

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

B E T W E E N:

**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 / Respondents

- and -

ATTORNEY GENERAL OF CANADA

Respondent / Applicant

- and -

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF
SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL
OF BRITISH COLUMBIA, ASSOCIATION DES MEMBRES DE LA POLICE MONTÉE
DU QUÉBEC, MOUNTED POLICE MEMBERS LEGAL FUND,
CONFÉDÉRATION DES SYNDICATS NATIONAUX, CANADIAN POLICE
ASSOCIATION, LABOUR CONGRESS, CANADIAN CIVIL LIBERTIES
ASSOCIATION, PUBLIC SERVICE ALLIANCE OF CANADA, AND BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Interveners

**NOTICE OF MOTION TO A JUDGE OR THE REGISTRAR TO PERMIT A
SUR-REPLY AFFIDAVIT (On behalf of the Mounted Police Association of
Ontario / Association de la Police Montés de l'Ontario)
(Rules 3 & 47 of the *Rules of the Supreme Court of Canada*)**

TAKE NOTICE that the Mounted Police Association of Ontario / Association de la Police Montés de l'Ontario (the "MPAO") applies to a Judge or the Registrar under Rules 3 and 47, for an order to permit the service and filing of a responding affidavit to the affidavit of Stéphane Drouin, dated December 28, 2015, filed by the Attorney

General of Canada as part of its Reply submissions, or any further or other order that the Judge may deem appropriate.

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

1. In its Reply submissions, the Attorney General of Canada relies heavily on the affidavit of Stéphane Drouin, dated December 28, 2015 (the "Drouin Affidavit");
2. The Drouin Affidavit contains inaccurate assertions and allegations that may jeopardize the accuracy of information before the Court;
3. In particular, the Drouin Affidavit significantly misrepresents the change in the representational character for individual RCMP members as a result of the impending disbandment of the role of the SRRP representatives in representation of individual members, and the introduction of the Member Workplace Services Program; and
4. In these circumstances, the MPAO requests that it be permitted to serve and file the brief supplementary affidavit of Peter Merrifield in sur-reply.

Dated at Toronto, Ontario this 11 day of January, 2016.

SIGNED BY



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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

If the motion is served and filed with the application for leave to appeal, then the Respondent may serve and file the response to the motion with the response to the application for leave to appeal.

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ASSOCIATION, ON THEIR OWN BEHALF AND ON BEHALF OF ALL MEMBERS
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Appellants / Respondents

- and -

ATTORNEY GENERAL OF CANADA

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COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Interveners

**SUPPLEMENTARY AFFIDAVIT OF PETER MERRIFIELD
(On behalf of the Mounted Police Association of Ontario / Association de la Police
Montés de l'Ontario)**

I, Peter Merrifield, of the City of Barrie, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. This affidavit is supplementary to the affidavit sworn by me dated December 17, 2015, filed in these proceedings. This supplementary affidavit responds to the affidavit

of Stephane Drouin dated December 28, 2015, filed by the Attorney General of Canada as part of its Reply submissions.

2. Stephane Drouin's affidavit significantly misrepresents the change in the representational character for individual RCMP members as a result of the impending disbandment of the role of the SRRP representatives in representation of individual members, and the introduction of the Member Workplace Services Program (MWSP).

3. RCMP management did not consult the SRRP representatives on the proposed MWSP. Some SRRP representatives, upon request of management, provided a list of their job functions. SRRP representatives were not consulted, advised or informed of the elimination of almost all the individual representation services for RCMP members, until December 8, 2015.

4. As I stated in my affidavit of December 18, 2015, the SRRP representatives are the only current individual representation available for RCMP members for a host of important and serious workplace matters and issues. In practical terms, this means that SRRP representatives have continued to represent individual RCMP members through the 12 month stay of the Court's judgment, including attendance at meetings, interviews and hearings, as the representatives of individual RCMP members. SRRP representatives are also able to share knowledge and experience with other SRRP colleagues in representing individual RCMP member interests.

5. Individual RCMP member representation will be severely diminished by the implementation of the proposed MWSP. The MWSP advisors will not be permitted to actually "represent" members. They will provide only generic policy information and

advice to an individual member by telephone or email from their offices. They will not be functionally capable of "representing" members in respect of various internal procedural mechanisms. In their role as MWSP advisors, they will not provide representation during any required meetings, interviews or hearings that deal with individual members workplace issues, including harassment, conduct allegations, grievances, as well as workplace conflict and working conditions.

6. The change proposed by RCMP management of the status quo that has been in place until now is highly prejudicial to RCMP members in the event that the Court grants a six month extension to the stay of its judgment.

7. Until now, individual representation of RCMP members by SRRP representatives has been an important feature of the working conditions of RCMP members. It is also a common feature of the workplace services provided by a certified or recognized bargaining agent (i.e. union or association).

8. The RCMP intends to significantly reduce, even dispense with, the ability of RCMP members to obtain individual representation they have enjoyed until now.

9. The Drouin affidavit references section 47.1 of the *RCMP Act* which allows any other member to assist or represent a member. Although this already exists, there is no funding for such assistance, no paid work time afforded to a member representative away from other duties to provide assistance and, most importantly, there are no privileges and access recognized by management as presently exists with SRRP representation.

10. The employer changes in respect of individual representation in the period of the requested 6 month stay extension diminish access to fair representation. The proposed change from SRRP representation for individual members to the MWSP contravenes the spirit of the Court's decision. The substantial diminishment of RCMP member representation and access to such representation, during the interim period when no legislative regime exists to achieve certification of a representative labour organization, is highly prejudicial to RCMP members.

11. For example, the MSWP removes all anonymity for RCMP members who come forward to report harassment, workplace misconduct, wrongdoing, and conflict of interest, as it requires a formal file to be opened for each matter being reported as a case. These files will identify to management the complainant or witness, potentially exposing them to retaliation by RCMP management. This cannot occur under the present SRRP. SRR representatives enjoy appropriate privilege not to divulge information which might jeopardize the anonymity of the complainant.

12. If RCMP management is not required to retain the current status quo of representation available to RCMP members during an extension of the stay of the Court's judgment, members will be severely prejudiced because they will not be able to obtain comparable representation that, to date, has been provided by SRRP representatives, since there will be no certified or recognized bargaining agent available to them.

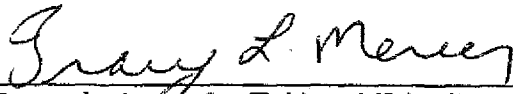
13. Currently, RCMP members benefit from the ability of its SRRP representatives to maintain a collective knowledge base in regard to interpretation of RCMP policy, to

ensure consistent application to RCMP members nationally. RCMP management has standardized its code of conduct and harassment policy, developing a national intake and control office for each process. It has also implemented a national training course and standards for all conduct and harassment advisors, whose functions directly support management. The elimination of the current SRRP representative support for RCMP members also eliminates access to important national policy centres that provide knowledge-based, collaborative assistance to SRRP representatives trying to resolve individual workplace issues.

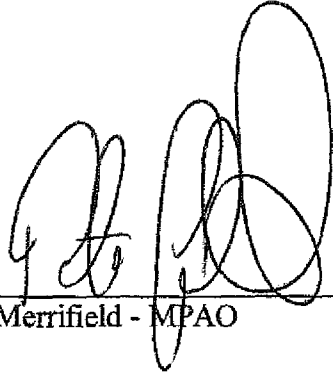
14. By comparison, MSWP advisors will be isolated, unable to access the knowledge-based information maintained within these policy centres. This will negatively impact the ability of individual RCMP members to obtain even the best information available from MSWP advisors. The MPAO simply seeks, as a condition of any stay extension, the maintenance of the status quo for individual RCMP member representation for immediate work place issues.

15. I make this affidavit on behalf of MPA in response to the reply affidavit filed by the Attorney General of Canada in support of a motion brought by the Attorney General of Canada to extend the period of suspension of the declaration of invalidity made by the Court on January 16, 2015.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on this 7th day of January, 2016.



Commissioner for Taking Affidavits
(or as may be)



Peter Merrifield - MPAO

Tracy Lyne Mercer, a Commissioner, etc., Province of Ontario, for Armstrong, Meakings, Barristers and Solicitors. Expires November 19, 2017.

MOUNTED POLICE ASSOCIATION OF ONTARIO ET AL and **ATTORNEY GENERAL OF CANADA**
Appellants / Respondents Respondent / Applicant

Court File No. 34948

SUPREME COURT OF CANADA

NOTICE OF MOTION

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