

CONTAINS DOCS No.
CONTIENT LES DOCS No.

12, 13, 14

Court File No.: T-1657-13

FEDERAL COURT

BETWEEN:

ROCCO GALATI AND CONSTITUTIONAL RIGHTS CENTRE INC.

Applicants

- and -

**THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE
RIGHT HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON, THE
HONOURABLE JUSTICE MARC NADON, JUDGE OF THE FEDERAL COURT
OF APPEAL AND THE ATTORNEY GENERAL OF CANADA AND THE
MINISTER OF JUSTICE**

FEDERAL COURT COUR FÉDÉRALE		D E P O S É
Filed	OCT 28 2013	
Shirley Asiro		
TORONTO, ONT.		

**MOTION RECORD
OF THE ATTORNEY GENERAL OF CANADA**

October 28, 2013

William F. Pentney
Deputy Attorney General of Canada
Department of Justice
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Paul J. Evraire, Q.C./Christine Mohr

Tel: (416) 973-4006/(416) 973-4111
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File: 2-599029
LSUC# 128651/37645R

Solicitors for the Respondents, the Right Honourable Stephen Harper, His Excellency the Right Honourable Governor General David Johnston, the Attorney General and the Minister of Justice

TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: Rocco Galati
Rocco Galati Law Firm
Professional Corporation
1062 College Street
Lower Level
Toronto, Ontario
M6H 1A9

AND TO: Paul Slansky
Slansky Law
Professional Corporation
1062 College Street
Lower Level
Toronto, Ontario
M6H 1A9

AND TO: Raynold Langlois, Q.C.
Langlois, Kronstrom, Desjardins
1002 Sherbrooke Street West, 28th Floor
Montreal, Québec
H3A 3L6

AND TO: Jean-Yves Bernard
Ministere de la justice
1, rue Notre-Dame est, ch. 8.00
Counsel for the Attorney General of Quebec
Montréal, Québec
H2Y 1B6



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FEDERAL COURT

BETWEEN:

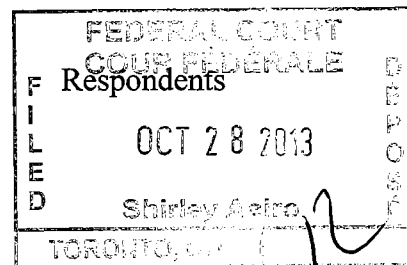
ROCCO GALATI AND CONSTITUTIONAL RIGHTS CENTRE INC.

Applicants

- and -

**THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE
RIGHT HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON, THE
HONOURABLE JUSTICE MARC NADON, JUDGE OF THE FEDERAL
COURT OF APPEAL AND THE ATTORNEY GENERAL OF CANADA AND
THE MINISTER OF JUSTICE**

NOTICE OF MOTION



TAKE NOTICE THAT the Attorney General of Canada will make a motion on Friday, November 15, 2013 at 9:00 a.m., or as soon thereafter as the motion can be heard, at 180 Queen St. West, Toronto, Ontario.

THE MOTION IS FOR:

- (1) An order staying this application pending determination of the reference before the Supreme Court of Canada;
- (2) In the alternative, an order extending the time period provided under rule 318(1) for transmission of the materials sought under rule 317 to a date that is 10 days following the Court's decision on this motion;
- (3) Costs of the motion; and

- (4) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (1) The Applicants seek a declaration that a judge of the Federal Court of Appeal cannot be appointed to the Supreme Court of Canada as one of the three judges from the province of Québec;
- (2) The Applicants seek a further declaration that the appointment of a judge from the Federal Court of Appeal as one of the three judges from the province of Québec constitutes a change to the composition of the Supreme Court of Canada that requires a constitutional amendment;
- (3) By Order in Council, P.C. 2013-1105, dated October 22, 2013, His Excellency the Governor in Council referred the following questions to the Supreme Court of Canada for consideration and determination:
 - a) Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Québec pursuant to sections 5 and 6 of the *Supreme Court Act*?
 - b) Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No.2*?
- (4) By Notice of Reference dated October 22, 2013, the above-noted reference was filed with the Supreme Court of Canada;
- (5) The questions referred to the Supreme Court of Canada engage the issues raised by this application. The Supreme Court of Canada has been asked to

provide an opinion upon the proper interpretation of sections 5 and 6 of the *Supreme Court Act* as well as Parliament's legislative authority to enact legislation requiring an appointee to have at least 10 years experience at the bar of a province as a condition of appointment;

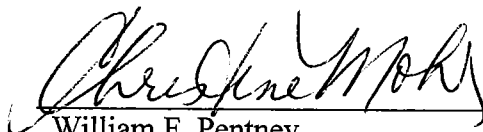
- (6) In answering the second question referred to the Supreme Court, the Court will be required to consider the applicability of sections 101 of the *Constitution Act, 1867* and sections 41(1)(d) and 42(1)(d) of the *Constitution Act, 1982*;
- (7) The proposed stay is in the interests of justice and the public interest;
- (8) There is no prejudice to the Applicants from the proposed stay;
- (9) *Federal Courts Act*, R.S.C. 1985, c.F-7, s. 50(1);
- (10) *Federal Courts Rules*, SOR/98-106, rules 3, 8, 317, 318, 359, 401;
- (11) *Supreme Court Act*, R.S.C. 1985, c.S-26, ss. 4, 5, 6, 53;
- (12) *Rules of the Supreme Court of Canada*, SOR/2002-156, s. 46;
- (13) *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11, ss.38, 41(d), 42(1)(d);
- (14) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s.101;
- (15) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (1) Affidavit of Andrew Law, sworn October 28, 2013 and exhibits thereto;
- (2) The Notice of Application, dated October 7, 2013;

- (3) The Notice of Constitutional Question, dated October 9, 2013; and
- (4) Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 28, 2013



William F. Pentney
Deputy Attorney General of Canada

Per: Paul J. Evraire Q.C. / Christine Mohr
Department of Justice
Ontario Regional Office
The Exchange Tower
130 King St. West
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Fax: (416) 952-4518
File: 2-599029

Solicitors for the Respondents, the Right Honourable Stephen Harper, His Excellency the Right Honourable Governor General David Johnston, the Attorney General of Canada and the Minister of Justice

TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
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M5V 3L6

AND TO: Rocco Galati
Barrister and Solicitor
Rocco Galati Law Firm
Professional Corporation
1062 College Street
Lower Level
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Applicant

AND TO: Paul Slansky
Slansky Law
Professional Corporation
1062 College Street
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Counsel for the Constitutional Rights Centre Inc.

AND TO: Raynold Langlois
Langlois Kronström Dèsjardins
1002, rue Sherbrooke Ouest / St. West
28^e étage / 28th Floor
Montréal Qc H3A 3L6

Counsel for the Honourable Mr. Justice Nadon

AND TO: Jean-Yves Bernard
Ministere de la justice
1, rue Notre-Dame est, ch. 8.00
Counsel for the Attorney General of Québec
Montréal, Québec
H2Y 1B6

Counsel for the Attorney General of Québec

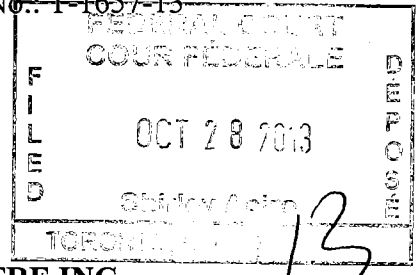
Tab-2



Court File No.: T-1657-13

FEDERAL COURT

BETWEEN:



ROCCO GALATI AND CONSTITUTIONAL RIGHTS CENTRE INC.

Applicants

- and -

**THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE
RIGHT HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON, THE
HONOURABLE JUSTICE MARC NADON, JUDGE OF THE FEDERAL
COURT OF APPEAL, THE ATTORNEY GENERAL OF CANADA AND THE
MINISTER OF JUSTICE**

Respondents

AFFIDAVIT OF ANDREW LAW

I, ANDREW LAW, of the City of Toronto, SOLEMNLY AFFIRM THAT:

1. I am employed by the Department of Justice as Counsel in the Ontario Regional Office in Toronto, Ontario. I provide assistance to Paul J. Evraire, Special Counsel, and Christine Mohr, Senior Counsel, with respect to the within application. As such, I have knowledge of the facts hereinafter deposed. Where I rely on the information of others, I state the source of my information and verily believe it to be true.

The Application

2. The Honourable Mr. Justice Marc Nadon (“Justice Nadon”) was appointed to the Supreme Court of Canada by Order in Council, P.C. 2013-1050, made October 3, 2013. Attached hereto and marked as **Exhibit “A”** is a true copy of Order in Council, P.C. 2013-1050.

3. Justice Nadon was sworn in as a judge of the Supreme Court of Canada before the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, and the Judges of the Court in a private ceremony held on October 7, 2013. A copy of the news release dated October 7, 2013 is attached hereto and marked as **Exhibit “B”**.

4. This matter was commenced by Notice of Application issued on October 7, 2013 and served on October 8, 2013. A Notice of Appearance was filed and served on October 11, 2013 on behalf of the Right Honourable Stephen Harper, His Excellency the Right Honourable Governor David Johnston, the Attorney General of Canada and the Minister of Justice.

5. The Applicants challenge the appointment of Justice Nadon to the Supreme Court of Canada. Attached hereto and marked as **Exhibits “C” and “D”** are true copies of the Notice of Application and Notice of Constitutional Question.

6. On October 8, 2013, the Supreme Court of Canada issued a news release indicating that Justice Nadon had decided, in light of this challenge to his

appointment, not to participate in matters before the Supreme Court of Canada. A copy of the news release dated October 8, 2013 is attached hereto and marked as **Exhibit "E"**.

7. As a result of Justice Nadon's decision not to participate in hearings before the Supreme Court of Canada, the Court is now operating without a full complement of judges.

Reference to the Supreme Court of Canada

8. On October 22, 2013, the *Economic Action Plan Act 2013, No.2*, was introduced in the House of Commons. Clauses 471 and 472 of the Bill propose two declaratory provisions, to be named section 5.1 and 6.1 of the *Supreme Court Act*. Attached hereto and marked as **Exhibit "F"** is a true copy of Division 19 of the *Economic Action Plan Act 2013, No.2* containing clauses 471 and 472.

9. Also on October 22, 2013, His Excellency, the Governor in Council, by Order in Council, P.C. 2013-1105, referred two questions to the Supreme Court of Canada for hearing and determination. The first question relates to the interpretation of sections 5 and 6 of the *Supreme Court Act*. The second question asks the Court to rule on Parliament's authority to enact a requirement that an individual have at least 10 years experience as a member of the bar of a province to be eligible for appointment to the Supreme Court. By this second question, the Attorney General of Canada intends the Supreme Court of Canada to rule upon Parliament's constitutional jurisdiction to enact such a requirement.

10. The questions referred to the Supreme Court of Canada read as follows:

- i) Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Québec pursuant to sections 5 and 6 of the *Supreme Court Act*?
- ii) Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions as set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No.2*?

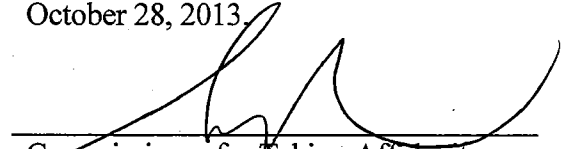
11. Attached hereto and marked as **Exhibit "G"** is a true copy of Order in Council, P.C. 2013-1105, dated October 22, 2013.

12. The Attorney General of Canada commenced the above-noted reference by filing a Notice of Reference with the Supreme Court of Canada Registrar on October 22, 2013. Attached hereto and marked as **Exhibit "H"** is a true copy of the Notice of Reference filed on October 22, 2013.

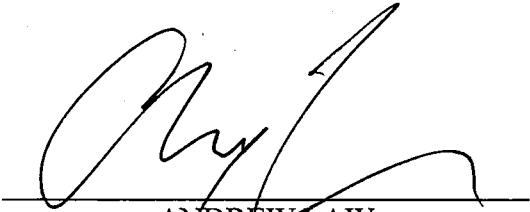
13. The Attorney General of Canada has brought a motion to the Chief Justice of the Supreme Court of Canada for a direction that the above-noted reference be heard on an expedited basis. Attached hereto and marked as **Exhibit "I"** is a true copy of the Attorney General of Canada's Notice of Motion setting out a proposed expedited timetable.

14. I make this affidavit in support of the motion for a temporary stay of this proceeding brought by the Attorney General of Canada and for no other or improper purpose.

AFFIRMED before me at the City of
Toronto in the Province of Ontario on
October 28, 2013.



Commissioner for Taking Affidavits
H. Graham




ANDREW LAW

Exhibit-A



This is Exhibit "A" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

P.C. 2013-1050



CANADA

PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 3rd day of October, 2013

The Committee of the Privy Council, on the recommendation of the Prime Minister, advises that letters patent under the Great Seal of Canada be issued appointing the Honourable Marc Nadon, a Judge of the Federal Court of Appeal, to be a Puisne Judge of the Supreme Court of Canada.

A handwritten signature in black ink, appearing to read "L. St. Laurent".

C.P. 2013-1050



CANADA

CONSEIL PRIVÉ

Copie certifiée conforme au procès-verbal d'une réunion du Comité du
Conseil privé, approuvé par Son Excellence le Gouverneur général le

3 octobre 2013

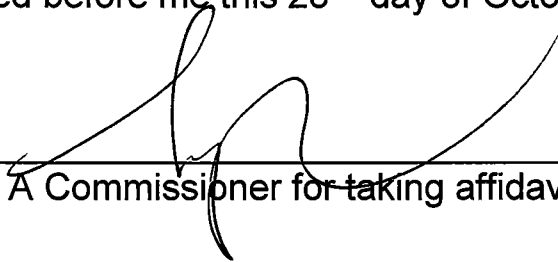
Sur recommandation du premier ministre, le Comité
du Conseil privé recommande que des lettres patentes revêtues du
grand sceau du Canada soient émises nommant l'honorable
Marc Nadon, juge de la Cour d'appel fédérale, au poste de juge de
la Cour suprême du Canada.

A handwritten signature in black ink, appearing to read "F. S. [unclear]".

Exhibit-B



This is Exhibit "B" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

FOR IMMEDIATE RELEASE

OTTAWA, October 7, 2013 – The Honourable Mr. Justice Marc Nadon was sworn-in as a judge of the Supreme Court of Canada before The Right Honourable Beverley McLachlin, Chief Justice of Canada, and the judges of the Court in a private ceremony on October 7, 2013. A formal welcome ceremony will take place on a date to be announced.

For further information contact:

Owen M. Rees
Executive Legal Officer
(613) 996-9296
owen.rees@scc-csc.ca

* * *

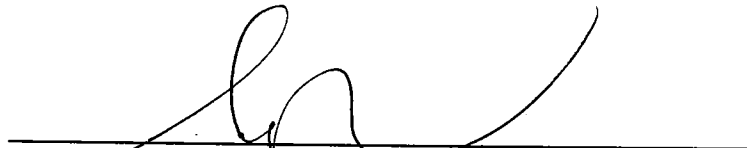
POUR DIFFUSION IMMÉDIATE

OTTAWA, le 7 octobre 2013 – L'honorable juge Marc Nadon a prêté serment comme juge de la Cour suprême du Canada devant la très honorable Beverley McLachlin, juge en chef du Canada, et les juges de la Cour lors d'une cérémonie privée tenue le 7 octobre 2013. La date de la cérémonie d'accueil officielle sera annoncée plus tard.

Renseignements :

Owen M. Rees
Adjoint exécutif juridique
(613) 996-9296
owen.rees@scc-csc.ca

This is Exhibit "C" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

Exhibit-C



Court File No.: T-65913

FEDERAL COURT

BETWEEN:

ROCCO GALATI, and
CONSTITUTIONAL RIGHTS CENTRE INC.,

Applicants

- and -

THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE RIGHT
HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON,
THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, CHIEF JUSTICE OF CANADA,
THE HONOURABLE JUSTICE MARC NADON,
JUDGE OF THE FEDERAL COURT OF APPEAL,
THE ATTORNEY GENERAL OF CANADA, and THE MINISTER OF JUSTICE

Respondents

NOTICE OF APPLICATION
(pursuant to ss. 18 – 18.1 Federal Courts Act, and
ss. 24(1) and 52 of the Constitution Act, 1982)

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the **Federal Court Rules, 1998** and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** of being served with this notice of application.

Copies of the **Federal Court Rules, 1998**, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED at Toronto on this 7th day of October, 2013.

JENA RUSSELL
REGISTRY OFFICER
Issued by: AGENT DU GREFFE

180 Queen Street West 180, rue Queen Ouest
Suite 200 bureau 200
Address of Toronto, Ontario Toronto, Ontario
Local office: MSV 3L6 MSV 3L6

TO: Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto ON M5X 1K6

ORIGINATING NOTICE OF APPLICATION
PURSUANT TO S.18 AND 18.1 OF THE
FEDERAL COURT ACT

TO THE RESPONDENTS:

YOU ARE HEREBY ADVISED that the Applicants, Rocco Galati, and the Constitutional Rights Centre Inc., will be making an application to the Court, on a day and at a time and place to be set by the Court, for the purpose of obtaining, pursuant to s.18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c.F.-7 as amended, declaratory, prerogative and injunctive relief, from the decision, made October 3rd, 2013, to appoint and "swear in" (administering of oath) the Honourable Justice Marc Nadon, a Judge of the Federal Court of Appeal to the Supreme Court of Canada pursuant to the requirements of ss. 4(2) 6, 10 and 11 the *Supreme Court of Canada Act* and s. 41(d) and 42(d) of the *Constitution Act, 1982*.

The Applicants will be making application for **THE FOLLOWING RELIEF:**

- i. A declaration that:
 - (a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada;
 - (b) that s. 6 of the *Supreme Court Act*, when properly interpreted, in tow with s. 5 of the *Supreme Court Act*, allows only for the appointment from "among":
 - (i) Court of Appeal and Superior Justices of Quebec; or
 - (ii) Advocates of Quebec with at least 10 years standing at the bar;
 With "from among" meaning sitting Justices currently on the Court, or advocates (for the past 10 years of more) just prior to nomination for appointment;

- (c) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as "Quebec" Judges to the Supreme Court of Canada, constitutes a change to "the composition" of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42(d) of the *Constitution Act, 1982*;
- (d) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, undermines and breaches the "Federalism", "Constitutionalism", and "Rule of Law" pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;
- (e) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, further breaches the Applicant's rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges' Reference*;
- (f) that the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.

2. A permanent and interim order, in (the nature of) *prohibition*, pursuant to ss. 2 and 18-18.1 of the *Federal Courts Act*, and ss. 24(1) and/or s. 52 of the *Constitution Act, 1982*, to prohibit the appointment, the issuance of letters patent under the Great Seal, pursuant to s. 4(2) of the *Supreme Court Act*, or the "swearing in", administering of the oath by the Chief Justice, or in case of her illness, by any other Judge present in Ottawa, pursuant to ss. 10-11 of the *Supreme Court Act*, of the Honourable Justice Marc Nadon by the Respondents, and from any of their designates, to the Supreme Court of Canada.
3. That, should letters patent under the Great Seal be issued, and the oath already administered, that such letters patent under the Great Seal, by way of:
 - (a) Quo Warranto;
 - (b) declaratory relief; and
 - (c) an order (in the nature of) *certiorari*;be declared invalid and quashed, *nunc pro tunc* to the day prior to the nomination of the Honourable Justice Marc Nadon to fill the vacant Supreme Court of Canada spot as one of the three (3) Quebec Judges required under s. 6 of the *Supreme Court Act*.
4. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

THAT THIS APPLICATION IS BASED ON THE FOLLOWING GROUNDS:

1. That:

(a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada under s.6;

(b) s. 6 of the *Supreme Court Act*; when properly interpreted in tow, with s. 5 of the *Supreme Court Act*, allows only for the appointment from "among":

(i) Court of Appeal and Superior Justices of Quebec; or

(ii) Advocates of Quebec with at least 10 years standing at the bar;

With "from among" meaning sitting Justices currently on the Court, or advocates (for the past 10 years or more) just prior to nomination for appointment;

(c) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as "Quebec" Judges to the Supreme Court of Canada, constitutes a change to "the composition" of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42 (d) of the *Constitution Act, 1982*;

(d) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, undermines and breaches the "Federalism", "Constitutionalism", and "Rule of Law" pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;

- (e) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, further breaches the Applicant's rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges' Reference*;
 - (f) the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.
2. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

THE APPLICANT REQUESTS, pursuant to *Rules* 317 and 318 of the *Federal Courts Rules*, that the Respondents send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal (Minister of Justice/Attorney General of Canada) to the applicant and to the Registry:

- 1. any other legal opinion commissioned and/or received by the Minister of Justice/Attorney General of Canada, The Right Honourable Stephen Harper, and/or any of their designates on the same, or other questions covered by former Supreme Court of Canada Justice Ian Binnie's opinion, and/or any opinion whatsoever with respect to the appointment of Federal Court (of Appeal) judge to the Supreme Court of Canada.; and

- 8 -

2. any and all opinions and/or commentary provided by Professor Hogg and/or former Supreme Court of Canada Justice Louise Charron, or anyone else whatsoever with respect to the matters referred to in 1. above.

AND FURTHER TAKE NOTICE THAT the Applicants intend to seek an interim order, pursuant to, *inter alia*, *Metropolitan Stores* and *RJR MacDonald*, to stay the appointment and swearing in of the Honourable Justice Marc Nadon, to the Supreme Court of Canada, to be made returnable within 2-3 weeks from the Issuance and Service of the within originating Notice of Application, pending the expedited determination of the singular issue contained in the within application.

The address in Canada where documents may be served on the Applicants is:

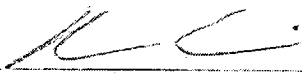
ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 530-9684
FAX: (416) 530-8129
Email: rocco@idirect.com

SLANSKY LAW
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Paul Slansky, B.A., LL.B., J.D.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9
TEL: (416) 536-1220
FAX: (416) 536-8842
Email: paul.slansky@bellnet.ca

The Applicants propose that this application be heard in Toronto.

DATED at Toronto, this 7th day of October,

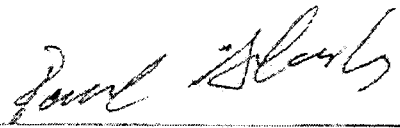


ROCCO GALATI, on his own behalf.

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W PAUL SLANSKY, on behalf of the Constitutional Rights Centre Inc.

SLANSKY LAW PROFESSIONAL CORPORATION
Paul Slansky, B.A., LL.B., JD
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Toronto, Ontario M6H 1A9

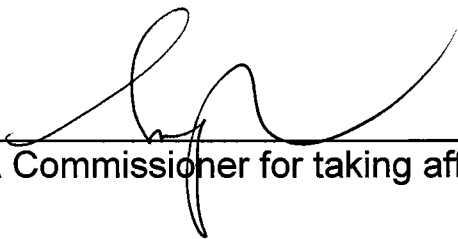
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Email: paul.slansky@bellnet.ca

Exhibit-D



This is Exhibit "D" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

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Registry No.: T-1657-13

FEDERAL COURT**BETWEEN:**ROCCO GALATI,
CONSTITUTIONAL RIGHTS CENTRE INC.,

Applicants

- and -

THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE RIGHT
HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON,
THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, CHIEF JUSTICE OF
CANADA,
THE HONOURABLE MARC NADON, JUDGE OF THE FEDERAL COURT OF
APPEAL,
THE ATTORNEY GENERAL OF CANADA, THE MINISTER OF JUSTICE

Respondents

NOTICE OF CONSTITUTIONAL QUESTION

You are hereby advised that, the Applicants intend to invoke and question the constitutionality, as well the operability and applicability of *inter alia*, ss. 4(2), 5, 6, 10, and 11, of the *Supreme Court Act*, R.S.C. 1985, c. -26, with respect to the appointment of The Honourable Marc Nadon, Judge of the Federal Court of Appeal to the Supreme Court of Canada as a "Quebec" Judge, based on *inter alia* ss. 7, 24(1), 41(d) and 42(d), of the *Constitution Act, 1982*, as well as underlying constitutional imperatives of Federalism, Constitutionalism, and Rule of Law, and to challenge the constitutionality as well as the operability and applicability of *inter alia*, ss. 4(2), 5, 6, 10, and 11, of the *Supreme Court Act*, R.S.C. 1985, c. -26, on an anticipatorily expedited basis to be set down by the Administrator of the Federal Court, at:

Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

The following are the material facts giving rise to this constitutional question:

1. On or before October 3rd, 2013 The Right Honourable Stephen Harper purportedly nominated The Honourable Justice Marc Nadon, a sitting Justice of the Federal Court of Appeal, to the Supreme Court of Canada as a "Quebec" Judge pursuant to s. 6 of the *Supreme Court Act*.
2. At some time, unknown to the Applicants, Governor-in-Council purported to issue letters patent, under the Great Seal, appointing The Honourable Justice Nadon, pursuant to s. 4(2) of the *Supreme Court Act*, to the Supreme Court of Canada as a "Quebec" Judge pursuant to s. 6 of the *Supreme Court Act*.
3. On Thursday October 3rd, 2013, The Right Honourable Beverley McLachlin, Chief Justice of Canada, announced that The Honourable Justice Nadon would be "sworn in... on a date to be announced". No such date, to the Applicants' knowledge, was announced.
4. On or about Monday October 7th, at an unknown time, The Honourable Justice Nadon had his purported oath, pursuant to ss. 10-11 of the *Supreme Court Act*, administered by the Right Honourable Beverley McLachlin, Chief Justice of Canada, in Ottawa. Subsequent to this, on October 7th, 2013 the announcement was press released by the Supreme Court of Canada from Ottawa. At the same time of the press release, the notice of application, in the within application, which had been prepared and drafted over the weekend of October 5-6th by the Applicants, and finalized by the morning of October 7th, was being issued in the Federal Court Registry in Toronto.
5. On October 8th, 2013, The Honourable Justice Nadon publicly indicated the following by way of press release:

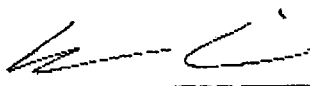
"Mr. Justice Marc Nadon has decided, in light of the challenge to his appointment pending before the Federal Court, not to participate for the time being in matters before the Supreme Court of Canada."

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The following is the legal basis for this constitutional question:

- (a) As set out in the Applicant's Notice of Application filed with the Court, contained as annexed hereto as "Schedule B".
- (b) Such further grounds as counsel may advise and this Honourable Court allow.

Dated at Toronto this 9th day of October, 2013.



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 Rocco Galati, B.A., LL.B., LL.M.
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 FAX: (416) 530-8129

Email: rocco@idirect.com
 Solicitor for the Applicant

TO: The Attorney General of Canada
 The Attorney General of each Province
 and Territory, as annexed hereto as "Schedule A"

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**"SCHEDULE A"
to Notice of Constitutional Question**

Attorney General of Alberta
Department of Justice
403 Legislature Building
Edmonton, AB T5K 2B6
FAX: 780-422-6621

Attorney General of British Columbia
Parliament Buildings, Room 234
PO Box 9044, Stn Prov. Govt.
Victoria, BC V8W 9E2
FAX: 250-387-6411

Ministry of Justice and Attorney General
Department of Justice
104 Legislative Bldg.
450 Broadway
Winnipeg Manitoba R3C 0V8
FAX: 204-945-2517

Attorney General
Centennial Building
P.O. Box 6000
Fredericton, NB E3B 5H1
FAX: 506-453-3651

Attorney General of Newfoundland
4th Floor, Confederation Bldg. E.
PO Box 8700
St. John's, NL A1B 4J6
FAX: 709-729-2129

Attorney General of the Northwest
Territories
Dept. of Justice - Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9
FAX: 867-873-0306

Attorney General - Department of Justice
4th Floor, 5151 Terminal Rd.
P.O. Box 7
Halifax, NS B3J 2L6
FAX: 902-424-7596

Attorney General
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON M5G 2K1
FAX: 416-326-4007

Attorney General of Prince Edward Island
4th Floor, Shaw Building, North
P.O. Box 2000
Charlottetown, PEI C1A 7N8
Fax: 902-368-4910

Procureur général du Québec
1200 route de l'Eglise, 6ième étage
Québec, QC G1V 4M1
Fax: 418-646-0027

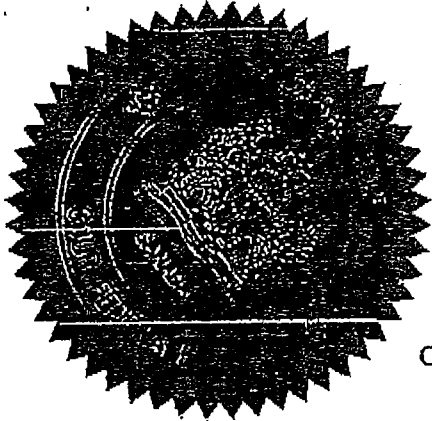
Minister & Attorney General
Department of Justice
355 Legislative Bldg., Room 30
Regina, Saskatchewan S4S 0B3
FAX: 306-787-1232

Attorney General of Yukon
Department of Justice - Yukon
PO Box 2703 (J-1)
Whitehorse, YK Y1A 2C6
FAX: 867-393-6379

Attorney General of Nunavut
Department of Justice
Court House
PO Bag 1000, Stn 500
Iqaluit, NU X0A 0H0
FAX: 867-975-6195

Minister of Justice & Attorney General of
Canada
284 Wellington Street
Ottawa, ON K1A 0H8
FAX: 613-990-7255

"SCHEDULE B"
to Notice of Constitutional Question



Court File No.: T-1657-13

FEDERAL COURT

ROCCO GALATI, and
CONSTITUTIONAL RIGHTS CENTRE INC.,

Applicants

- and -

THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE RIGHT
HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON,
THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, CHIEF JUSTICE OF CANADA,
THE HONOURABLE JUSTICE MARC NADON,
JUDGE OF THE FEDERAL COURT OF APPEAL,
THE ATTORNEY GENERAL OF CANADA, and THE MINISTER OF JUSTICE

Respondents

NOTICE OF APPLICATION
(pursuant to ss. 18 - 18.1 Federal Courts Act, and
ss. 24(1) and 52 of the Constitution Act, 1982)

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the **Federal Court Rules, 1998** and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** of being served with this notice of application.

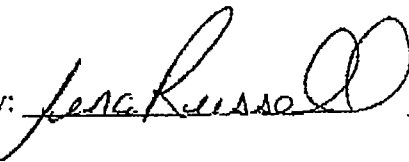
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- 2 -

Copies of the **Federal Court Rules, 1998**, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED at Toronto on this 7th day of October, 2013.

Issued by: 

Address of
Local office: _____

TO: Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto ON M5X 1K6

180 Queen Street West 180, rue Queen Ouest
Suite 200 bureau 200
Toronto, Ontario Toronto, Ontario
M5V 3L6 M5V 3L6

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**ORIGINATING NOTICE OF APPLICATION
PURSUANT TO S.18 AND 18.1 OF THE
FEDERAL COURT ACT**

TO THE RESPONDENTS:

YOU ARE HEREBY ADVISED that the Applicants, Rocco Galati, and the Constitutional Rights Centre Inc., will be making an application to the Court, on a day and at a time and place to be set by the Court, for the purpose of obtaining, pursuant to s.18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c.F.-7 as amended, declaratory, prerogative and injunctive relief, from the decision, made October 3rd, 2013, to appoint and "swear in" (administering of oath) the Honourable Justice Marc Nadon, a Judge of the Federal Court of Appeal to the Supreme Court of Canada pursuant to the requirements of ss. 4(2) 6, 10 and 11 the *Supreme Court of Canada Act* and s. 41(d) and 42(d) of the *Constitution Act, 1982*.

The Applicants will be making application for **THE FOLLOWING RELIEF:**

1. A declaration that:
 - (a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada;
 - (b) that s. 6 of the *Supreme Court Act*, when properly interpreted, in tow with s. 5 of the *Supreme Court Act*, allows only for the appointment from "among":
 - (i) Court of Appeal and Superior Justices of Quebec; or
 - (ii) Advocates of Quebec with at least 10 years standing at the bar;With "from among" meaning sitting Justices currently on the Court, or advocates (for the past 10 years of more) just prior to nomination for appointment;

- 4 -

- (c) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as “Quebec” Judges to the Supreme Court of Canada, constitutes a change to “the composition” of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42(d) of the *Constitution Act, 1982*;
- (d) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, undermines and breaches the “Federalism”, “Constitutionalism”, and “Rule of Law” pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;
- (e) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, further breaches the Applicant’s rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges’ Reference*;
- (f) that the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.

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- 5 -

2. A permanent and interim order, in (the nature of) *prohibition*, pursuant to ss. 2 and 18-18.1 of the *Federal Courts Act*, and ss. 24(1) and/or s. 52 of the *Constitution Act, 1982*, to prohibit the appointment, the issuance of letters patent under the Great Seal, pursuant to s. 4(2) of the *Supreme Court Act*, or the "swearing in", administering of the oath by the Chief Justice, or in case of her illness, by any other Judge present in Ottawa, pursuant to ss. 10-11 of the *Supreme Court Act*, of the Honourable Justice Marc Nadon by the Respondents, and from any of their designates, to the Supreme Court of Canada.
3. That, should letters patent under the Great Seal be issued, and the oath already administered, that such letters patent under the Great Seal, by way of:
 - (a) Quo Warranto;
 - (b) declaratory relief; and
 - (c) an order (in the nature of) *certiorari*;be declared invalid and quashed, *nunc pro tunc* to the day prior to the nomination of the Honourable Justice Marc Nadon to fill the vacant Supreme Court of Canada spot as one of the three (3) Quebec Judges required under s. 6 of the *Supreme Court Act*.
4. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

THAT THIS APPLICATION IS BASED ON THE FOLLOWING GROUNDS:

1. That:

- (a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada under s.6;
- (b) s. 6 of the *Supreme Court Act*; when properly interpreted in tow, with s. 5 of the *Supreme Court Act*, allows only for the appointment from "among";
 - (i) Court of Appeal and Superior Justices of Quebec; or
 - (ii) Advocates of Quebec with at least 10 years standing at the bar;With "from among" meaning sitting Justices currently on the Court, or advocates (for the past 10 years or more) just prior to nomination for appointment;
- (c) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as "Quebec" Judges to the Supreme Court of Canada, constitutes a change to "the composition" of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42 (d) of the *Constitution Act, 1982*;
- (d) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, undermines and breaches the "Federalism", "Constitutionalism", and "Rule of Law" pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;

- 7 -

- (c) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as "Quebec" judges to the Supreme Court of Canada, further breaches the Applicant's rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges' Reference*;
- (f) the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.

2. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

THE APPLICANT REQUESTS, pursuant to *Rules 317 and 318 of the Federal Courts Rules*, that the Respondents send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal (Minister of Justice/Attorney General of Canada) to the applicant and to the Registry:

1. any other legal opinion commissioned and/or received by the Minister of Justice/Attorney General of Canada, The Right Honourable Stephen Harper, and/or any of their designates on the same, or other questions covered by former Supreme Court of Canada Justice Ian Binnie's opinion, and/or any opinion whatsoever with respect to the appointment of Federal Court (of Appeal) judge to the Supreme Court of Canada.; and

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2. any and all opinions and/or commentary provided by Professor Hogg and/or former Supreme Court of Canada Justice Louise Charron, or anyone else whatsoever with respect to the matters referred to in I. above.

AND FURTHER TAKE NOTICE THAT the Applicants intend to seek an interim order, pursuant to, *inter alia*, *Metropolitan Stores* and *RJR MacDonald*, to stay the appointment and swearing in of the Honourable Justice Marc Nadon, to the Supreme Court of Canada, to be made returnable within 2-3 weeks from the Issuance and Service of the within originating Notice of Application, pending the expedited determination of the singular issue contained in the within application.

The address in Canada where documents may be served on the Applicants is:

ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 530-9684
FAX: (416) 530-8129
Email: rocco@idirect.com

SLANSKY LAW
PROFESSIONAL CORPORATION
Paul Slansky, B.A., LL.B., J.D.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9
TEL: (416) 536-1220
FAX: (416) 536-8842
Email: paul.slansky@bellnet.ca

The Applicants propose that this application be heard in Toronto.

39

DATED at Toronto, this 7th day of October,

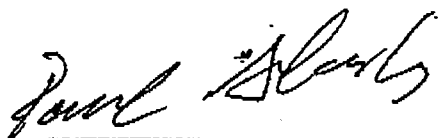


ROCCO GALATI, on his own behalf.

ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
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1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 530-9684
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Email: rocco@idirect.com



PAUL SLANSKY, on behalf of the Constitutional Rights Centre Inc.

SLANSKY LAW PROFESSIONAL CORPORATION
Paul Slansky, B.A., LL.B., J.D.
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FAX: (416) 536-8842

Email: paul.slansky@bellnet.ca

40

- 10 -

Court File No. T-1657

FEDERAL COURT

BETWEEN:

ROCCO GALATI,
CONSTITUTIONAL RIGHTS CENTRE INC.,

Applicants

- and -

THE RIGHT HONOURABLE STEPHEN HARPER,
HIS EXCELLENCY THE RIGHT HONOURABLE
GOVERNOR GENERAL DAVID JOHNSTON,
THE RIGHT HONOURABLE BEVERLEY
MCLACHLIN, CHIEF JUSTICE OF CANADA,
THE HONOURABLE JUSTICE MARC NADON,
JUDGE OF THE FEDERAL COURT OF APPEAL,
THE ATTORNEY GENERAL OF CANADA, THE
MINISTER OF JUSTICE

Respondents

ORIGINATING NOTICE OF APPLICATION
PURSUANT TO S. 18 AND 18.1 OF THE
FEDERAL COURT ACT

ROCCO GALATI LAW FIRM
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CORPORATION
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TEL: (416) 530-9684
FAX: (416) 530-8129

Email: rocco@idirct.com

Solicitor on his own behalf

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PROFESSIONAL
CORPORATION
Paul Slansky, B.A., LL.B., J.D.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 536-1220
FAX: (416) 536-8842

Email: paul.slansky@bellnet.ca

Solicitor for the Constitutional
Rights Centre Inc.

41

Registry No.: T-1657-13

FEDERAL COURT

BETWEEN:

ROCCO GALATI,
CONSTITUTIONAL RIGHTS CENTRE
INC.,

Applicants

- and -

THE RIGHT HONOURABLE STEPHEN
HARPER, HIS EXCELLENCY THE
RIGHT HONOURABLE GOVERNOR
GENERAL DAVID JOHNSTON,
THE RIGHT HONOURABLE BEVERLEY
MCLACHLIN, CHIEF JUSTICE OF
CANADA,
THE HONOURABLE MARC NAIDON,
JUDGE OF THE FEDERAL COURT OF
APPEAL,
THE ATTORNEY GENERAL OF
CANADA, THE MINISTER OF JUSTICE

Respondents

**NOTICE OF CONSTITUTIONAL
QUESTION**

ROCCO GALATI LAW FIRM
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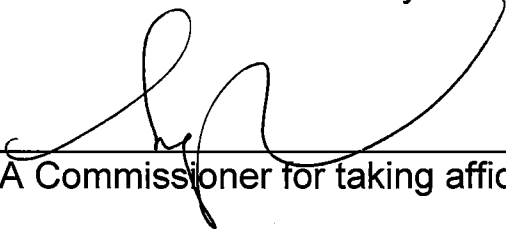
Email: rocco@idirect.com

Solicitor for the Applicant

Exhibit-E



This is Exhibit "E" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

FOR IMMEDIATE RELEASE

OTTAWA, October 8, 2013 – Mr. Justice Marc Nadon has decided, in light of the challenge to his appointment pending before the Federal Court, not to participate for the time being in matters before the Supreme Court of Canada.

For further information contact:

Owen M. Rees
Executive Legal Officer
(613) 996-9296
owen.rees@scc-csc.ca

* * *

POUR DIFFUSION IMMÉDIATE

OTTAWA, le 8 octobre 2013 – Compte tenu de la contestation de sa nomination devant la Cour fédérale, le juge Marc Nadon a décidé de ne pas participer, pour le moment, aux affaires dont est saisie la Cour suprême du Canada.

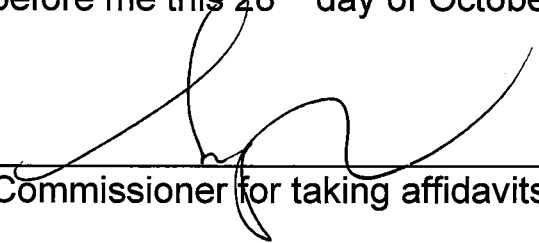
Renseignements :

Owen M. Rees
Adjoint exécutif juridique
(613) 996-9296
owen.rees@scc-csc.ca

Exhibit-F



This is Exhibit "F" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

Labour Relations and Employment Board Act, as enacted by section 365 of this Act, is replaced by the following:

l'emploi dans la fonction publique, édictée par l'article 365 de la présente loi, est remplacé par ce qui suit :

Obligation to prepare report

42. (1) As soon as feasible after the end of each fiscal year, the Board must prepare and submit to the Minister a report on its activities during the immediately preceding fiscal year, other than its activities under the *Parliamentary Employment and Staff Relations Act*. The report must include a summary of the reports that the Board has received under the *Public Sector Equitable Compensation Act* during that year.

42. (1) Dans les meilleurs délais suivant la fin de chaque exercice, la Commission établit un rapport sur ses activités — autres que celles régies par la *Loi sur les relations de travail au Parlement* — au cours de l'exercice précédent et le transmet au ministre. Elle inclut dans le rapport un sommaire des rapports qu'elle a reçus pendant cet exercice au titre de la *Loi sur l'équité dans la rémunération du secteur public*.

Établissement du rapport

(10) If section 405 of the other Act comes into force on the same day as section 390 of this Act, then that section 405 is deemed to have come into force before that section 390 and subsection (8) applies as a consequence.

(10) Si l'entrée en vigueur de l'article 405 de l'autre loi et celle de l'article 390 de la présente loi sont concomitantes, cet article 405 est réputé être entré en vigueur avant cet article 390, le paragraphe (8) s'appliquant en conséquence.

Coming into Force

Entrée en vigueur

Order in council

470. Sections 365 to 466, and the provisions of any Act as they are enacted by this Division, come into force on a day or days to be fixed by order of the Governor in Council.

470. Les articles 365 à 466, ou les dispositions de toute loi édictées par ces articles, entrent en vigueur à la date ou aux dates fixées par décret.

Décret

DIVISION 19

SECTION 19

SUPREME COURT ACT

LOI SUR LA COUR SUPRÊME

R.S., c. S-26

L.R., ch. S-26

471. The *Supreme Court Act* is amended by adding the following after section 5:

471. La *Loi sur la Cour suprême* est modifiée par adjonction, après l'article 5, de ce qui suit :

For greater certainty

5.1 For greater certainty, for the purpose of section 5, a person may be appointed a judge if, at any time, they were a barrister or advocate of at least 10 years standing at the bar of a province.

5.1 Pour l'application de l'article 5, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau d'une province.

Précision

472. The Act is amended by adding the following after section 6:

472. La même loi est modifiée par adjonction, après l'article 6, de ce qui suit :

For greater certainty

6.1 For greater certainty, for the purpose of section 6, a judge is from among the advocates of the Province of Quebec if, at any time, they were an advocate of at least 10 years standing at the bar of that Province.


6.1 Pour l'application de l'article 6, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau de la province de Québec.

Précision

Exhibit-G



This is Exhibit "G" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits



CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2013-1105
October 22, 2013

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 53 of the *Supreme Court Act*, refers to the Supreme Court of Canada for hearing and consideration the following questions:

1. Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Quebec pursuant to sections 5 and 6 of the *Supreme Court Act*?

2. Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions as set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No. 2*?

CERTIFIED TO BE A TRUE COPY—COPIÉ CERTIFIÉ CONFORMÉ

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ



Sur recommandation du ministre de la Justice et en vertu de l'article 53 de la *Loi sur la Cour suprême*, Son Excellence le Gouverneur général en conseil soumet au jugement de la Cour suprême du Canada les questions suivantes :

1. Une personne qui a autrefois été inscrite comme avocat pendant au moins dix ans au Barreau du Québec peut-elle être nommée à la Cour suprême du Canada à titre de juge de la Cour suprême pour le Québec conformément aux articles 5 et 6 de la *Loi sur la Cour suprême* ?

2. Le Parlement peut-il légiférer pour exiger, à titre de condition de sa nomination au poste de juge de la Cour suprême du Canada, qu'une personne soit ou ait été inscrite comme avocat au barreau d'une province pendant au moins dix ans ou adopter des dispositions déclaratoires telles que celles prévues aux articles 471 et 472 du projet de loi intitulé *Loi n° 2 sur le plan d'action économique de 2013*, ci-annexé ?

CERTIFIED TO BE A TRUE COPY—COPIÉ CERTIFIÉ CONFORMÉ

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

SCHEDULE

471. The *Supreme Court Act* is amended by adding the following after section 5:

For greater
certainty

5.1 For greater certainty, for the purpose of section 5, a person may be appointed a judge if, at any time, they were a barrister or advocate of at least 10 years standing at the bar of a province.

472. The Act is amended by adding the following after section 6:

For greater
certainty

6.1 For greater certainty, for the purpose of section 6, a judge is from among the advocates of the Province of Quebec if, at any time, they were an advocate of at least 10 years standing at the bar of that Province.

ANNEXE

471. La Loi sur la Cour suprême est modifiée par adjonction, après l'article 5, de ce qui suit :

5.1 Pour l'application de l'article 5, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau d'une province.

Précision

472. La même loi est modifiée par adjonction, après l'article 6, de ce qui suit :

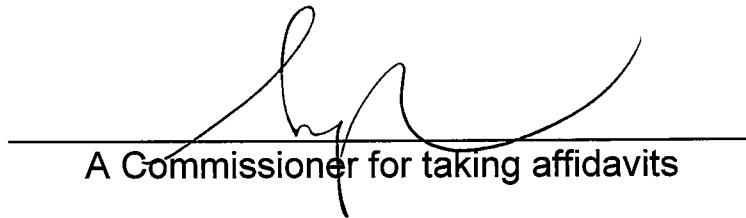
6.1 Pour l'application de l'article 6, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau de la province de Québec.

Précision

Exhibit-H



This is Exhibit "H" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

Court File No.

IN THE SUPREME COURT OF CANADA

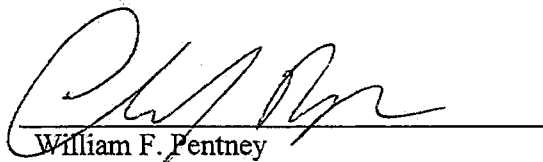
IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council concerning sections 5 and 6 of the *Supreme Court Act*, R.S.C. 1985, c.S-26, as set out in Order in Council, P.C. 2013-1105, dated October 22, 2013

NOTICE OF REFERENCE

(Pursuant to section 46(1) of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the said reference is filed pursuant to section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, and rule 46(1) of the *Rules of the Supreme Court of Canada*.



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Agent for the Attorney General of Canada

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Ottawa Agents for the Government of the Yukon Territory



CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2013-1105
October 22, 2013

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, pursuant to section 53 of the *Supreme Court Act*, refers to the Supreme Court of Canada for hearing and consideration the following questions:

1. Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Quebec pursuant to sections 5 and 6 of the *Supreme Court Act*?
2. Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions as set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No. 2*?

CERTIFIED TO BE A TRUE COPY—COPIÉ CERTIFIÉ CONFORMÉ

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

SCHEDULE

471. The *Supreme Court Act* is amended by adding the following after section 5:

For greater
certainty

5.1 For greater certainty, for the purpose of section 5, a person may be appointed a judge if, at any time, they were a barrister or advocate of at least 10 years standing at the bar of a province.

472. The Act is amended by adding the following after section 6:

For greater
certainty

6.1 For greater certainty, for the purpose of section 6, a judge is from among the advocates of the Province of Quebec if, at any time, they were an advocate of at least 10 years standing at the bar of that Province.



CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

C.P. 2013-1105
22 octobre 2013

Sur recommandation du ministre de la Justice et en vertu de l'article 53 de la *Loi sur la Cour suprême*, Son Excellence le Gouverneur général en conseil soumet au jugement de la Cour suprême du Canada les questions suivantes :

1. Une personne qui a autrefois été inscrite comme avocat pendant au moins dix ans au Barreau du Québec peut-elle être nommée à la Cour suprême du Canada à titre de juge de la Cour suprême pour le Québec conformément aux articles 5 et 6 de la *Loi sur la Cour suprême* ?
2. Le Parlement peut-il légiférer pour exiger, à titre de condition de sa nomination au poste de juge de la Cour suprême du Canada, qu'une personne soit ou ait été inscrite comme avocat au barreau d'une province pendant au moins dix ans ou adopter des dispositions déclaratoires telles que celles prévues aux articles 471 et 472 du projet de loi intitulé *Loi n° 2 sur le plan d'action économique de 2013*, ci-annexé ?

CERTIFIED TO BE A TRUE COPY—COPIÉ CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

ANNEXE

471. La Loi sur la Cour suprême est modifiée par adjonction, après l'article 5, de ce qui suit :

5.1 Pour l'application de l'article 5, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau d'une province.

Précision

472. La même loi est modifiée par adjonction, après l'article 6, de ce qui suit :

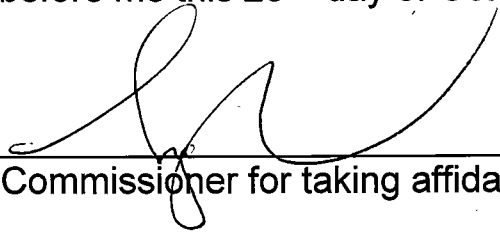
6.1 Pour l'application de l'article 6, il demeure entendu que les juges peuvent être choisis parmi les personnes qui ont autrefois été inscrites comme avocat pendant au moins dix ans au barreau de la province de Québec.

Précision

Exhibit-I



This is Exhibit "I" mentioned and
referred to in the affidavit of Andrew Law
Affirmed before me this 28th day of October, 2013



A Commissioner for taking affidavits

Court File No.

IN THE SUPREME COURT OF CANADA

IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C., 1985, c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council concerning sections 5 and 6 of the *Supreme Court Act*, R.S.C. 1985, c.S-26, as set out in Order in Council, P.C. 2013-1105, dated October 22, 2013

NOTICE OF MOTION

TAKE NOTICE that the Governor in Council hereby applies to the Chief Justice or to a judge of the Court pursuant to sections 53 and 79 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as am., and rule 46(4) of the *Rules of the Supreme Court of Canada* for an Order:

- (1) Directing the Registrar to set this case down on the list of cases to be heard by the Court;
- (2) Abridging the time periods provided for in the *Rules of the Supreme Court* for the giving of notice and filing of materials in order to ensure the expeditious hearing of this matter, as set out in Appendix A; and
- (3) Such further and other matters as this Honourable Court shall direct.

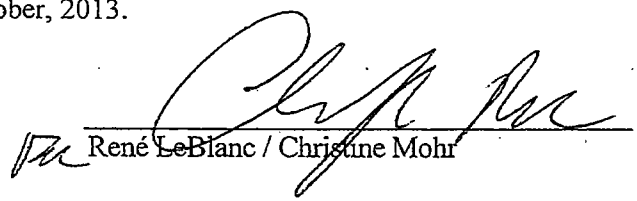
AND FURTHER TAKE NOTICE THAT the motion shall be made on the following grounds:

- (1) By Order in Council P.C. 2013-1105, dated the 22nd day of October, 2013, the Governor in Council referred two questions to this Court for consideration and determination, and directions are required with respect to the procedure to be followed on the said reference;
- (2) The Order in Council includes two questions concerning the interpretation of sections 5 and 6 of the *Supreme Court Act* and the constitutional validity of the portions of those provisions which deal with past or present standing at the bar of a province and of the declaratory amendments set out in clauses 471 and 472 of the *Economic Action Plan Act 2013, No. 2*;
- (3) By notice dated the 22nd day of October, 2013; the reference was filed with this Court; and
- (4) Resolution of the questions referred is essential to restore the effective operation of the Supreme Court of Canada and is of significant importance in the administration of justice in Canada.

AND FURTHER TAKE NOTICE that, the following material shall be relied on in support of the motion:

- (1) The Affidavit of Jonathan Shanks, sworn on October 22, 2013;
- (2) The Notice of Reference dated October 22, 2013, appending the Order in Council, P.C. 2013-1105, dated October 22, 2013, and clauses 471 and 472 of the *Economic Action Plan Act, 2013, No. 2*;
- (3) The submissions of counsel for the Attorney General of Canada; and
- (4) Such further and other material that may be filed and permitted.

Dated at Ottawa, this 22nd day of October, 2013.


René LeBlanc / Christine Mohr

Department of Justice Canada
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Counsel for the Attorney General of Canada

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APPENDIX A

PROPOSED TIMETABLE

Step	Usual timetable and rule	Accelerated Timetable
Filing of Notice of Reference, attaching a copy of the Order in Council	r. 46(1)	Completed: October 22, 2013
Service of the Notice of Reference on the Attorneys General of the provinces and Ministers of Justice of the Territories	within 1 week after filing of Notice of Reference - r. 46(5)	Completed: October 22, 2013
Service and filing of Notices of Intervention by the Attorneys General of the provinces and Ministers of Justice of the territories	within 4 weeks of being served with the Notice of Reference - r. 46(6)	Proposed: November 6, 2013
Any person interested in intervening in the reference may make a motion to intervene	within 4 weeks of filing of the record of the Attorney General of Canada - r. 46(10)	Proposed: November 6, 2013
Responses of the Attorneys General to motions to intervene by interested parties	within 10 days of service of motions - r. 54(1)	Proposed: November 13, 2013
Interested parties' opportunity to file reply	5 days before file is submitted to panel - r. 58	Proposed: November 18, 2013
Attorney General of Canada to serve and file electronic copy of its proposed record		Proposed: November 27, 2013

Proposed timetable, cont'd

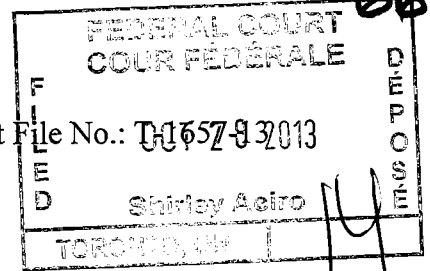
Notices to indicate whether they will seek to add material to the record

Notices to indicate whether they will seek to add material to the record

Step	Usual timetable and rule	Accelerated Timetable
Attorneys General and any Ministers of Justice who intervene and any other persons granted leave to file evidence shall serve and file an electronic copy of their proposed records		Proposed: December 4, 2013
Cross-examinations, if any, to be completed by		Proposed: December 11, 2013
Attorney General of Canada to file its record, factum and authorities	within 12 weeks of the filing of the Notice of Reference – r. 46(7)	Proposed: December 18, 2013
Attorneys General of the provinces to file their records, facta and authorities	20 weeks from the filing of Notice of Intervention– r. 46(9)	Proposed: January 8, 2013
Filing of other Interveners', records, facta and authorities	8 weeks from Order granting leave – r. 37	Proposed: January 8, 2013
Court's request to counsel to appear and argue case		
Any counsel requested to appear and argue the case shall serve electronic materials	within 8 weeks of filing of the record of the Attorney General of Canada or from date of request – r. 46(8)	To be filed with paper copies
Hearing date		Proposed: January 13, 2014 or as soon thereafter possible

Tab-3





Court File No.: T-1657-932013

FEDERAL COURT

BETWEEN:

ROCCO GALATI AND CONSTITUTIONAL RIGHTS CENTRE INC.

Applicants

- and -

**THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE
RIGHT HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON, THE
HONOURABLE JUSTICE MARC NADON, JUDGE OF THE FEDERAL
COURT OF APPEAL, THE ATTORNEY GENERAL OF CANADA AND THE
MINISTER OF JUSTICE**

Respondents

**WRITTEN REPRESENTATIONS OF THE ATTORNEY
GENERAL OF CANADA**

PART I – OVERVIEW

1. On October 22, 2013, His Excellency the Governor in Council referred directly to the Supreme Court of Canada (the “reference”) questions which specifically address the issues raised in this proceeding. Accordingly, the Attorney General of Canada moves for an order staying the within application pursuant to section 50(1) of the *Federal Courts Act* pending determination of the reference. This Court should await the Supreme Court of Canada’s opinion on the proper interpretation of sections 5 and 6 of the *Supreme Court Act* and on the constitutionality of those provisions and the proposed declaratory amendments

contained in the *Economic Action Plan 2013 Act, No.2*. If any questions remain, the application can then proceed with the benefit of the Supreme Court’s guidance.

2. A temporary stay will cause no prejudice to the Applicants. The Attorney General has asked the Supreme Court to expedite the reference and Justice Nadon has declined to hear appeals while the issue is outstanding. Conversely, proceeding with this application concurrently with the Supreme Court reference wastes scarce judicial resources and risks conflicting legal decisions.

PART II – STATEMENT OF FACTS

3. The Honourable Mr. Justice Marc Nadon (“Justice Nadon”) was appointed to the Supreme Court of Canada from the Federal Court of Appeal on October 3, 2013.¹ By this proceeding, the Applicants challenge the propriety of that appointment.

4. The Applicants seek declarations that a judge of the Federal Court of Appeal cannot be appointed to the Supreme Court of Canada in fulfilment of the requirements of section 6 of the *Supreme Court Act*.² They also seek a declaration that the appointment of Justice Nadon constitutes a change to the composition of the Supreme Court of Canada that may only be done by constitutional amendment.³

¹ Affidavit of Andrew Law, sworn October 25, 2013 (“Law Affidavit”), para.2 and exhibit “A” thereto, **Motion Record of the Attorney General of Canada (“AGC Record”), Tabs 2 and 2A**

² Notice of Application, exhibits “C” and “D” to the Law Affidavit, **AGC Record, Tabs 2C and 2D**

³ *Ibid.*

5. As a result of this application, Justice Nadon has decided not to participate in matters presently before the Supreme Court of Canada.⁴ Consequently, the Court is sitting without a full bench.

6. On October 22, 2013, the *Economic Action Plan 2013 Act, No.2* was introduced in the House of Commons. Clauses 471 and 472 of that Bill introduce two declaratory provisions, to be named sections 5.1 and 6.1 of the *Supreme Court Act*. These provisions declare that, for greater certainty, an individual may be appointed to the Supreme Court of Canada if they were an advocate of a province for at least 10 years.⁵

7. Also on October 22, 2013, His Excellency the Governor in Council referred the following questions to the Supreme Court of Canada for determination pursuant to section 53 of the *Supreme Court Act*:

- (a) Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Québec pursuant to sections 5 and 6 of the *Supreme Court Act*?
- (b) Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions as set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No.2*?⁶

⁴ Law Affidavit, para.6 and exhibit "E" thereto, AGC Record, Tabs 2 and 2E

⁵ Law Affidavit, para.8 and exhibit "F" thereto, AGC Record, Tabs 2 and 2F

⁶ Law Affidavit, para.9-10 and exhibit "G" thereto, AGC Record, Tabs 2 and 2G

8. The Attorney General of Canada commenced the above-noted reference by filing a Notice of Reference with the Supreme Court of Canada on October 22, 2013.⁷

9. The Attorney General of Canada has also brought a motion to the Chief Justice of the Supreme Court of Canada requesting, *inter alia*, that the reference be heard on an expedited basis.⁸

PART III – POINTS IN ISSUE

10. The issues on this motion are whether this application should be stayed on a temporary basis pending determination of the motion; and if a stay is declined, should the Court grant an extension of the time period provided under rule 318(2).

PART IV – SUBMISSIONS

A. A TEMPORARY STAY IS WARRANTED IN THE CIRCUMSTANCES OF THIS CASE

11. The jurisdiction of this Court to stay an application is given by subsection 50(1) of the *Federal Courts Act*, and by this Court’s plenary jurisdiction to manage and regulate its own proceedings.⁹ Subsection 50(1) reads as follows:

⁷ Law Affidavit, para.12 and exhibit “H” thereto, AGC Record, Tabs 2 and 2H

⁸ Law Affidavit, para.13 and exhibit “I” thereto, AGC Record, Tabs 2 and 2I

⁹ *Coote v. Lawyers’ Professional Indemnity Company*, 2013 FCA 143 at para.8, Attorney General of Canada’s Book of Authorities (“AGC Auth.”), Tab 1

50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.¹⁰

1) **The issues raised in this proceeding are before the Supreme Court of Canada**

12. Before this Court, the Applicants raise issues relating to the statutory interpretation of sections 5 and 6 of the *Supreme Court Act* as well as with respect to Parliament's jurisdiction to appoint a judge of the Federal Courts who has had 10 years experience as a member of the Barreau du Québec. According to the applicants, this authority may only be gained by constitutional amendment made under sections 41(d) and 42(d) of the *Constitution Act, 1982*.¹¹

13. Similarly, the reference questions ask the Supreme Court of Canada to consider and render a decision upon (1) whether a person (including a judge of the Federal Courts) who has had 10 years standing at the Barreau du Québec may be appointed to the Supreme Court of Canada pursuant to sections 5 and 6 of the *Supreme Court Act*; and (2) whether Parliament has legal authority to enact legislation requiring that a person be, or have previously been, a barrister or advocate with at least 10 years experience at the bar of a province as a condition to appointment.¹²

¹⁰ *Federal Courts Act*, R.S.C. 1985, c.F-7, s.50(1), **Appendix A ("App. A.")**

¹¹ Notice of Application, **AGC Record, Tab 2B**; *Supreme Court Act*, R.S.C. 1985, c.S-26, as am. ("*Supreme Court Act*"), s.6, **App. A**

¹² Law Affidavit at paras.9-10 and exhibit "G" thereto, **AGC Record, Tabs 2 and 2G**

14. Under subsection 53(4) of the *Supreme Court Act*, the Supreme Court must consider, answer and give reasons for each question that is referred to it.¹³ Therefore, the Supreme Court of Canada is presently seized of, and will render an opinion on, the legal issues raised in this application.

15. The first question requires the Supreme Court to provide its opinion on the proper interpretation of sections 5 and 6 of the *Supreme Court Act*. Since the eligibility requirements for appointment to the Federal Court and Federal Court of Appeal also require that a person have at least 10 years standing at the bar, the question put to the Supreme Court captures the issues raised in the application.¹⁴

16. The second question referred to the Court puts the constitutionality of the current provisions, as well as the proposed declaratory amendments, before the Supreme Court. The Attorney General of Canada fully intends that the Supreme Court of Canada consider and decide upon Parliament's constitutional jurisdiction as it relates to the criteria which the Applicant alleges do not support the appointment of Justice Nadon.¹⁵

17. In particular, the second question asks whether Parliament can enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment to the Supreme Court of Canada. The Attorney General takes the position that such

¹³ *Supreme Court Act*, s. 53(4), **App. A**

¹⁴ *Federal Courts Act*, *supra*, sections 5.2-5.4

¹⁵ Law Affidavit at para.9, **AGC Record, Tab 2**

legislation is within Parliament's legislative authority under s. 101 of the *Constitution Act, 1867*. The question necessarily requires the Supreme Court to opine on whether or not the subject-matter of such legislation engages the application of the Constitution's amendment procedures. If the legislation does, then it would be of no force and effect pursuant to section 52 of the *Constitution Act, 1982* because it would constitute an attempt to amend the Constitution of Canada without following the required amending procedures. If sections 41(d) or 42(1)(d) were engaged, resolutions of the House of Commons, Senate and some or all of the legislative assemblies would be required before a Proclamation could be issued by the Governor General under the Great Seal of Canada.¹⁶

18. The test to be applied on a motion to stay pursuant to subsection 50(1) requires the moving party to demonstrate:

- (a) that the continuation of the proceeding will cause prejudice or injustice to the respondents; and
- (b) that the stay will not work an injustice to the applicants.¹⁷

19. The Minister of Justice is responsible for the administration of justice in Canada. Within this role, the Minister is responsible for the continuation of a fair, bijural and accessible system of federal courts for all Canadians. Proceeding with this application while the reference is being heard could cause prejudice to the administration of justice.

¹⁶ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11, ss. 38, 41, **App. A**

¹⁷ *Tractor Supply Co. of Texas, LP v. TSC Stores L.P.*, 2010 FC 883 at paras.23-4 aff'd by 2011 FCA, 46, **AGC Auth., Tabs 2 and 3**

20. As a result of this application, the Supreme Court of Canada is no longer functioning with a full complement of justices. This could impact the work of the Court, and may result in longer reserve times for decisions and/or the hearing of fewer appeals. In addition, the absence of Justice Nadon means that the number of sitting judges on the Supreme Court from Québec is limited to two.

21. The Supreme Court of Canada is at the apex of the Canadian judicial system and is the court of last resort for all Canadians. In order to ensure that the Court can fulfil its significant and central role in our legal system, it is imperative that the issues raised in this matter be resolved as quickly as possible through the reference to the Supreme Court. Concurrent proceedings in this Court could jeopardize that process.

22. In addition, there is no prospect that the Applicants will be prejudiced by the proposed stay. The Applicants have no heightened legal interest in proceeding by way of this application as opposed to the Supreme Court reference, nor in having both processes proceed concurrently. In fact, it is unclear from the Notice of Application on what basis either of the Applicants claim to have standing to bring this application.

23. The legal issues raised in this matter will receive a full hearing in the Supreme Court of Canada. Indeed, the Applicants seek from this Court a declaration that the Attorney General of Canada was duty-bound to refer this matter to the

Supreme Court of Canada.¹⁸ It would be unreasonable for the Applicants to now argue that they will be prejudiced by the very remedy they seek.

2) The interests of justice require a stay

24. To stay a matter under paragraph 50(1)(b), this Court must be satisfied that a proposed stay is in the interests of justice. Where, as here, the court is being asked to suspend or delay a pending application, the legal test for a stay is whether the interests of justice support the granting of a stay based on all the circumstances.¹⁹

25. Whether the interests of justice support the staying of an application depends on the facts of each case, as guided by broader factors respecting the proper administration of justice. In particular, the interests of justice are opposed to the wasting of scarce judicial and public resources.²⁰ As recognized by the Federal and Ontario Courts of Appeal, a stay should be granted when it serves to advance the fair, well-ordered and timely disposition of litigation.²¹

26. As a result, a motions judge that is asked to stay an application must ask whether the proposed stay helps to secure “the just, most expeditious and least

¹⁸ Notice of Application, para.1(f)

¹⁹ *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312 at para.14, **AGC Auth., Tab 4**; *Korea Data Systems (USA), Inc. v. Amazing Technologies Inc. (c.o.b. Ajay Amazing Technologies Inc.)*, 2012 ONCA 756 at paras.17-19, **AGC Auth., Tab 5**

²⁰ *Cooté v. Lawyers’ Professional Indemnity Company*, 2013 FCA 143 at para.13, **AGC Auth., Tab 1**

²¹ *Ibid.*

expensive determination” of the proceeding on its merits.²² Irreparable harm and/or prejudice to the parties are also relevant considerations.²³

27. In all of the circumstances, the interests of justice require that this proceeding be stayed. This is for two reasons. First, proceeding with the application despite the Supreme Court reference will waste scarce judicial time and resources that could be devoted to other matters. This court’s analysis in this matter will undoubtedly be guided by the opinion rendered by the Supreme Court of Canada. To hastily proceed alongside the Supreme Court’s proceedings would, therefore, amount to a wasteful use of judicial resources that this court should exercise its discretion against.²⁴

28. Second, it would not be in the interests of well-ordered litigation for this application to be heard concurrently with the reference. This Court should avoid the possibility that it may render a conflicting decision with the Supreme Court of Canada. Such a result would be confusing and would undermine the proper and orderly administration of justice. In recognition of the Supreme Court of Canada’s superior position as the final court of appeals in Canada, this Court should defer its proceedings by temporarily staying this application. After the reference is

²² *Ibid.* at para.12; *Federal Courts Rules*, SOR-98/106, Rule 3.

²³ *Ibid.* at para.14; *Korea Data Systems (USA), Inc. v. Amazing Technologies Inc. (c.o.b. Ajay Amazing Technologies Inc.)*, 2012 ONCA 756 at para.19, **AGC Auth., Tab 5**; *Siemens Canada Ltd. v. J.D. Irving Ltd.*, 2012 FCA 225 at paras.126-7, **AGC Auth., Tab 6**

²⁴ *Coote v. Lawyers’ Professional Indemnity Company*, 2013 FCA 143 at para.13, **AGC Auth., Tab 1**

determined, the Court could assess whether there are any outstanding issues which ought to be adjudicated by this Court.

29. For all of the above reasons, the application should be stayed.

B. EXTENSION OF TIME

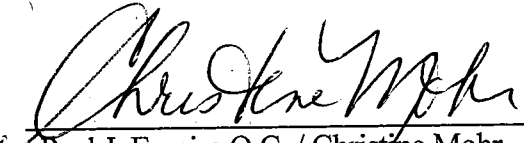
30. If the motion for a temporary stay is declined, the Attorney General requests an additional 10 days in order to respond to the Applicants' request under rule 317.

PART V – ORDER SOUGHT

31. The Attorney General of Canada respectfully requests that this Application be stayed pending the Supreme Court of Canada's judgment on the reference, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 28th day of October, 2013.


Paul J. Evraire Q.C. / Christine Mohr

Of Counsel for the Respondents, the Right Honourable Stephen Harper, His Excellency the Right Honourable Governor General David Johnston, the Attorney General of Canada and the Minister of Justice

TO: The Administrator
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M5V 3L6

AND TO: Rocco Galati
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AND TO: Raynold Langlois, Q.C.
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APPENDIX A - STATUTES AND REGULATIONS

Federal Courts Act, R.S.C., 1985, c. F-7

Loi sur les Cours Fédérales, L.R.C. (1985), ch. F-7

Stay of proceedings authorized

Suspension d'instance

50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

50. (1) La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire:

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

a) au motif que la demande est en instance devant un autre tribunal;

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

Federal Courts Rules, SOR/98-106

Règles des Cours Fédérales, DORS/98-106

General principle

Principe general

3. These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

3. Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

Extension or abridgement

Délai prorogé ou abrégé

8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

8. (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.

Material from tribunal

Matériel en la possession de l'office fédéral

317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

317. (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels

Material to be transmitted

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

Notice of Motion

359. Except with leave of the Court, a motion shall be initiated by a notice of motion, in Form 359, setting out

(a) in respect of a motion other than one made under rule 369, the time, place and estimated duration of the hearing of the motion;

(b) the relief sought;

(c) the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and

(d) a list of the documents or other material to be used at the hearing of the motion.

Costs of motion

401. (1) The Court may award costs of a motion in an amount fixed by the Court.

(2) Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

demandés.

Documents à transmettre

318. (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet:

(a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

(b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Avis de requête

359. Sauf avec l'autorisation de la Cour, toute requête est présentée au moyen d'un avis de requête établi selon la formule 359 et précise :

(a) sauf s'il s'agit d'une requête présentée selon la règle 369, la date, l'heure, le lieu et la durée prévue de l'audition de la requête;

(b) la réparation recherchée;

(c) les motifs qui seront invoqués, avec mention de toute disposition législative ou règle applicable;

(d) la liste des documents et éléments matériels qui seront utilisés à l'audition de la requête.

Dépens de la requête

401. (1) La Cour peut adjuger les dépens afférents à une requête selon le montant qu'elle fixe.

(2) Si la Cour est convaincue qu'une requête n'aurait pas dû être présentée ou contestée, elle ordonne que les dépens

**Supreme Court Act, R.S.C., 1985,
c. S-26**

Constitution of Court

4. (1) The Court shall consist of a chief justice to be called the Chief Justice of Canada, and eight puisne judges.

(2) The judges shall be appointed by the Governor in Council by letters patent under the Great Seal.

Who may be appointed judges

5. Any person may be appointed a judge who is or has been a judge of a superior court of a province or a barrister or advocate of at least ten years standing at the bar of a province.

Three judges from Quebec

6. At least three of the judges shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province.

Opinion of Court

53. (4) Where a reference is made to the Court under subsection (1) or (2), it is the duty of the Court to hear and consider it and to answer each question so referred, and the Court shall certify to the Governor in Council, for his information, its opinion on each question, with the reasons for each answer, and the opinion shall be pronounced in like manner as in the case of a judgment on an appeal to the Court, and any judges who differ from the opinion of the majority shall in like manner certify their opinions and their reasons.

afférents à la requête soient payés sans délai.

**Loi sur la Cour suprême, L.R.C.
(1985), ch. S-26**

Composition de la Cour

4. (1) La Cour se compose du juge en chef, appelé juge en chef du Canada, et de huit juges puînés.

(2) La nomination des juges se fait par lettres patentes du gouverneur en conseil revêtues du grand sceau.

Conditions de nomination

5. Les juges sont choisis parmi les juges, actuels ou anciens, d'une cour supérieure provinciale et parmi les avocats inscrits pendant au moins dix ans au barreau d'une province.

Représentation du Québec

6. Au moins trois des juges sont choisis parmi les juges de la Cour d'appel ou de la Cour supérieure de la province de Québec ou parmi les avocats de celle-ci. la chose a été recueilli, traité, préparé, transformé, entreposé et manipulé de cette

Avis de la Cour

53. (4) La Cour est tenue d'étudier tout renvoi fait aux termes des paragraphes (1) ou (2) et de répondre à chaque question qui lui est ainsi déférée. Elle transmet ensuite au gouverneur en conseil, pour son information, un avis certifié et motivé sur chacune des questions, de la même manière que dans le cas d'un jugement rendu sur appel porté devant elle; tout juge dont l'opinion diffère de celle de la majorité transmet pareillement son avis certifié et motivé.

**Rules of the Supreme Court of
Canada, SOR/2002-156**

**Règles de la Cour
suprême du Canada, DORS/2002-
156**

Reference to the Court

Renvoi Devant La Cour

46. (1) A reference to the Court by the Governor in Council under section 53 of the Act shall be commenced by notice of reference in Form 46 to which shall be attached a copy of the order in council authorizing the reference.

46. (1) Le renvoi devant la Cour par le gouverneur en conseil en vertu de l'article 53 de la Loi est introduit par un avis de renvoi conforme au formulaire 46, accompagné du décret autorisant le renvoi.

***Constitution Act, 1867, 30 & 31
Victoria, c. 3 (U.K.)***

***Loi constitutionnelle de 1867, 30 &
31 Victoria, ch. 3 (R.-U.)***

General Court of Appeal, etc.

Cour générale d'appel, etc.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

101. Le parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans la présente loi, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.

***Constitution Act, 1982, being
Schedule B to the Canada Act 1982
(UK), 1982, c.11***

***Loi Constitutionnelle de 1982,
Édictée comme l'annexe B de la Loi
de 1982 sur le Canada, 1982, ch. 11
(R.-U.)***

**General procedure for amending Constitution of
Canada**

Procédure normale de modification

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

38. (1) La Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée à la fois:

(a) resolutions of the Senate and House of Commons; and

(a) par des résolutions du Sénat et de la Chambre des communes;

(b) resolutions of the legislative assemblies

(b) par des résolutions des assemblées législatives d'au moins deux tiers des

of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

provinces dont la population confondue représente, selon le recensement général le plus récent à l'époque, au moins cinquante pour cent de la population de toutes les provinces.

Amendment by unanimous consent

Consentement unanime

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

41. Toute modification de la Constitution du Canada portant sur les questions suivantes se fait par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de chaque province :

(d) the composition of the Supreme Court of Canada;

(d) la composition de la Cour suprême du Canada;

Amendment by general procedure

Procédure normale de modification

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

42. (1) Toute modification de la Constitution du Canada portant sur les questions suivantes se fait conformément au paragraphe 38(1) :

(d) subject to paragraph 41(d), the Supreme Court of Canada;

(d) sous réserve de l'alinéa 41d), la Cour suprême du Canada;