gen Div); See also: *M v H, supra*, at para 34**
> **Asper Centre Notice of Motion, para (a), Asper Centre Motion Record, pp 1-2;**
> **AI Coalition Notice of Motion, para (a), AI Coalition Motion Record, p 1;**
> **ARCH Coalition Notice of Motion, para (a), ARCH Coalition Motion Record, p 1;**
> **CCPI Coalition Notice of Motion, para 1, CCPI Motion Record, p 1;**
> **ACORN Coalition Notice of Motion, para (a), ACORN Coalition Motion Record, Tab 1**
> ***Charter, supra,* s 1**

23. Proposed interveners in *Charter* challenges are not excused from their onus of satisfying the court that they have a direct interest in, and can make a useful contribution to, the issue to be

determined in this proceeding: whether the Application should be struck out pursuant to R.21.01(1)(b) on the basis that it is not justiciable.

***Halpern, supra,* at para 16 (Div Ct); *Ethyl, supra*, at para 4**

(2) The Nature of the Issue

24. Interventions by third parties on preliminary motions and interlocutory proceedings, while theoretically possible, remain rare. In the recent Court of Appeal decision *Issasi v. Rosenzweig*, Winkler C.J.O. permitted the intervention of three *amicus curiae*, subject to the express condition that the interveners be prohibited from involvement in a preliminary motion to quash the appeal as an abuse of process.

***Issasi, supra,* at paras 7, 9, 21.10**
***Jones, supra*, at para 39; *Fairview Donut, supra,* at para 2; *Dalton, supra*, at para 9; *Peixeiro v. Haberman*, [1994] OJ No 2459, para 18 (Gen Div); *Vail v Prince Edward Island (Workers' Compensation Board)*, 2011 PECA 17 at para 3; *Dieleman, supra,* at para 15; *M v H, supra*, at paras 33, 55; *Drennan v K2 Wind*, 2013 ONSC 1176 at paras 5-7**

25. The discrete issue before the court in this proceeding, whether the Applicants' pleading discloses a reasonable cause of action, is a question of law where evidence is inadmissible. As such, factual information respecting the impact of striking the Application on the different constituencies represented by the proposed interveners is irrelevant. As the PEI Court of Appeal observed in *Vail*, approving the lower court's decision to deny intervention in a motion to strike:

> Since no evidence is admissible on such a motion, any facts peculiar to Mr. Richard's [the proposed intervener's] case could not be relevant to whether Vail and McIver's case survives.

***Vail, supra* at paras 3, 21**
***Leadbetter v Ontario*, [2001] OJ No 3472 at para 9 (ONSC); Rules of Civil Procedure, *supra* R. 21.01(1)(b), 21.01(2)(b)**

26. Whether the Application raises a justiciable claim is a straightforward legal inquiry respecting the appropriate role of the court and its institutional competence to determine the "adequacy" and "effectiveness" of government housing strategies. As MacPherson J. (as he then was) observed in *Peixeiro*, rejecting an analogous application for intervention by LPIC in an interlocutory proceeding, where the sole issue to be determined by the motions judge "is a straightforward interpretation" of the law,

> [t]here is, in my view, none of the amorphous social policy background that animates many of the constitutional (especially post-Charter) cases in which issues of standing and intervention often arise. Accordingly, the second component of Peel does not favour LPIC's application.

***Peixeiro, supra*, at para 16**
***Dee v. Canada (Minister of Employment and Immigration)*, 1987 CarswellNat 117, at para 10 (FCTD)**

(3) The Proposed Interveners cannot make a Useful Contribution

(i) Qualified Counsel are already Responding to the Motion to Strike

27. The Governments' motion to strike asserts that the adequacy and effectiveness of housing strategy is not a justiciable issue of legal rights for a reviewing court, but a political question of social and economic policy development for the legislature.

Notice of Motion to Strike of the Attorney General of Canada, June 11, 2012, para (e), Attorneys' General Joint Motion Record, p 18; Notice of Motion to Strike of the Attorney General of Ontario, June 11, 2012, para (e), Attorneys' General Joint Motion Record, p 23

28. A team of three counsel experienced in public law litigation represent the Applicants and are responding to the Governments' motion to strike. As the Divisional Court noted in *John Doe*,

> Interventions *amici curiae* should be restricted to those cases in which the Court is clearly in need of assistance because there is a failure to present issues (as, for example, where one side of the argument has not been presented to the Court).

***John Doe v. Ontario (Information and Privacy Commissioner)*, 1991 CarswellOnt 470 at para 9 (Gen Div – Div Ct). See for e.g.: Reference *Re: Secession of Quebec*, [1998] 2 SCR 217**

29. In this proceeding the Applicants' Amended Notice of Application addresses the issues raised in the proposed interveners' submissions.[1] The court is not lacking a "full adversarial context" for the resolution of the R.21 motion.

> ***Reference re Workers' Compensation Act 1983 (Nfld)*, [1989] SCJ No 113, at para 13 ["*Re Workers*"]; *Authorson (Litigation guardian of) v Canada (AG)*, [2001] OJ No 2768 at para 19 (CA)**
> **Cf *R v Lepage*, [1994] OJ No 1305 at para 24; *Pinet v Penetanguishene Mental Health Centre (Administrator)* (2006), 80 OR (3d) 139 at paras 42-43 (SC)**

30. In addition, the materials served by the five proposed interveners do not cast any doubts respecting Applicants' counsel's ability to "forcefully and skilfully make the salient points" required to respond to the Governments' motion.

> ***Pearson v Inco Ltd*, [2005] OJ No 803 at para 6 (CA); See also: *McIntyre, supra*, at paras 12, 30; *R v Zundel*, 1986 CarswellOnt 823 at paras 4, 6 (CA)**

31. By May 27, 2013, the date on which the motion to strike is returnable, the Applicants will have had nearly six months to prepare in response to Canada's written submission, and over four months to prepare in response to Ontario's written submission, served on December 5, 2012, and January 16, 2013, respectively. Intervention is denied where the issue on a motion is a "straightforward...one which a competent lawyer who engages in proper research and preparation should be capable of addressing quite comfortably".

> ***Peixeiro, supra*, at para 18**

(ii) The Proposed Interveners lack relevant Special Expertise

32. Although several of the proposed interveners possess expertise, this knowledge is not relevant to the motion to strike. The proposed interveners' expertise pertains to housing rights

[1] As set out below at paras. 36 ff.

under domestic and international law. It is derived from a combination of legal research and empirical studies amassed through interaction with individuals from the constituencies the proposed interveners represent, including those who are "inadequately housed" or "homeless". While the moving parties might seek to rely on this type of expertise in the event they were seeking leave to intervene in the Application on the merits, where different perspectives on the impact of homelessness may be salient to the court's *Charter* analysis, such information is irrelevant to the instant motion to strike, where evidence is inadmissible.

Affidavit of Lorraine Weinrib, para 7-11, Asper Centre Motion Record, pp 3-5
Affidavit of Rebecca Brown, paras 6, 7, 11, 15-17, 21-24, Affidavit of Alex Neve, paras 13-19, AI Coalition Motion Record, pp 12-16, 18-19, 23-24
Affidavit of Ivana Petricone, paras 6-9, 18-21, 23-27, 32-33, 36-39, ARCH Motion Record, Tab 2, pp 2-3, 5-12
Affidavit of Bonnie Morton, paras 3-5, 10-17, Affidavit of Peter Wrinch, paras 8-18, Affidavit of Gerda Kaegi, paras 7-9, 12-15, Affidavit of Annabel Webb, paras 3-10, CCPI Coalition Motion Record, pp 13-14, 18-21, 35-37, 41-44, 50-53
Rules of Civil Procedure, *supra* R. 21.01(2)(b)

33. Where proposed interveners seek intervention in a proceeding in order to make submissions on unrelated matters, leave is regularly denied.

***Fairview, supra,* at para 9; *R v Eurocopter,* [2004] OJ No 2195 at paras 33-35 (ONSC); *McIntyre, supra,* at paras 8, 15; *Canada (AG) v. Cardinal Insurance Co,* 1991 CarswellOnt 474 at para 18 (Gen Div)**

34. As the Court of Appeal explained in *Finta*, it is incumbent on the proposed intervener to demonstrate that their "special knowledge and expertise" is "closely linked with the matters in which they seek the right of intervention". On this motion, the proposed interveners' materials do not assert particular expertise in respect of the Rules of Civil Procedure, motions to strike, the adequacy of pleadings or the principle of justiciability. Where the moving parties have intervened in other litigation, none of the previous cases involved motions to strike under R.21.01(1)(b). In the result, the proposed interveners are unable to make a useful contribution,

let alone one which is distinct from the Applicants, to the discrete legal inquiry as to whether the impugned Application discloses a reasonable cause of action.

> ***Finta, supra,* at para 7; See also: *Dalton, supra,* para 48-49; *Authorson, supra,* para 18**
> **Affidavit of Lorraine Weinrib, para 12-15, Asper Centre Motion Record, pp 5-6**
> **Affidavit of Alex Neve, para 20-25, Affidavit of Rebecca Brown, paras 19-20, AI Coalition Motion Record, pp 16-18, 25-27**
> **Affidavit of Ivana Petricone, paras 10, 13, 22, 28-31, 34, 40-41, ARCH Coalition Motion Record, pp 3-4, 7, 9-13**
> **Affidavit of Bonnie Morton, para 6, Affidavit of Peter Wrinch, paras 19-20, Affidavit of Gerda Kaegi, paras 10-11, 16, CCPI Coalition Motion Record, pp 14-16, 35-37, 42-43, 45-46**
> **ACORN Coalition Factum, para 11**

35. An application for leave to intervene by two of the proposed interveners in the ARCH Coalition, HIV/AIDS Legal Network and HIV/AIDS Legal Clinic Ontario, was recently denied by the Court of Appeal in *Jones*. That case involved an appeal from a successful motion for summary judgment, where the court reiterated the important onus that rests on a proposed intervener to establish a link between their special expertise and the discrete question of law before the court:

> … the expertise of the Legal Network/HALCO seems far removed from the issues that fairly arise here. Indeed, this proposed intervenor seeks to augment the record by the introduction of a now dated survey about attitudes towards those suffering from HIV/Aids. It is unclear to me how such a survey would materially assist a panel of this court in determining whether Ontario law does or should recognize a discrete tort of invasion of privacy.
>
> ***Jones, supra,* at para 34**

(iii) The Proposed Interveners lack a Distinct Perspective

36. The material served by the proposed interveners does not disclose any unique perspective on the law that could make a useful contribution to the analysis of the narrow issue before this court. Instead, the motion records and facta of the proposed interveners set out generally their perspective on the merits of the Applicants' constitutional challenge. This information does not assist the court with the threshold question of clarifying the parameters of its role and

institutional competence to establish and supervise a matter of social and economic policy, namely the effectiveness of government housing strategies. The proposed interveners' submissions are aimed at the incorrect legal question, and in any event, simply "echo" the position of the Applicants on the merits, as articulated in the Amended Notice of Application.[2]

> ***CUPE, supra*, at para 10; *Fairview, supra*, para 10; *Pearson, supra*, at para 6**
> **See: AI Coalition Factum, para 34 and Amended Notice of Application paras 7-10, 26, 33, Attorneys' General Joint Motion Record, pp 6, 10-11, 12;**
> **ARCH Coalition Factum, para 32 and Amended Notice of Application paras 7, 9, 10, Attorneys' General Joint Motion Record, p 6**
> **ACORN Coalition Factum, para 23 and Amended Notice of Application paras 6, 15-19, 34-38, Attorneys' General Joint Motion Record, pp 5, 7-9, 12-13**
> **CCPI Coalition Notice of Motion paras 15(a)-(f), (h)-(j), CCPI Coalition Motion Record, pp 5-8 and Amended Notice of Application paras 6, 8, 27-32, 34-38, Attorneys' General Joint Motion Record, pp 5-6, 11, 12-13**

37. Each of the proposed intervener's materials contain commitments not to duplicate the submissions of a party or any other group granted intervention status. Pledges of this sort do not meet the positive onus on the moving parties. As the court explained in *M. v. H.*:

> What they have done is promise not to overlap or duplicate any of the arguments or materials of the original parties. **However, the onus is on them to persuade the court of the significance of what they would be doing rather than the significance of what they would not be doing**. The moving parties have presented the court with no information as to what contribution they can make to the legal argument in this proceeding, over and above that which will be made by the parties.

> ***M v H, supra*, at para 51 [emphasis added]; See also: *Canadian Blood Services v Freeman*, [2005] OJ No 2159 at para 17 (SC) ["*Freeman*"]**

38. In exercising its discretion to determine an application for leave to intervene, the equities of a case are a legitimate consideration for the court. In *Roks*, Winkler C.J.O. granted

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[2] In certain respects, the proposed interveners' submissions are also duplicative among each other. See for e.g., the international law submissions of the AI Coalition (at AI Coalition Notice of Motion, paras (q)(i)-(iv), (vii), (ix), (xiv), (xvi)-(xvii); Affidavit of Rebecca Brown, para 24, Affidavit of Alex Neve, paras 40(a), 40(d), AI Coalition Motion Record, pp 4-6, 19, 32), the ARCH Coalition (at ARCH Coalition Notice of Motion (j)(i)-(ii); Affidavit of Ivana Petricone, paras 48(iii)-(v), ARCH Coalition Motion Record, Tab 1, pp 4-5, Tab 2, pp 15-16; ARCH Coalition Factum at para 32), and the CCPI Coalition (CCPI Coalition Notice of Motion, para 15(h), CCPI Coalition Motion Record, p 7).

intervention, in part, because "the addition of an intervenor supportive of the appellants' position would not create an appearance of imbalance." In the instant case, where fourteen different organizations, represented by nine counsel, organized into five different coalitions, seek intervener status in a preliminary motion to come to the assistance of the Applicants, equity does not favour intervention. As Justice Major explained:

> Those interventions that argue the merits of the appeal and align their argument to support one party of the other with respect to the specific outcome of the appeal are, on this basis, of no value. **That approach is simply piling on**, and incompatible with a proper intervention.
>
> **Major J., "Interveners and the Supreme Court of Canada", *The National*, 8:3 (May 1999) 27 [emphasis added]**
> ***Roks, supra*, at para 14**
> **See also: *Re Workers, supra* at para 11**

(iv) The Proposed Interveners lack a real, substantial and identifiable Interest

a. Precedent

39. The interest the proposed interveners assert is not a direct interest in the outcome of this proceeding for the four individual applicants and the CERA. It is, instead, an interest in the precedential impact of this court's ruling. The proposed interveners' actual concern relates to the detrimental impact a successful motion to strike could have on their ability to raise similar or related constitutional and international law claims going forward.

> **Affidavit of Kay Bisnath, para 29, Affidavit of Mara Haase, para 32, Affidavit of Sheryl Lindsay, at para 36, ACORN Coalition Motion Record, Tabs 2, 3, 4; ACORN Coalition Factum, para 11:** "the Respondent's motions, if successful, ... would be used as a sword to strike down future attempts to enforce housing rights".
>
> **ARCH Coalition Factum, paras 26:** "[a] dismissal of the Application ... would have a particularly chilling impact on the ability of people with disabilities to present new and unique arguments on the questions of the purpose and meaning of the Charter" (See also para 31).

CCPI Coalition Factum, para 15; Affidavit of Gerda Kaegi, para 20, Affidavit of Annabel Webb, paras 4, 11, CCPI Motion Record at pp 47, 50-51, 54; Affidavit of Bonnie Merton, at para 22, CCPI Motion Record at pp 22-23: "granting the motion to dismiss the Application in the present case would represent a serious set back to the ongoing work of CCPI and its members to achieve...recognition...for the constitutional rights of those living in poverty", and would serve to "thwart CCPI's longstanding efforts" (para 20).

AI Coalition Factum, para 14; Affidavit of Rebecca Brown, para 21, AI Coalition Motion Record, p 18; Affidavit of Alex Neve, para 35, AI Coalition Motion Record, p 31: "[t]he Court's determinations...will have a significant impact on the longstanding efforts of Amnesty...to protect and enhance...social and economic rights, including the right to housing".

Asper Centre Factum, para 19; Asper Centre Notice of Motion para(g), Asper Centre Motion Record, p 3: "the outcome" of the Respondents' motion to strike "will contribute to the existing body of Charter jurisprudence" (See also para (f)).

40. A purely jurisprudential interest in a proceeding is insufficient to establish a basis for intervention. In the seminal statement from *Bolton*, which has been repeatedly endorsed by subsequent courts, Jackett CJ stated:

> No matter how widely one interprets the Court's power to permit person to be heard, it does not extend to permitting a person to be heard merely because he has an interest in another controversy where the same question of law will or may arise as that which will or may arise in the controversy that is before Court.

***Canada v Bolton*, [1976] 1 FC 252 at para 4 (FCA)**
See also: *Dalton* at para 26; *CUPE, supra*, at para 11; *CCH Canadian Ltd v Law Society of Upper Canada*, [2000] FCJ No 949 at paras 15-16 (FCA); *Tioxide Canada Inc v Canada*, [1994] FCJ No 634 at para 2 (FCA); *Schofield v Ontario (Minister of Consumer and Commercial Relations)*, 28 OR (2d) 764 at 767, Wilson JA, (as she then was), 772, Thorson JA, concurring in the result (CA); *Eurocopter, supra*, at paras 44-45; *R v Trang*, [2002] AJ No 223 at para 13 (QB)

41. In the result, the Court of Appeal for Ontario has denied leave to intervene to applicants with pending cases on similar issues. Where, as here, the proposed interveners' concern pertains to future proceedings yet to be commenced, the concern vis-à-vis adverse precedent is more speculative, and even less likely to merit intervention.

***Schofield, supra*, at 769, Wilson JA (as she then was), at 774, Thorson JA, concurring in the result; See also: *Vail, supra*, at para 20**

42. If a precedential interest was sufficient to ground intervention in a proceeding, the operation of the common law would "implode upon itself":

> The … reason, in my opinion, that the discretion to add parties has been exercised cautiously has to do with the very basis upon which the common law is built. It is built upon an incremental system of developing the law. An issue is determined between parties and then, subsequently, an individual who has a case with the same issue pending asks the court hearing his or her matter to decide whether or not the precedent set is applicable. If the courts had previously interpreted or were to interpret Rule 13 as giving intervention rights to individuals who might be affected, adversely or otherwise, solely by the legal precedent which the first case creates, then, as Ms. Eberts [counsel] so aptly put it, there would be no principled way of excluding the second or the 500th case. The common law system would implode upon itself.

***M v H, supra,* at para 33 (see also, paras 30-32); See also: *Tioxide, supra,* at para 2**

43. In *Amnesty International v. Canada*, the Federal Court of Appeal considered an analogous motion seeking leave to intervene initiated by the International Human Rights Clinic (IHRC)—a legal clinic specializing in human rights at the University of Toronto Faculty of Law. The court noted that the proposed intervener had "described itself, in effect, as a law firm," but, like many of the proposed interveners in the instant case, including U. of T.'s Asper Centre, did not purport to intervene on behalf of any client.

***Amnesty International Canada v Canada (Canadian Forces)*, 2008 FCA 257 at paras 1, 3-5**

44. In that proceeding a witness for the IHRC had sworn an affidavit claiming:

> The IHRC has a particular and pressing interest in this Appeal because of the IHRC's interest in ensuring that the Canadian government complies with its obligation under international human rights law and that *Charter* jurisprudence develops in a manner that maximizes respect for international human rights. The IHRC has a particular and pressing interest in ensuring that government authorities do not lose sight of their obligations in respect of such rights once they step outside of their borders, but rather that international human rights are truly given international scope.

***Amnesty, supra* at paras 5, 7**
See also: AI Coalition Factum, paras 13-14, 28

45. In denying intervention, the appellate court held that the clinic's only interest in the appeal was "jurisprudential"—an interest indistinguishable from that of any other group/firm specializing in this area of law:

> I analogize the interest of the Applicant in the appeal to that of the interest of a boutique income tax law firm, specializing in international income tax cases, in a tax appeal dealing with an international income tax issue that is being argued by a different law firm. Clearly, the income tax boutique will be interested in the outcome of the appeal as that outcome may affect its chosen area of international income tax law. Moreover, because of its specialized experience in that area of law, no doubt the income tax boutique would be able to bring useful and potentially unique submissions to the hearing of the appeal. **However, in my view, the interest of the income tax boutique law firm is insufficient to warrant its intervention in the appeal.**
>
> ***Amnesty, supra* at paras 7- 9 [emphasis added]**

b. Public Interest Groups

46. Several of the proposed interveners advance a further interest in support of their motions seeking leave to intervene—namely their experience as public interest groups advocating for legislative and policy change.

> **Affidavit of Alex Neve, paras 26-28, AI Coalition Motion Record, pp 27-29**
> **Affidavit of Ivana Petricone, para 17, ARCH Coalition Motion Record, p 5**
> **CCPI Coalition Factum, para 8; Affidavit of Gerda Kaegi, paras 3-4, CCPI Coalition Motion Record, p 40**
> **Affidavit of Kay Bisnath, paras 23-24, Affidavit of Mara Haase, paras 27, 30, Affidavit of Sheryl Lindsay, para 25, ACORN Coalition Motion Record, Tabs 2, 3, 4**

47. Although the court no longer imposes a strict requirement of neutrality on *amicus curiae* applicants, experience as a lobbyist or interest group does not form a basis for establishing a "real, substantial and identifiable interest" in a proceeding. In this case, the proposed interveners' experience in seeking changes in housing policy does not support a claim that they

will be likely to make a useful contribution to the resolution of the instant motion to strike. As Lang J. observed in *Halpern*:

> EGALE's stated experience as an interest group and lobbyist is insufficient to meet the test. **I would go further and say that lobbyists should not be given access to the courts. Lobbyists seek to persuade governments to change or to implement laws. Courts do not change or implement laws. Courts interpret the laws given them by government**, although such interpretation is sometimes done, as it will be here, with the backdrop of protected rights given to us by the Charter.
>
> ***Halpern, supra,* para 24, [emphasis added]**
> **See also: *Oakwell, supra,* at para 9; *Freeman, supra,* at para 17; *Peixeiro, supra,* at para 19**

48. Citing *Ward v. Canada*, the court counselled vigilance in respect of intervention applications from advocacy groups:

> While courts in considering the "public interest" in applications of this kind are somewhat less restrictive than before the Charter came into being, **the court must be ever vigilant to ensure that public interest groups not be allowed to use the courtroom as a forum to advocate a particular cause or to draw public attention to their pursuits**. It is only where a person or group can assist the Court in its determination of the constitutional issue before it that intervention should be allowed under the umbrella of "public interest".
>
> ***Halpern, supra* at para 25, citing *Ward v Canada et al*, [1997] N.J. No. 113 at para 23 (Nfld TD)**
> **See also: *Lepage, supra,* at para 35; Major J., "Interveners and the Supreme Court of Canada", *The National*, 8:3 (May 1999) 27**

49. There is a qualitative difference between a political interest in housing policy, which many of the proposed interveners assert, and a legal interest in the question of justiciability, which the moving parties lack.

> ...a well motivated concern and interest in the outcome of a particular proceeding before the Court is not, per se, a legal reason for permitting intervention and participation in that proceeding.
>
> ***Solosky v The Queen*, [1978] 1 FC 609 at para 8 (FCA)**

(v) Other Considerations

a. The Public Interest

50. Public interest considerations also inform the court's exercise of discretion respecting an application for intervention. On a preliminary motion involving a discrete legal inquiry, the public interest mandates the judicious use of limited court resources.

51. While it is important in constitutional cases for a court to receive a diversity of representations, "such litigation must be administered fairly and with due regard to the efficiencies entailed in a traditional entry test requiring a 'real, substantial and identifiable interest in the outcome' of a case." As this court explained in *Dieleman*, when considering applications seeking leave to intervene:

> it is clear that every concerned citizen willing to devote time and resources to a matter cannot be granted a participatory role without impairing the effectiveness of the judicial process. Therefore, some line-drawing is inevitable.

***Dieleman, supra*, at para 7**
See also: *Adler v Ontario*, [1992] OJ No 223 at para 41 (Gen Div)

52. In establishing parameters the controlling criteria should be to prevent repetitive material that is irrelevant to the discrete issue before the court from occupying valuable hearing time, and thereby depleting both public and private resources.

***Lepage, supra*, at para 23**

53. Limiting inappropriate interventions in this manner fosters the important goal of access to justice by ensuring that costs to the parties in question are lessened, and court resources are released from dealing with unmeritorious applications and can be made available to other litigants.

***Seascape 2000 Inc v Canada (AG)*, 2012 NLTD(G) 185 at para 20** (respecting the similar rationale which informs motions to strike)

b. Co-operation with the Applicants

54. The Applicants have yet to serve and file their written submission in response to the Attorneys' General motion to strike.

55. While the Applicants support each of the five motions seeking leave to intervene, they have not filed any evidence or written submission indicating an inability to respond to the discrete legal issue raised on this motion. Even if the proposed interveners were able to assist on the motion to strike, the Divisional Court has held that regardless "[t]his factor cannot advance an intervener application. Intervention is not granted simply to provide help to a party. If a party has difficulty with resources, such a difficulty must be addressed in other ways."

> ***Halpern, supra,* para 30 (Div Ct); Applicants' Consent, Attorneys' General Joint Motion Record, p 27**

56. The Applicants and the proposed interveners share an "identity of interest" in supporting the merits of the Applicants' challenge which seeks to impose positive housing obligations on the state under ss. 7 and 15 of the *Charter*. In the event intervention is denied, it remains open to the Applicants to consult the proposed interveners as they see fit, if the Applicants consider that the proposed interveners are in a position to aid their response to the motion to strike. There is no reason to believe such assistance would not be forthcoming:

> Finally, I note that in R. v. Finta (1990), 1 O.R. (3d) 183 at pp. 186-87, 44 O.A.C. 349, the Ontario Court of Appeal denied leave to intervene in an appeal by the Attorney General of Canada against the respondent's acquittal on an indictment alleging certain "crimes against humanity" and "war crimes". While the Canadian Holocaust Remembrance Association ("CHRA") was recognized to have a "profound interest" in the decision, the court was not convinced that "the assistance which the moving party could give . . . as an intervener would be

> different from that which [would] be given by the Attorney General of Canada". It was also noted by the court that if the Attorney General needed assistance from the CHRA "there [was] every reason to believe that it would be forthcoming".

***Dieleman, supra,* at para 13**
***Stadium Corp, supra*, at para 12 (identity of interest); See also: *Solosky, supra,* at para 14**

57. The unique present and historic interconnection between the institutional Applicant in this proceeding, CERA, and several of the proposed interveners, enhances the likelihood of such assistance being rendered:

- CERA is a member of the Adjudication Working Group of ESCR-Net, a proposed intervener within the AI Coalition; [AI Coalition Notice of Motion, para (m), AI Coalition Motion Record, p 3]

- To 2002, CERA co-ordinated interventions in *Charter* litigation by CCPI, a proposed intervener within the CCPI Coalition, and;

- HALCO, a proposed intervener within the ARCH Coalition, has previously been a member of CERA.

SECTION B:
PARTICULAR SUBMISSIONS RESPECTING THE PROPOSED INTERVENERS

58. In the Attorney General of Ontario's submission, each of the proposed interveners fails to establish that it can make a useful contribution to the resolution of this motion without causing injustice to the parties.

59. **The Amnesty International ["AI'] Coalition**

- ESCR-Net, a proposed intervener within the AI Coalition is based in the United States. The evidence filed on behalf of ESCR-Net does not identify a single Canadian case in which it has been granted leave to intervene: Affidavit of Rebecca Brown, paras 18-20, AI Coalition Motion Record, pp 16-18.

- International law is raised by the Applicants in the main Application. To the extent it is relevant on the motion to strike (which is not conceded), counsel for the Applicants can be expected to address it. Intervention by an international organization is not justified simply because international law may be an issue--courts assume that to the extent international law and its interpretation in other jurisdictions is salient, parties' counsel will bring the relevant authorities to the attention of the adjudicator: *Delgamuukw v British Columbia*, 1991 CarswellBC 2048 at paras 3, 8 (CA); AI Coalition Factum, para 34(i).

60. **The Asper Centre**

- Successful requests for intervention in previous cases does not predetermine the propriety of intervention in the present case: Asper Centre Factum, at paras 4, 5, 18. Every motion commenced pursuant to rule 13.02 must be determined on a case by case basis on the evidence and submissions presented: *Bedford v Canada*, [2009] O.J. No. 2739 at para 17 (SC) (rev'd on other grounds: 98 OR (3d) 792 (CA)).

- Proposing to confine their submissions to the issue of remedy does not absolve the Asper Centre from its burden of demonstrating an ability to contribute to the resolution of the narrow question at issue in this motion to strike: *Vail*, *supra* at para 16.

- The Asper Centre intends to defend the justiciability of the requested remedy "*if this Honourable Court ultimately finds that the Applicants' Charter rights have been unjustifiably infringed*": Asper Centre Notice of Motion, para (i), Asper Centre Motion Record, p 3. As the Asper Centre candidly acknowledges, the propriety of the Applicants' request for relief only becomes ripe subsequent to a determination on the merits of the ss. 7 and 15 challenge. It would be premature for this court to hear submissions respecting the propriety of the remedy requested at this stage of the litigation, when it has yet to be established that a reasonable cause of action has been pleaded--in the event that the motion to strike is granted, the issue of remedy will become moot, alternatively if the motion to strike is dismissed, the issue of remedy will be addressed on the hearing of the main application if the *Charter* violation is substantiated.

- Although Ontario's written submission served on the motion to strike notes deficiencies with the Applicants' request for relief, such flaws were identified to exemplify the inherent non-justiciability of the Applicants' underlying *Charter* claim: see Attorney General of Ontario Factum, paras 58-59 (motion to strike), AI Coalition Motion Record, p 93.

61. **The CCPI Coalition**

- The CCPI Coalition claims experience in advocating for judicial recognition of the "social condition" of poverty and homelessness as an analogous ground under *Charter* s.15: CCPI Coalition Factum, paras 21-22. While the Coalition might seek to rely on this type of expertise in the event they were seeking leave to intervene in the Application on the merits, such expertise is entirely unrelated to the instant inquiry respecting whether the Application

raises a justiciable claim. The fact that the proposed interveners "are prepared to make more sweeping constitutional arguments" does not create a basis for intervention: *Stadium Corp, supra* at para 14.

62. **The ACORN Coalition**

- None of the constituent members of the ACORN Coalition has ever been granted leave to intervene in a judicial proceeding: ACORN Coalition Factum, para 11. The Coalition is not a well recognized group with special expertise and a broadly identifiable membership base.

63. **The AI, ARCH, CCPI and ACORN Coalitions**

Each of the above-noted Coalitions asserts a perspective which they allege is distinct from the parties, based on the constituencies they represent. However, in each instance, the proposed intervener's perspective does not address the issue on the motion—justiciability and the role and institutional competence of the court to determine the Applicants' claim. In any event, the institutional applicant CERA has many of the same characteristics of the proposed interveners. CERA is a non-governmental not for profit human rights organization, with experience in advocating for the rights of persons with disabilities, women, low income persons and tenants.[3]

AI Coalition Factum, para 29
ARCH Coalition Factum, para 31
CCPI Coalition Factum, paras 17, 26
Affidavit of Mara Haase, paras 31-33, Affidavit of Sheryl Lindsay, paras 35, 38, ACORN Coalition Motion Record Tabs 3, 4
Amended Notice of Application, para 5, Attorneys' General Joint Motion Record, p 5

Conclusion

64. The moving parties bear the onus of demonstrating an ability to make a useful contribution to the resolution of this proceeding. The proposed interveners have not met this burden. They lack expertise relevant to the legal issue of justiciability that must be resolved on

[3] The individual Applicants on the main Application also include a disabled person, and two women: Amended Notice of Application, paras 1-4, Attorneys' General Joint Motion Record, pp 4-5.

this motion to strike. The proposed interveners do not demonstrate a perspective that is distinct from the Applicants, and their interest in this proceeding is precedential, not direct.

65. In exercising its discretion to determine intervention, the court must balance the contribution that might be made by the interveners with the disruption caused by the increase in the magnitude, timing, complexity and costs of the original proceeding. This balancing does not favour the proposed interveners—leave to intervene should be denied.

PART IV – ORDER REQUESTED

66. The Attorney General of Ontario requests:

a. an Order dismissing each of the motions seeking to leave to intervene in the Respondents' motion to strike; and

b. such further relief as this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 1st day of March, 2013.

Janet E. Minor

Arif Virani

Counsel for the Respondent
(Responding Party on Motions),
the Attorney General of Ontario

TAB A

Schedule "A"

1 *Peel (Regional Municipality) v Great Atlantic and Pacific Co of Canada Ltd,* [1990] OJ No 1378

2 *R v Roks*, 2010 ONCA 182

3 *M v H*, [1994] OJ No 2000 (CA)

4 *Halpern v Toronto (City) Clerk*, [2000] OJ No 4514 (Div Ct)

5 *Attorney General of Ontario v Dieleman et al*, [1993] OJ No 2587 (Gen Div)

6 *Bedford v Canada (AG)* (2009), 98 OR (3d) 792 (CA)

7 *Jones v Tsige* (2011), 106 OR (3d) 721 (CA)

8 *Issasi v Rosenzweig*, 2011 ONCA 198

9 *Dalton v Hutton*, [2003] NJ No 28 (SC)

10 *Stadium Corp of Ontario Ltd v Toronto,* [1992] OJ No 1574 (Div Ct)

11 *McIntyre Estate v Ontario (AG),* [2001] OJ No 3206 (CA)

12 *R v Finta,* [1990] OJ No 2282 (CA)

13 *Canadian Union of Public Employees (Airline Division) v Canadian Airlines International Ltd* [2000] FCJ No 220 (FCA)

14 *Oakwell Engineering Ltd v Enernorth Industries Inc,* [2006] OJ No 1942 (CA)

15 *Fairview Donut Inc v TDL Group Corp*, [2008] OJ No 4720 (SC)

16 *Ethyl Canada Inc v Canada (AG)*, [1997] OJ No 4225 (Gen Div)

17 *Peixeiro v Haberman*, [1994] OJ No 2459 (Gen Div)

18 *Vail v Prince Edward Island (Workers' Compensation Board),* 2011 PECA 17

19 *Drennan v K2 Wind* , 2013 ONSC 1176

20 *Leadbetter v Ontario*, [2011] OJ No 3472 (ONSC)

21 *Dee v Canada (Minister of Employment and Immigration),* 1987 CarswellNat 117 (FCTD)

22 *John Doe v Ontario (Information and Privacy Commissioner)*, 1991 CarswellOnt 470 (Div Ct)

23 *Reference Re Succession of Quebec,* [1998] 2 SCR 217

24 *Reference re Workers' Compensation Act 1983 (Nfld),* [1989] SCJ No 113

25 *Authorson (Litigation guardian of) v Canada (AG),* [2001] OJ No 2768 (CA)

26 *R v Lepage*, [1994] OJ No 1305 (Gen Div)

27 *Pinet v Penetanguishene Mental Health Care (Administrator)* (2006), 80 OR (3d) 139 (SC)

28 *Pearson v Inco Ltd,* [2005] OJ No 803 (CA)

29 *R v Zundel*, 1986 CarswellOnt 823 (CA)

30 *R v Eurocopter Canada Ltd,* [2004] OJ No 2195 (ONSC)

31 *Canada (AG) v Cardinal Insurance Co,* 1991 CarswellOnt 474 (Gen Div)

32 *Canadian Blood Services v Freeman*, [2005] OJ No 2159 (SC)

33 *Canada v Bolton*, [1976] 1 FC 252 (FCA)

34 *CCH Canadian Ltd v Law Society of Upper Canada*, [2000] FCJ No 949 (FCA)

35 *Tioxide Canada Inc v Canada*, [1994] FCJ No 634 (FCA)

36 *Schofield v Ontario (Minister of Consumer and Commercial Relations),* 28 OR (2d) 764 (ONCA)

37 *R v Trang,* [2002] AJ No 223 (QB)

38 *Amnesty International Canada v Canada (Canadian Forces)*, 2008 FCA 257

39 *Solosky v The Queen,* [1978] 1 FC 609 (FCA)

40 *Adler v Ontario*, [1992] OJ No 223 (Gen Div)

41 *Seascape 2000 Inc v Canada (AG),* 2012 NLTD(G) 185

42 *Delgamuukw v British Columbia*, 1991 CarswellBC 2048 (CA)

43 *Bedford v Canada*, [2009] OJ No 2739 (SC)

Text

44 Major J, "Interveners and the Supreme Court of Canada", *The National*, 8:3 (May 1999) 27

TAB B

Schedule "B"

Legislation

1 *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being schedule B to the *Canada Act 1982 (UK),* c 11, ss 1, 7, 15

2 Rules of Civil Procedure, RRO 1990, Reg 194, Rule 13.02, 14.09 and 21.01(1), 21.01(2)

3 *Courts of Justice Act*, RSO 1990, c C.43, s 106

Canadian Charter of Rights and Freedoms

Part I of the *Constitution Act, 1982,* being schedule B to the *Canada Act 1982 (UK),* c 11

Guarantee of Rights and Freedoms
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.

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.

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 origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

RULES OF CIVIL PROCEDURE

Made under the *Courts of Justice Act*, RRO 1990, Reg. 194

RULE 13
INTERVENTION

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

RULE 14
ORIGINATING PROCESS

• • •

STRIKING OUT OR AMENDING

14.09 An originating process that is not a pleading may be struck out or amended in the same manner as a pleading.

RULE 21
DETERMINATION OF AN ISSUE BEFORE TRIAL

WHERE AVAILABLE

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b).

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Stay of proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O. 1990, c. C.43, s. 106.

JENNIFER TANUDJAJA et al.	v.	ATTORNEY GENERAL OF CANADA et al.	Court File No.: CV-10-403688
Applicants		Respondents (Responding Parties on Motion)	

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding commenced at Toronto)

FACTUM OF THE RESPONDENT,
the Attorney General of Ontario
(Motions Seeking Leave to Intervene,
returnable March 7, 2013)

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