

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

**MOUNTED POLICE ASSOCIATION OF ONTARIO / ASSOCIATION DE LA POLICE
MONTÉE DE L'ONTARIO and B.C. MOUNTED POLICE PROFESSIONAL
ASSOCIATION, ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS
AND EMPLOYEES OF THE ROYAL CANADIAN MOUNTED POLICE**

Appellants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER
(Pursuant to Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156,
as amended)

HEENAN BLAIKIE LLP
Bay Adelaide Centre
333 Bay Street, Suite 2900
Toronto, ON M5H 2T4

HEENAN BLAIKIE LLP
55 Metcalfe Street
Suite 300
Ottawa, Ontario K1P 6L5

John D. R. Craig – LSUC No. 41850V
Telephone : (416) 360-3527
Facsimile: (416) 360-8425
Email : jcraig@heenan.ca

Judith Parisien
Telephone : (613) 236-4673
Facsimile : (866) 224-5596
Email : jparisien@heenan.ca

Christopher D. Pigott – LSUC No. 59036A
Telephone : (416) 643-6986
Facsimile: (416) 360-8425
Email : cpigott@heenan.ca

**Ottawa Agent for the Proposed Intervener,
Mounted Police Members' Legal Fund**

**Counsel for the Proposed Intervener,
Mounted Police Members' Legal Fund**

PART I – STATEMENT OF FACTS**A. Overview**

1. The central issue in this appeal is whether the Royal Canadian Mounted Police's ("RCMP") current labour relations regime interferes with RCMP members' freedom of association in violation of section 2(d) of the *Canadian Charter of Rights and Freedoms*.

2. The proposed intervener, the Mounted Police Members' Legal Fund / Fonds de Recours Juridique des Membres de la Gendarmerie (the "Legal Fund"), has a direct and significant interest in this appeal. This is because the Legal Fund represents the interests (including the employment-related interests) of the approximately 17,000 RCMP members who have elected to become members of the Legal Fund. In fulfilling this role and performing its other activities, the Legal Fund is itself an important part of the RCMP's current labour relations regime.

3. Furthermore, if the appeal is allowed, then the Legal Fund's and its members' interests would suffer a direct and significant adverse impact.

4. If granted leave to intervene, the Legal Fund intends to make submissions that will be useful to this Honourable Court and different from those of the parties and other interveners. In particular, the Legal Fund's submissions will explain the key features of the RCMP's workplace and how the RCMP's current labour relations system operates in practice. The Legal Fund will also explain how these features facilitate a process of good faith consultation and dialogue between RCMP members and RCMP management, in accordance with section 2(d) of the *Canadian Charter of Rights and Freedoms*.

5. The Legal Fund is uniquely placed to address these issues. It is the only organization that represents a broad range of RCMP members, and also has extensive experience within the RCMP's current labour relations regime.

6. The Legal Fund also has considerable intervener experience, including before the Supreme Court of Canada, in respect of the nature and features of the RCMP's labour relations regime and the application of section 2(d) of the *Canadian Charter of Rights and Freedoms* in this context.

7. The Legal Fund respectfully requests that it be granted intervener status, to be permitted to file a factum of no more than ten (10) pages, and to be permitted to make oral submissions at the hearing of the appeal.

A. The Legal Fund

(i) Structure and Objects

8. The Legal Fund has approximately 17,000 regular and civilian members, each of whom is a member of the RCMP. Approximately 77% of RCMP members are members of the Legal Fund. Membership in the Legal Fund is entirely voluntary.¹

9. The Legal Fund is entirely self-governed, independent and autonomous, with independent, democratically-elected directors and officers who are all members of the RCMP and of the Legal Fund. It is funded exclusively by the dues of its members.²

10. The Legal Fund performs an important role in the RCMP's labour relations regime by representing and advancing its members' interests and working for their benefit and welfare.³

¹ Affidavit of Mr. Paul Joyal sworn June 10, 2013, Proposed Intervener's Motion Record, Tab 2 ("Joyal Affidavit"), para. 3.

² Joyal Affidavit, para. 4.

11. The Legal Fund's objects include resolving issues that arise between members of the Legal Fund and the RCMP or the Government of Canada and taking action in respect of any matter that affects the dignity or welfare of a member of the Legal Fund. This includes, but is not limited to, employment-related matters that may arise under RCMP policies and directives.⁴

12. Ever since the Legal Fund was established, its officers and directors have also been Staff Relations Representatives involved in the Staff Relations Representative Program ("SRRP"), which is the labour relations program at the centre of this appeal. These Staff Relations Representatives are democratically elected by the members of the RCMP to represent members' workplace interests. In this capacity, the Legal Fund's officers and directors work alongside RCMP members in the workplace, hear their concerns and, where appropriate, assist and represent them.⁵

13. The Legal Fund is open to all members of the RCMP, regardless of position or rank. This unique feature allows the Legal Fund to obtain views from a broad constituency of RCMP members, formulate positions on the issues that concern its members, and seek resolutions to those issues that are in the best interests of all interested parties.⁶

14. The Legal Fund provides many types of assistance to RCMP members. Among other things, the Legal Fund brings members' concerns about workplace, employment and pay-related issues to the attention of RCMP management, media and politicians, working to achieve results through dialogue, consultations, negotiation, and litigation. It works, through meetings, presentations, and hearings, with the assistance of research organizations, independent consultants, and legal counsel, to try to persuade the RCMP and the Government of Canada to

³ Joyal Affidavit, para. 6.

⁴ Joyal Affidavit, para. 7.

⁵ Joyal Affidavit, para. 8.

⁶ Joyal Affidavit, para. 9.

adopt policies and laws that are favourable to the dignity and welfare of the members of the Legal Fund, and members of the RCMP generally. The Legal Fund carries out these functions in pursuit of its objects and, in doing so, is an important element of the labour relations regime within the RCMP.⁷

(ii) Advocacy Experience

15. The Court of Appeal for Ontario granted the Legal Fund intervener status in this case and received both written and oral submissions from the Legal Fund.⁸

16. Notably, this Honourable Court granted the Legal Fund intervener status in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 (“*Fraser*”), and received oral and written submissions from the Legal Fund in that appeal concerning the RCMP’s labour relations regime and the application of section 2(d) of the *Canadian Charter of Rights and Freedoms* in this context.⁹

PART II – STATEMENT OF THE QUESTION IN ISSUE

17. The only issue to be determined on this motion is whether the Legal Fund should be granted leave to intervene. The determination of this issue hinges on two questions:

- a) Does the Legal Fund have an interest in the appeal?
- b) If so, will the Legal Fund’s submissions be useful and different from those of the other parties?¹⁰

⁷ Joyal Affidavit, para. 10.

⁸ Joyal Affidavit, para. 12 and Exhibit “B”.

⁹ Joyal Affidavit, para. 22 and Exhibit “D”.

¹⁰ *Rules of the Supreme Court of Canada*, S.O.R./2002-156, Rules 55, 57; *R. v. Finta*, [1993] 1 S.C.R. 1138.

PART III – STATEMENT OF ARGUMENT**A. The Legal Fund Has an Interest in the Appeal****(i) The Outcome of the Appeal Impacts the Legal Fund and its Members**

18. The central issue in this case is whether the RCMP's current labour relations regime (in particular, the SRRP) interferes with RCMP members' freedom of association in violation of section 2(d) of the *Canadian Charter of Rights and Freedoms*.

19. If the appeal is allowed, then the SRRP will be eliminated. The elimination of the SRRP would adversely impact the Legal Fund's ability to pursue its current objects and perform its many activities. In particular, it would limit the benefits that the Legal Fund could provide to its members and cause significant and adverse changes to the operation of the Legal Fund.

20. In fact, there is a danger that the Legal Fund would cease to be viable, or would cease to exist, if the SRRP were eliminated.¹¹

21. The elimination of the SRRP would also have a significant impact on the interests of the Legal Fund's 17,000 members, all of whom are RCMP members. In particular, this appeal could significantly impact the employment-related interests of the Legal Fund's members and the benefits that the Legal Fund provides to them.

22. In light of its objects and activities, the Legal Fund has a significant interest in this appeal because of the impact that this Honourable Court's ultimate decision could have in these respects.¹²

¹¹ Joyal Affidavit, para. 11.

¹² Joyal Affidavit, para. 18.

(ii) The Legal Fund's Role and Activities are at Issue in the Appeal

23. The Legal Fund's role and activities within the RCMP's current labour relations system are also directly at issue in the substance of the appeal.

24. In the decision that is the subject of the appeal, the Court of Appeal for Ontario relied extensively on facts respecting the Legal Fund's role and activities as a basis for its conclusion that RCMP's current labour relations system is constitutional.¹³

25. However, in their factum in this appeal, the Appellants challenge the Legal Fund's role and activities in this respect. In particular, the Appellants argue that the Court of Appeal's findings with respect to the Legal Fund's role and activities are incorrect, and that "the existence of [the Legal Fund]... does not support the conclusion that RCMP members do not need the right to engage in collective bargaining, and should not have it."¹⁴

26. In light of the impact that this appeal may have on the Legal Fund and its members, the Legal Fund has a significant interest in ensuring that its role and activities are fairly and accurately described before this Honourable Court.

B. The Legal Fund's Submissions Will Be Useful and Different

27. If granted leave to intervene, the Legal Fund will offer a perspective that focuses on how the RCMP's workplace and current labour relations system, including the Legal Fund, operate in practice. The Legal Fund's submissions in this regard will be grounded in its extensive and unique experience as representative of the vast majority of RCMP members, and its intimate knowledge of, and experience with, the RCMP's current labour relations regime.

28. Specifically, if granted leave to intervene, the Legal Fund intends to submit that:

¹³ Joyal Affidavit, para. 13.

¹⁴ Appellants' Factum, para. 48.

- The RCMP's labour relations regime is multi-faceted in nature, and involves several different representative elements, including the Legal Fund. In practice, these elements facilitate a process of good faith consultation and dialogue between RCMP members and RCMP management in respect of workplace issues. When considered in its entirety, this regime meets the constitutional standard established by this Honourable Court in *Fraser*.
- The Court of Appeal's decision expressly relied on findings of fact made by the application judge, including the findings that (1) there is extensive collaboration and consultation between RCMP members and RCMP management within the RCMP's existing labour relations regime; and (2) RCMP management listens carefully and with an open mind to the collective representations of RCMP members within the RCMP labour relations regime. When the established and clear principles from *Fraser* are applied to the factual findings of the applications judge, the result reached by the Court of Appeal is constitutionally sound.
- Members of the police are expressly excluded from the Conventions of the International Labour Organization ("ILO") that address freedom of association and collective bargaining, namely, ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize, Article 9(1)), which Canada has ratified, and ILO Convention No. 98 (Right to Organize and Collective Bargaining, Article 5(1)), which Canada has not ratified. Labour relations within the police are therefore to be determined by national laws. As such, international labour law principles do not support the argument that the RCMP's labour relations system violates the applicable constitutional requirements.

- Allowing the appeal would cause considerable confusion and uncertainty within the RCMP.

29. These submissions will be useful to this Honourable Court when it considers the implications of its decision for the RCMP labour relations regime, and similar regimes that are not based on the traditional “Wagner Model.”

30. However, the Appellants have not addressed these arguments in their factum, and it cannot be assumed that the Respondent, the Attorney General of Canada, will address them in its submissions. This is because the Respondent represents the wider interests of the Government of Canada, including all of its numerous and diverse agencies, political interests, and other Crown interests. It does not represent the interests of RCMP members, the vast majority of whom are represented by the Legal Fund.

31. In addition, the Respondent’s and Legal Fund’s members’ views on how section 2(d) of the *Canadian Charter of Rights and Freedoms* applies within the context of the RCMP’s labour relations system have diverged dramatically in recent litigation.¹⁵

32. Accordingly, the Legal Fund can provide this Honourable Court with a useful and unique perspective on the application of section 2(d) of the *Canadian Charter of Rights and Freedoms* in the RCMP’s workplace.

33. The fact that the Legal Fund was granted leave to intervene by the Court of Appeal for Ontario in this case, and by this Honourable Court in *Fraser*, is a recognition that the Legal Fund has a significant interest in this appeal and that it will make submissions that are distinct and useful.

¹⁵ Joyal Affidavit, para. 24.

34. In any event, if granted leave to intervene, the Legal Fund will not make any submissions that are duplicative of those of a party or intervener, and particularly those of the Attorney General of Canada.¹⁶

PART IV – SUBMISSIONS CONCERNING COSTS

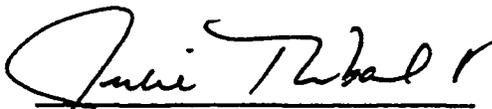
35. The Legal Fund does not seek costs and requests that none be awarded against it.

PART V – ORDER SOUGHT

36. The Legal Fund respectfully requests that it be granted leave to intervene in this appeal on the following terms:

- a) The Legal Fund shall be permitted to file a single factum not exceeding ten (10) pages in length; and,
- b) The Legal Fund shall be permitted to make oral submissions of not more than ten (10) minutes at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of June, 2013



for: **Judith Parisien**

**Agent for the Proposed Intervener,
Mounted Police Members' Legal Fund**

¹⁶ Joyal Affidavit, para. 25.

PART VI – TABLES OF AUTHORITIES

Case Law	Paragraph Cited
<i>Ontario (Attorney General) v. Fraser</i> , 2011 SCC 20	16, 28, 33
<i>R. v. Finta</i> , [1993] 1 S.C.R. 1138 (Tab 5)	17

PART VII – STATUTES AND RULES RELIED ON

1. **The *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.), 1982 c. 11**

[...]

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association

[...]

[...]

2. Chacun a les libertés fondamentales suivantes:

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

[...]

2. **Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156**

[...]

47. (1) Unless otherwise provided in these Rules, all motions shall be made before a judge or the Registrar and consist of the following documents, in the following order:

- (a) a notice of motion in accordance with Form 47;
- (b) any affidavit necessary to substantiate any fact that is not a matter of record in the Court;
- (c) if considered necessary by the applicant, a memorandum of argument in accordance with paragraph 25(1)(f), with any modifications that the circumstances require;
- (d) the documents that the applicant intends to rely on, in chronological order, in accordance with subrule 25(3); and
- (e) a draft of the order sought, including costs.

(1.1) An originating motion shall include, after the notice of motion,

- (a) a certificate in Form 25B that states
 - (i) whether there is a sealing or confidentiality order in effect in the file from a lower court or the Court and whether any document filed includes information that is subject to a sealing or confidentiality order or that is classified as confidential by legislation,
 - (ii) whether there is, pursuant to an order or legislation, a ban on the publication of evidence or the names or identity of a party or witness and whether any document filed includes information that is subject to that ban, and
 - (iii) whether there is, pursuant to legislation, information that is subject to limitations on public access and whether any document filed includes information that is subject to those limitations;
- (b) a copy of any order referred to in subparagraph (a)(i) and (ii) or of the provision of the applicable legislation mentioned in subparagraphs (a)(i) to (iii); and
- (c) if a judge's previous involvement or connection with the case may result in it being inappropriate for that judge to take part in the adjudication on the proceedings in the Court, a certificate in Form 25C setting out the issues.

(2) Parts I to V of the memorandum of argument shall not exceed 10 pages.

(3) There shall be no oral argument on the motion unless a judge or the Registrar otherwise orders.

[...]

55. Any person interested in an application for leave to appeal, an appeal or a reference may make a motion for intervention to a judge.

56. A motion for intervention shall be made in the case of

(a) an application for leave to appeal, within 30 days after the filing of the application for leave to appeal;

(b) an appeal, within four weeks after the filing of the factum of the appellant; and

(c) a reference, within four weeks after the filing of the Governor in Council's factum.

57. (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

(2) A motion for intervention shall

(a) identify the position the person interested in the proceeding intends to take in the proceeding; and

(b) set out the submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

58. At the end of the applicable time referred to in Rule 51, the Registrar shall submit to a judge all motions for intervention that have been made within the time required by Rule 56.

59. (1) In an order granting an intervention, the judge may

(a) make provisions as to additional disbursements incurred by the appellant or respondent as a result of the intervention; and

(b) impose any terms and conditions and grant any rights and privileges that the judge may determine, including whether the intervener is entitled to adduce further evidence or otherwise to supplement the record.

(2) In an order granting an intervention or after the time for filing and serving all of the memoranda of argument on an application for leave to appeal or the facts on an appeal or reference has expired, a judge may, in their discretion, authorize the intervener to present oral argument at the hearing of the application for leave to appeal, if any, the appeal or the reference, and determine the time to be allotted for oral argument.

(3) An intervener is not permitted to raise new issues unless otherwise ordered by a judge.

[...]

47. (1) Sauf disposition contraire des présentes règles, toute requête est présentée à un juge ou au registraire et comporte dans l'ordre suivant :

- a) un avis de requête conforme au formulaire 47;
- b) tout affidavit nécessaire pour attester un fait dont la preuve n'est pas au dossier de la Cour;
- c) si le requérant le considère nécessaire, un mémoire conforme à l'alinéa 25(1)f), avec les adaptations nécessaires;
- d) les documents que compte invoquer le requérant, par ordre chronologique, compte tenu du paragraphe 25(3);
- e) une ébauche de l'ordonnance demandée, notamment quant aux dépens.

(1.1) La requête introductive d'instance comporte, à la suite de l'avis de requête :

- a) une attestation conforme au formulaire 25B indiquant :
 - (i) si une ordonnance de mise sous scellés ou de confidentialité rendue par un tribunal d'instance inférieure ou par la Cour est en vigueur dans le dossier et si un document déposé contient des renseignements qui sont, soit visés par une ordonnance de mise sous scellés ou de confidentialité, soit classés comme confidentiels aux termes de dispositions législatives,
 - (ii) s'il existe, en vertu d'une ordonnance ou d'une disposition législative, une obligation de non-publication de la preuve ou du nom ou de l'identité

d'une partie ou d'un témoin et si un document déposé contient des renseignements visés par cette obligation,

(iii) s'il existe, en vertu d'une disposition législative, une restriction qui limite l'accès du public à certains renseignements et si un document déposé contient des renseignements visés par cette restriction;

b) une copie de toute ordonnance visée aux sous-alinéas a)(i) et (ii) ou des dispositions législatives applicables visées aux sous-alinéas a)(i) à (iii);

c) dans le cas où il pourrait ne pas être indiqué que le juge prenne part à la décision de la Cour en raison de sa participation antérieure à l'affaire ou de l'existence d'un lien entre lui et celle-ci, une attestation conforme au formulaire 25C énonçant les questions soulevées.

(2) Les parties I à V du mémoire de la requête comptent au plus dix pages.

(3) Sauf ordonnance contraire d'un juge ou du registraire, aucune plaidoirie orale n'est présentée à l'égard de la requête.

[...]

55. Toute personne ayant un intérêt dans une demande d'autorisation d'appel, un appel ou un renvoi peut, par requête à un juge, demander l'autorisation d'intervenir.

56. La requête en intervention est présentée dans les délais suivants :

a) dans le cas de la demande d'autorisation d'appel, dans les trente jours suivant son dépôt;

b) dans le cas d'un appel, dans les quatre semaines suivant le dépôt du mémoire de l'appelant;

c) dans le cas d'un renvoi, dans les quatre semaines suivant le dépôt du mémoire du gouverneur en conseil.

57. (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

(2) La requête expose ce qui suit :

a) la position que cette personne compte prendre dans la procédure;

b) ses arguments, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.

58. À l'expiration du délai applicable selon la règle 51, le registraire présente au juge toutes les requêtes en intervention présentées dans les délais prévus à la règle 56.

59. (1) Dans l'ordonnance octroyant l'autorisation d'intervenir, le juge peut :

a) prévoir comment seront supportés les dépens supplémentaires de l'appelant ou de l'intimé résultant de l'intervention;

b) imposer des conditions et octroyer les droits et privilèges qu'il détermine, notamment le droit d'apporter d'autres éléments de preuve ou de compléter autrement le dossier.

(2) Dans l'ordonnance octroyant l'autorisation d'intervenir ou après l'expiration du délai de dépôt et de signification des mémoires de demande d'autorisation d'appel, d'appel ou de renvoi, le juge peut, à sa discrétion, autoriser l'intervenant à présenter une plaidoirie orale à l'audition de la demande d'autorisation d'appel, de l'appel ou du renvoi, selon le cas, et déterminer le temps alloué pour la plaidoirie orale.

(3) Sauf ordonnance contraire d'un juge, l'intervenant n'est pas autorisé à soulever de nouvelles questions.