

Court of Appeal File No.:

Superior Court File Nos.:

**CV-20-00636089-0000,
CV-20-00636421-0000,
CV-20-00636524-0000,
CV-20-00636529-0000,
CV-20-00637314-0000,
CV-20-00638156-0000,
CV-20-00646385-0000,
CV-20-00084683-0000,
CV-20-00653134-0000,
CV-20-00653130-0000**

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**ONTARIO ENGLISH CATHOLIC TEACHERS ASSOCIATION, ALEXANDRA
BUSCH AND KAREN EBANKS**

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by THE
ATTORNEY GENERAL OF ONTARIO, PRESIDENT OF THE TREASURY BOARD,
and THE MINISTER OF EDUCATION**

Respondents (Appellants in appeal)

(Title of Proceeding Continued on p. 2)

NOTICE OF APPEAL

AND BETWEEN:

**ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, PAUL WAYLING
and MELODIE GONDEK**

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by
THE PRESIDENT OF THE TREASURY BOARD, THE MINISTER OF
EDUCATION, and THE ATTORNEY GENERAL OF ONTARIO**

Respondents (Appellants in appeal)

AND BETWEEN:

**THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, ASSOCIATION
DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS, JADE
ALEXIS CLARKE, CHRISTINE GALVIN, and YVES DUROCHER**

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by
the ATTORNEY GENERAL OF ONTARIO, the PRESIDENT OF THE TREASURY
BOARD, and the MINISTER OF EDUCATION**

Respondents (Appellants in appeal)

AND BETWEEN:

**ONTARIO NURSES' ASSOCIATION, VICKI MCKENNA
and BEVERLY MATHERS**

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by
the ATTORNEY GENERAL OF ONTARIO, the PRESIDENT OF THE TREASURY
BOARD, MINISTER OF HEALTH and MINISTER OF LONG-TERM CARE**

Respondents (Appellants in appeal)

AND BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION and WARREN (“SMOKEY”) THOMAS, EDUARDO ALMEIDA, SANDRA CADEAU, DONNA MOSIER, ERIN CATE SMITH RICE, and HEIDI STEFFEN-PETRIE

Applicants (Respondents in appeal)

- and -

THE CROWN IN RIGHT OF ONTARIO as represented by the ATTORNEY GENERAL OF ONTARIO and THE PRESIDENT OF THE TREASURY BOARD

Respondents (Appellants in appeal)

AND BETWEEN:

ONTARIO FEDERATION OF LABOUR, CANADIAN UNION OF PUBLIC EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1 CANADA, ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS, ASSOCIATION OF PROFESSORS OF THE UNIVERSITY OF OTTAWA, BRESCIA UNIVERSITY FACULTY ASSOCIATION, BROCK UNIVERSITY FACULTY ASSOCIATION, FACULTY ASSOCIATION OF THE UNIVERSITY OF WATERLOO, HURON UNIVERSITY COLLEGE FACULTY ASSOCIATION, KING’S UNIVERSITY COLLEGE FACULTY ASSOCIATION, LAKEHEAD UNIVERSITY, LAURENTIAN UNIVERSITY FACULTY ASSOCIATION, MCMASTER UNIVERSITY ACADEMIC LIBRARIANS’ ASSOCIATION, MCMASTER UNIVERSITY FACULTY ASSOCIATION, NIPISSING UNIVERSITY FACULTY ASSOCIATION, ONTARIO COLLEGE OF ART AND DESIGN FACULTY ASSOCIATION, QUEEN’S UNIVERSITY FACULTY ASSOCIATION, RENISON ASSOCIATION OF ACADEMIC STAFF, RYERSON FACULTY ASSOCIATION, ST. JEROME’S UNIVERSITY ACADEMIC STAFF ASSOCIATION, TRENT UNIVERSITY FACULTY ASSOCIATION, UNIVERSITY OF ONTARIO INSTITUTE OF TECHNOLOGY FACULTY ASSOCIATION, UNIVERSITY OF TORONTO FACULTY ASSOCIATION, UNIVERSITY OF WESTERN ONTARIO FACULTY ASSOCIATION, WILFRED WILFRID LAURIER UNIVERSITY FACULTY ASSOCIATION, WINDSOR UNIVERSITY FACULTY ASSOCIATION, YORK UNIVERSITY FACULTY ASSOCIATION, ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL CROWN EMPLOYEES OF ONTARIO, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, PUBLIC SERVICE ALLIANCE OF CANADA, SOCIETY OF UNITED PROFESSIONALS LOCAL 160, AMALGAMATED TRANSIT UNION LOCAL 1587, CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 636,

WORKERS UNITED CANADA COUNCIL, PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA, UNITED FOOD AND COMMERCIAL WORKERS LOCAL 175, ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS FRANCO-ONTARIENS UNITÉ 203, AEFO UNITÉ 103, EDUCATIONAL ASSISTANTS ASSOCIATION, HALTON DISTRICT EDUCATION ASSISTANTS ASSOCIATION, DUFFERIN-PEEL EDUCATION RESOURCE WORKERS' ASSOCIATION, ASSOCIATION OF PROFESSIONAL STUDENT SERVICES PERSONNEL, UNITE HERE LOCAL 272, SEIU LOCAL 2, CANADIAN MEDIA GUILD, LOCAL 30213 OF THE NEWSPAPER GUILD/COMMUNICATIONS WORKERS OF AMERICA, RON BABIN, STEPHANIE BANGARTH, CARMEN BARNWELL, ROCKLYN BEST-PIERCE, PAMELA BONIFERRO, ANDREW BRAKE, NEIL BROOKS, NATASHA BROUILLETTE, DANIEL G. BROWN, COLLEEN BURKE, MITCHELL CHAMPAGNE, JOHN CIRIELLO, FABRICE COLIN, CLAIRE COPP, WILLIAM CORNET, ALLYSON CULLEN, GAUTAM DAS, RYAN DEVITT, TIMOTHY EDNEY, MELISSA ELLIS, KIMBERLY ELLIS-HALE, PEDRAM KARIMIPOUR FARD, CARRIE GERDES, ALISON GRIGGS, MYRON GROOVER, ELKAFI HASSINI, ELIZABETH HANSON, JEAN-DANIEL JACOB, MELISSA JEAN, BETTY JONES, NADIA KERR, NATHAN KOZUSKANICH, SAHVER KUZUCUOGLU, MIN SOOK LEE, RICHARD LEHMAN, DAVID LENGYEL, KRISTINA LLEWELLYN, SUSAN LUCEK, ELIZABETH MACDOUGALL-SHACKLETON, TERRY MALEY, MEREDITH MARTIN, BRANDI MATTHIAS, STEPHANIE MCKNIGHT, LUCIE MÉNARD, DAVID MONOD, DAVID R. NEWHOUSE, KIMBERLY NUGENT, LISA PATTISON, LOUIS PELLETIER, TOM POCRNICK, KEVIN PORTER, WANDA REID, PAULINE RICKARD, LOIS ROSS, LORNA ROURKE, ALLAN ROWE, ELLEN SIMMONS, COLLEEN DIETRICH SISSON, RYAN STUDINSKI, ALBERTO TONERO, ARI JOHAN VANGEEST, JOY WAKEFIELD, JUDY WATSON, MICHELLE WEBBER, DON WILSON, PETER ZIMMERMAN, and TEREZIA ZORIC on their own behalf and on behalf of all other employees in bargaining units affected by this Application

Applicants (Respondents in appeal)

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the ATTORNEY GENERAL OF ONTARIO and the PRESIDENT OF THE TREASURY BOARD

Respondents (Appellants in appeal)

AND BETWEEN:

UNIFOR, KELLY GODICK, SARAH BRAGANZA, and KATHLEEN ATKINS

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by
the ATTORNEY GENERAL OF ONTARIO and the PRESIDENT OF THE
TREASURY BOARD**

Respondents (Appellants in appeal)

AND BETWEEN:

**CARLETON UNIVERSITY ACADEMIC STAFF ASSOCIATION and ANGELO
MINGARELLI, ROOT GORELICK, and R. GREGORY FRANKS on their own
behalf, and on behalf of all the members of the Carleton University Academic Staff
Association**

Applicants (Respondents in appeal)

- and -

**THE CROWN IN RIGHT OF ONTARIO as represented by the PRESIDENT OF THE
TREASURY BOARD**

Respondents (Appellants in appeal)

AND BETWEEN:

**SOCIETY OF UNITED PROFESSIONALS, LOCAL 160 OF THE INTERNATIONAL
FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, JO-ANN
KINNEAR, CINDY ROKS, and JANET SAKAUYE**

Applicants (Respondents in appeal)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the
ATTORNEY GENERAL OF ONTARIO and the PRESIDENT OF THE TREASURY
BOARD**

Respondents (Appellants in appeal)

AND BETWEEN:

**POWER WORKERS' UNION (CANADIAN UNION OF PUBLIC EMPLOYEES,
LOCAL 1000), ANDREW CLUNIS and ROBERT BUSCH**

Applicants (Respondents in Appeal)

- and -

**THE CROWN IN RIGHT OF ONTARIO as represented by
the PRESIDENT OF THE TREASURY BOARD, and the ATTORNEY GENERAL OF
ONTARIO**

Respondents (Appellants in appeal)

NOTICE OF APPEAL

THE APPELLANTS, HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by THE ATTORNEY GENERAL OF ONTARIO, THE PRESIDENT OF THE TREASURY BOARD, THE MINISTER OF EDUCATION, THE MINISTER OF HEALTH AND THE MINISTER OF LONG-TERM CARE, APPEAL to the Court of Appeal for Ontario from the judgment of the Honourable Justice Markus Koehnen of the Superior Court of Justice dated November 29, 2022, made at Toronto, Ontario.

THE APPELLANTS ASK that the judgment be set aside and a judgment be granted as follows:

1. That the appeal be allowed and the applications be dismissed with costs;
2. In the alternative, that the appeal be allowed and the decision below varied to reflect the least intrusive remedy; and
3. Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS OF APPEAL are as follows:

1. The honourable application judge erred in holding that the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, SO 2019, c 12 [“Act”] infringes s. 2(d) of the

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*“Charter”*] and, in particular, the application judge:

- a. erred in holding that the financial impact of the Act’s limits on annual compensation increases substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;
- b. erred in holding that the Act limits unions’ ability to trade sought compensation increases against other issues in a manner that substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;
- c. erred in holding that the Act impacts the unions’ ability to address staffing shortages in a manner that substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;
- d. erred in holding that the Act disrupts long-standing bargaining relationships and patterns by fragmenting bargaining units into public and private sector units in a manner that substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;
- e. erred in holding that the Act impacts employee self-government in a manner that substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;
- f. erred in holding that the Act impacts freely negotiated agreements in a manner that substantially interferes with the Respondents’ right to a meaningful process of collective bargaining;

- g. erred in holding that the Act prohibits affected employees from striking to obtain an annual compensation increase of more than 1 percent or limits the effectiveness of strikes in a manner that substantially interferes with the Respondents' right to a meaningful process of collective bargaining;
- h. erred in holding that the Act interferes with the independence, impartiality and effectiveness of interest arbitration in a manner that substantially interferes with the Respondents' right to a meaningful process of collective bargaining;
- i. erred in holding that the Act and the Appellants' conduct undermines the relationship between unions and their members in a manner that substantially interferes with the Respondents' right to a meaningful process of collective bargaining;
- j. erred in holding that the Act impacts the balance of power between employers and employees in a manner that substantially interferes with the Respondents' right to a meaningful process of collective bargaining;
- k. erred in failing to find that the communications from the Respondent unions to their members demonstrates that the Respondents continue to have access to a meaningful process of collective bargaining;
- l. erred in preferring the evidence of Prof. Robert Hebdon (the Respondents' expert witness on collective bargaining) over the evidence of Prof. Chris Riddell (the Appellants' expert witness on collective bargaining);
- m. erred in holding that the exemption process under the Act does not support the Act's validity under s. 2(d) of the *Charter*;

- n. erred in holding that the Appellants did not engage in good faith consultation before the Act was enacted;
 - o. erred in holding that the applications before the application judge were distinguishable from decisions of the Supreme Court, this Court, and other Courts of Appeal dismissing constitutional challenges against the federal *Expenditure Restraint Act*, SC 2009, c 2, section 393; and
 - p. erred by declining to follow the decision of the Manitoba Court of Appeal dismissing a constitutional challenge against Manitoba's *Public Services Sustainability Act*, CCSM c P 272.
2. The honourable application judge erred in holding that any infringement of s. 2(d) of the *Charter* was not demonstrably justified under s. 1 of the *Charter* and, in particular, the application judge:
- a. erred by mischaracterizing the pressing and substantial objective advanced by the Act and by failing to accept the pressing and substantial objective identified by the Appellants, namely to “moderate the rate of growth of compensation increases for public sector employees so as to manage the Province’s finances in a responsible manner and to protect the sustainability of public services”;
 - b. erred in holding that the Act does not advance a pressing and substantial objective;
 - c. erred in holding that there is no rational connection between the Act and its pressing and substantial objective;

- d. erred in holding that the Act is not a minimally impairing means for advancing its pressing and substantial objective; and
- e. erred in holding that the salutary effects of the Act do not outweigh any infringement of *Charter* rights.

3. In the alternative, the application judge erred in declaring the entire Act invalid rather than adopting the least intrusive remedy. The application judge ought to have considered alternative remedies, including but not limited to reading down the legislation in a manner which confined the declarations of unconstitutionality to only those portions of the Act which were held to infringe s. 2(d) of the *Charter* and could not be saved by s. 1 of the *Charter*.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:

1. Sections 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
2. The appeal is from a final order of a judge of the Superior Court of Justice and no appeal lies to the Divisional Court; and
3. Leave to appeal is not required for this appeal.

December 29, 2022

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ONTARIO ENGLISH CATHOLIC TEACHERS ASSOCIATION et al. -and- HIS MAJESTY THE KING IN RIGHT OF ONTARIO et al.

Applicants (Respondents in appeal)

Respondents (Appellants in appeal)

COURT OF APPEAL FOR ONTARIO

NOTICE OF APPEAL

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Ontario et al.