

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

B E T W E E N :

**JOANNE FRASER, ALLISON PILGRIM, and
COLLEEN FOX**

Appellants
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

Respondent
(Respondent)

- and -

**ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF QUEBEC**

Interveners

**MOTION FOR LEAVE TO INTERVENE
of the Proposed Intervener, Public Service Alliance of Canada**
(pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)

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i
INDEX

TAB	PAGE NO.:
1. Notice of Motion for Leave to Intervene, dated September 6, 2019.....	1
2. Affidavit of Patricia Harewood, affirmed September 5, 2019	5
3. Memorandum of Argument, dated September 6, 2019.....	13
PART I – STATEMENT OF FACTS	13
PART II – ISSUES.....	17
PART III – ARGUMENT.....	17
A. PSAC has an interest and will be directly affected by the outcome of this proceeding.....	17
B. PSAC brings a useful and different perspective before this Court.....	20
C. No prejudice to the parties	22
PART IV – SUBMISSIONS ON COSTS	22
PART V – ORDER REQUESTED	22
PART VI – TABLE OF AUTHORITIES	23
PART VII – LEGISLATION.....	24

TAB 1

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

BETWEEN:

**JOANNE FRASER, ALLISON PILGRIM and
COLLEEN FOX**

Appellants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

**ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF QUEBEC**

Interveners

**NOTICE OF MOTION FOR LEAVE TO INTERVENE BY
THE PUBLIC SERVICE ALLIANCE OF CANADA**
(Pursuant to Rules 47, 55-59 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the proposed intervener, Public Service Alliance of Canada ("PSAC"), hereby applies to a Judge of the Court pursuant to Rules 47, 55-59 of the *Rules of the Supreme Court of Canada*:

- (a) for an Order granting PSAC intervener status, including the right to file a factum and make oral submissions before this Honourable Court;
- (b) for an Order that there shall be no costs either in PSAC's favour or against it, arising from this motion or the Appeal, and;

- (c) for any further or other Order that the Judge may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of the said motion:

- (a) the Affidavit of Patricia Harewood, affirmed September 5, 2019, and;
- (b) such further and other material as counsel may advise and this Court may permit.

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

- (a) as evidenced in the affidavit of Patricia Harewood, PSAC and its members have a genuine and substantial interest in the issues raised in this appeal and will be directly affected by its disposition. Particularly, PSAC and its membership will be directly impacted by the Court's decision regarding the constitutionality of RCMP pension scheme, given its close resemblance to the *Public Service Superannuation Act* ("PSSA") provisions which regulate the pensions of PSAC bargaining unit members as well as their ability to buy back periods of leave without pay;
- (b) if granted leave to intervene, PSAC will bring a unique and relevant perspective to the proceedings. PSAC has a demonstrable historical and current interest in the interpretation and application of federal public service pension legislation, such as the legislation under consideration in this appeal. PSAC regularly provides advice and representation to and advocacy on behalf of its membership on issues pertaining to pensions under the substantively identical PSSA pension scheme. Furthermore, PSAC has extensive experience providing representation to its membership on equality rights matters pursuant to the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*, including on matters related to family status accommodation in the federal public service;
- (c) PSAC will make submissions that are different from those of the other parties in

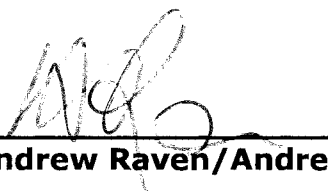
the proceeding. Specifically, if granted leave to intervene, PSAC will submit that:

- i. The RCMP pension scheme must be interpreted within the context of the broader federal public service pension legislation. Given that the relevant pension mechanisms under the *PSSA* are substantively identical to those at issue in the present appeal, it is relevant to consider how the *PSSA* pension plan has been interpreted and applied to issues of reduced hours, leave without pay, and service buyback within prior cases. It is similarly important to situate the analysis of the RCMP pension scheme within the historical development of federal public service pension legislation, particularly in light of the long-standing recognition of the gendered impact of the federal public service pension benefit schemes;
- ii. The inclusion of childcare obligations within the protected human rights ground of family status has received broad acceptance since the early 2000s, including from human rights tribunals, labour arbitrators, and courts. The evolving jurisprudence on this issue provides a framework for analyzing how legislation, like a facially neutral workplace rule, may conflict with family responsibilities and impose burdens on or withhold benefits from parents in a manner different from those who do not share their status. Moreover, recent decisions and legal scholarship on family status highlight the analytical errors and stereotyping inherent in framing the childcare decisions of parents, particularly those of working mothers, as voluntary choices. The family status case law therefore provides particular assistance in the assessment of the Appellants' intersectional argument; and,
- iii. The courts below erred and failed to properly apply human rights principles by treating the Appellants as part-time employees. While the Appellants have addressed the issue of employment status from the perspective of the right to return to full-time hours in their

submissions, human rights law in the labour and employment context also confirms the obligation on employers to maintain full-time employment status as an aspect of the duty to accommodate. Akin to this Court's analysis in cases such as *Hydro-Québec v SCFP-FTQ* and *McGill University*, courts and labour arbitrators have held that full-time employment status must be maintained, pursuant to human rights legislation, where a return to full-time hours is reasonably foreseeable. Applying this analysis in the present case confirms that the Appellants remained full-time employees while temporarily reducing their hours to care for their children, which is a human rights-protected reason.

- (d) both the public interest and the interests of justice will be best served by granting PSAC's motion for leave to intervene in this appeal;
- (e) if granted leave to intervene, PSAC will not seek costs and would ask that no costs be awarded against it;
- (f) Rules 47, 55-59 of the *Rules of the Supreme Court of Canada*, SOR/2002-156, as amended by SOR/2006-203, and;
- (g) Such further and other grounds as counsel may advise and this Court permit.

DATED AT Ottawa, Ontario this 6th day of September, 2019.



Per: Andrew Raven/Andrew Astritis/Morgan Rowe

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TAB 2

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

B E T W E E N:

**JOANNE FRASER, ALLISON PILGRIM and
COLLEEN FOX**

Appellants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

**ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF QUEBEC**

Interveners

AFFIDAVIT OF PATRICIA HAREWOOD

I, Patricia Hyacinth Harewood, of the City of Ottawa, in the Province of Ontario,
AFFIRM THAT:

1. I have been employed with the proposed intervener, Public Service Alliance of Canada ("PSAC"), in various capacities for the past 10 years. Currently, I am employed as a Legal Officer in PSAC's Representation and Legal Services Branch. On the basis of this experience and my responsibilities in this position, I have knowledge of the matters deposed to herein. Where my knowledge is based on information and belief, I have so stated the basis of such information and belief.

2. The present appeal alleges that the Royal Canadian Mounted Police ("RCMP") statutory pension scheme, as set out in the *Royal Canadian Mounted Police Superannuation Act* ("RCMPSA") and the *Royal Canadian Mounted Police Superannuation Regulations*, discriminates on the grounds of sex and family status, contrary to section 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter").

3. PSAC has a demonstrable historical and current interest in ensuring that statutory pension schemes in the federal public service, such as the *RCMPSA* and the substantively identical regime under the *Public Service Superannuation Act* ("PSSA"), do not, either in substance or application, discriminate against women who temporarily reduce their hours of work for childcare reasons. It seeks leave to intervene on this basis.

The Proposed Intervener

4. Formed in 1966, PSAC is an employee organization which has been certified as the bargaining agent for employees included in various bargaining units across the federal government. PSAC also represents workers in the private sector, in territorial governments, and in the broader public sector, including universities.

5. PSAC is the largest bargaining agent in the federal public service, representing approximately two-thirds of all unionized employees working across the country in all areas of the federal public service. Currently, PSAC is the certified bargaining agent for over 147,000 employees whose labour relations and collective bargaining rights are regulated under the *Federal Public Sector Labour Relations Act* ("FPSLRA") and for over 162,000 employees for whom issues regarding pension entitlement are regulated by the *PSSA*.

6. Within bargaining units regulated by the *FPSLRA*, the majority of PSAC members are women. Indeed, certain federal public service bargaining units are disproportionately made up of women. For instance, based on past internal estimates, PSAC's Program and Administrative Services ("PA") bargaining unit within the federal public service is made up of approximately 75% female

members. This is equivalent to approximately 53,000 female employees in the PA bargaining unit alone.

PSAC's Expertise and Interest in Federal Public Service Pensions

6. PSAC has an active and concrete interest in the matters at issue in this case. As a bargaining agent for employees in the federal public service, PSAC is uniquely positioned to provide the Court with insights based on its work representing and advocating on behalf of members who are directly impacted by the approach to interpreting and applying pension legislation in the federal public service.

7. As noted above, PSAC's federal public service members are subject to a statutory pension scheme that is substantively identical to the RCMP pension scheme with respect to the issues engaged in this appeal. Like the RCMP pension scheme, the pension plan established pursuant to the *PSSA* is a registered pension plan, pursuant to the *Income Tax Act*. The *PSSA* provides for a defined pension benefit upon retirement based on the pension contributions made over the course of an individual's employment. Of particular relevance to the present appeal, the *PSSA* also provides a mechanism through which employees can "buy back" periods of time when they were not actively at work due to an approved leave without pay.

8. PSAC members, especially women who reduce their hours due to childcare responsibilities, will be directly impacted by the Court's decision regarding the constitutionality of the RCMP pension scheme, given its close resemblance to the *PSSA* scheme which regulates their pensions and their ability to buy back periods of leave without pay. PSAC therefore has a direct stake in this Court's determination of the present appeal in its representational capacity as the bargaining agent for members who are now subject to legislation which is substantively identical to the legislation being challenged by the Appellants.

9. Finally, PSAC will bring significant expertise to this Appeal on pension issues. This includes an intersectional gendered analysis that recognizes how facially neutral pension schemes, such as the *PSSA*, may contribute to income inequality against women in all their diversity (i.e. women with disabilities, racialized women,

Indigenous women etc.). PSAC has a long history of representing members with respect to the interpretation and application of the *PSSA*. Particularly, PSAC has developed its expertise through several decades of advising members with pension issues, providing submissions to the federal government with respect to proposed pension reforms, negotiating human rights accommodations and significant pay equity settlements that impact pension benefits with government employers, and providing members with representation in their interactions with the Government of Canada Pension Centre.

10. PSAC will also bring expertise to the pension issues raised in this Appeal based on its history of advocacy, education and lobbying on the broader concerns underlying income inequality within Canadian society. This includes PSAC's efforts to address the pay gap between women and men by promoting proactive pay equity legislation and to bargain for benefit schemes that address historic and current disadvantages faced by women and other equity groups.

PSAC's Expertise and Interest in Equality Jurisprudence

11. As part of its work representing federally-regulated employees, PSAC is committed to supporting and advancing equality principles, as enshrined in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. As part of this commitment, PSAC has pursued projects, collective action, and litigation which are consistent with the equality commitments outlined in its Policy on Human Rights. These include PSAC's commitments to:

- (a) Promote human rights issues through educational and sensitization measures aimed at PSAC members and public awareness programs;
- (b) Support collective bargaining proposals for articles which further PSAC's human rights goals, including but not limited to protection against personal harassment; protection for workers who are or become disabled; child care; equal pay for work of equal value; joint and equal participation in union-management employment equity programs; improvements to current "no discrimination" and "sexual harassment" articles;
- (c) Pressure the employer at all levels to end discriminatory practices against equity groups, including women; implement special measures to eliminate

barriers to employment for members of equity groups, and redress past and present systemic discrimination against women which has an adverse impact on PSAC's membership;

- (d) Continue to lobby for changes in legislation to achieve full bargaining rights in the public service and to strengthen the *CHRA* and the *Employment Equity Act*, and;
- (e) Participate with other groups with similar goals to improve benefits and conditions for diverse women and other disadvantaged groups in Canada.

12. Furthermore, PSAC has a demonstrable and historical interest in the interpretation and application of equality rights under both the *Charter* and *CHRA*. PSAC has developed a substantial expertise in this area through its representation of federal government employees in human rights matters. PSAC regularly pursues human rights matters on behalf of its members before the Canadian Human Rights Tribunal and other federal tribunals and decision-makers across the country. PSAC also regularly pursues human rights arguments in the context of grievances before adjudicators, pursuant to the *FPSLRA*, and arbitrators, pursuant to the *Canada Labour Code*.

13. In this role, PSAC has provided representation to members in a number of significant decisions involving the interpretation and application of equality rights under the *CHRA*, including: *Public Service Alliance of Canada v Treasury Board* (1998), 32 CHRR D/349; *Barr v Treasury Board (Department of National Defence)*, 2006 PSLRB 85; *Mellon v Human Resources Development Canada*, 2006 CHRT 3; *Public Service Alliance of Canada v Canada Post Corp.*, 2011 SCC 57; *Turner v Canada Border Service Agency*, 2012 FCA 159.

14. Of particular note to the present appeal, PSAC provided representation to one of its members – a Border services officer who was a mother forced to reduce her working hours due to childcare responsibilities. This was a landmark federal human rights case regarding family status accommodation in employment with a government employer: *Johnstone v Canada Border Service Agency*, 2010 CHRT 20, upheld 2014 FCA 110.

15. Finally, PSAC has been granted leave to intervene in a number of legal proceedings involving *Charter* and human rights issues before this Court, including: *Delisle v Canada (Attorney General)*, [1999] 2 SCR 989; *Bell Canada v Canadian Telephone Employee Assn.*, [2003] 1 SCR 884; *Canada (Human Rights Commission) v Canadian Airlines International Ltd.*, [2006] 1 SCR 3; *Mounted Police Association of Ontario*, 2015 SCC 1; *Meredith v Canada (Attorney General)*, 2015 SCC 2; *Saskatchewan Federation of Labour*, 2015 SCC 4; *British Columbia Teachers' Federation*, 2016 SCC 49; *Québec (Attorney General) v Alliance du personnel professionnel et technique de la santé des services sociaux et al*, 2018 SCC 17; and *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31.

16. Through its litigation and advocacy work, PSAC has sought to advance equality rights jurisprudence and to contribute to the development of a liberal and meaningful approach to interpreting section 15 of the *Charter*.

PSAC's Proposed Intervention

17. Broadly speaking, PSAC proposes to make submissions on the following issues:

- a. The RCMP pension scheme must be interpreted within the context of the broader federal public service pension legislation. Given that the relevant pension mechanisms under the *PSSA* are substantively identical to those at issue in the present appeal, it is relevant to consider how the *PSSA* pension plan has been interpreted and applied to issues of reduced hours, leave without pay, and service buyback within prior cases. It is similarly important to situate the analysis of the RCMP pension scheme within the historical development of federal public service pension legislation, particularly in light of the long-standing recognition of the gendered impact of the federal public service pension benefit schemes;
- b. The inclusion of childcare obligations within the protected human rights ground of family status has received broad acceptance since the early

2000s, including from human rights tribunals, labour arbitrators, and courts. The evolving jurisprudence on this issue provides a framework for analyzing how legislation, like a facially neutral workplace rule, may conflict with family responsibilities and impose burdens on or withhold benefits from parents in a manner different from those who do not share their status. Moreover, recent decisions and legal scholarship on family status highlight the analytical errors and stereotyping inherent in framing the childcare decisions of parents, particularly those of working mothers, as voluntary choices. The family status case law therefore provides particular assistance in the assessment of the Appellants' intersectional argument; and,

- c. The courts below erred and failed to properly apply human rights principles by treating the Appellants as part-time employees. While the Appellants have addressed the issue of employment status from the perspective of the right to return to full-time hours in their submissions, human rights law in the labour and employment context also confirms the obligation on employers to maintain full-time employment status as an aspect of the duty to accommodate. Akin to this Court's analysis in cases such as *Hydro-Québec v SCFP-FTQ* and *McGill University*, courts and labour arbitrators have held that full-time employment status must be maintained, pursuant to human rights legislation, where a return to full-time hours is reasonably foreseeable. Applying this analysis in the present case confirms that the Appellants remained full-time employees while temporarily reducing their hours to care for their children, which is a human rights-protected reason.


18. If granted leave, PSAC will expand upon these submissions.

19. Counsel for PSAC has reviewed the Appellants' factum. I can confirm that PSAC is committed not to repeat arguments made by the Appellants or Respondent and, if granted leave to intervene in this appeal, will confine its participation to matters arising out of its perspective and experiences. PSAC will not detract from

the particular issues at stake between the parties to the litigation and is not seeking leave to adduce fresh evidence.

20. I make this affidavit in support of an application for leave to intervene in this appeal and for no other improper purpose.

AFFIRMED BEFORE ME at the)
City of Ottawa, this 5th day)
of September, 2019.)


_____)
A Commissioner etc.)


_____)
Patricia H. Harewood)

TAB 3

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

B E T W E E N:

**JOANNE FRASER, ALLISON PILGRIM and
COLLEEN FOX**

Appellants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

**ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF QUEBEC**

Interveners

**MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER,
PUBLIC SERVICE ALLIANCE OF CANADA
(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)**

PART I - STATEMENT OF FACTS

Overview

1. The Public Service Alliance of Canada ("PSAC") brings this motion seeking leave to intervene in this appeal, pursuant to Rules 55 and 59 of the *Rules of the Supreme Court of Canada*.

Rules of the Supreme Court of Canada, SOR/2002-156, as amended, Rules 55, 59

2. PSAC is the largest bargaining agent in the federal public service and

represents federally-regulated employees across Canada, pursuant to the *Federal Public Sector Labour Relations Act* ("FPSLRA"). Through its representational work on behalf of members, PSAC has developed significant experience and expertise in the interpretation and application of federal public service pension legislation, such as the *Public Service Superannuation Act* ("PSSA"). It also regularly represents its membership in equality rights matters pursuant to the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* ("CHRA"), including in the landmark family status decision in *Johnstone v Canada Border Services Agency*.

Canadian Human Rights Act, RSC, 1985, c H-6; *Public Service Superannuation Act*, RSC, 1985, c P-36; *Federal Public Sector Labour Relations Act*, SC 2003, c 22; *Johnstone v Canada Border Services Agency*, 2010 CHRT 20, affirmed *Canada (Attorney General) v Johnstone*, 2014 FCA 110 ["Johnstone"]

3. PSAC seeks to participate in the present appeal in three respects: first, to speak to the interpretation of the RCMP pension scheme within the broader context of federal public service pension legislation; second, to make representations regarding the framework for assessing conflicts between legislation and childcare obligations in light of the developing human rights case law on family status; and third, to address the appropriate approach to assessing employment status where hours of work are temporarily reduced for a human rights-protected reason.

4. PSAC will bring a unique and important perspective to these issues given its breadth of experience in these matters. PSAC's role as the largest bargaining agent for federal public service employees results in it being directly affected by the resolution of these issues. PSAC submits that both the public interest and the interests of justice will be best served by granting its motion for leave to intervene in this appeal.

Factual Background

5. This case arises out of a *Charter* challenge brought on behalf of three female, full-time members of the Royal Canadian Mounted Police ("RCMP"). The Appellants allege that the RCMP statutory pension scheme, as set out in the *Royal Canadian Mounted Police Superannuation Act* ("RCMPSA") and the *Royal Canadian Mounted*

Police Superannuation Regulations, discriminates against them by preventing them from buying back periods of service during which they had temporarily reduced hours of work for childcare reasons. The Appellants maintain that the RCMP pension scheme breaches section 15 of the *Charter* based on the intersectional grounds of sex and parental/family status.

Royal Canadian Mounted Police Superannuation Act, RSC, 1985, c R-11;
Royal Canadian Mounted Police Superannuation Regulations, CRC, c 1393

6. In the decisions below, the Federal Court and Federal Court of Appeal dismissed the Appellants' application on the basis that the pension provisions in issue did not constitute a benefit under the law, did not create a distinction based on sex and/or family status, and did not perpetuate prejudice or stereotyping stemming from historic disadvantage.

Fraser et al v Canada (Attorney General), 2017 FC 557; *Fraser et al v Canada (Attorney General)*, 2018 FCA 223

The Proposed Intervener

7. The proposed intervener, PSAC, is the certified bargaining agent for over 147,000 employees whose labour relations and collective bargaining rights are regulated under the *FPSLRA*. PSAC is the largest bargaining agent in the federal public service, representing approximately two-thirds of all unionized employees working across the country in all areas of the federal public service. PSAC also represents workers in the private sector, in territorial governments, and in the broader public sector, including universities. Currently, PSAC serves as bargaining agent for over 162,000 employees for whom issues regarding pension entitlement are regulated by the *PSSA*.

Affidavit of Patricia Harewood, Motion Record ["MR"] Tab 2 at paras 4-5 ["Harewood Affidavit"]

8. Notably, within bargaining units regulated by the *FPSLRA*, the majority of PSAC members are women. Indeed, certain federal public service bargaining units are disproportionately made up of women. For instance, based on past internal

estimates, PSAC's Program and Administrative Services ("PA") bargaining unit within the federal public service is made up of approximately 75% female members. This is equivalent to approximately 53,000 female employees in the PA bargaining unit alone.

Harewood Affidavit, MR Tab 2 at para 6

9. As part of its work representing federally-regulated employees, PSAC is committed to supporting and advancing equality principles, as enshrined in the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. As part of this commitment, PSAC has pursued projects, collective action, and litigation which are consistent with the equality commitments outlined in its Policy on Human Rights. These include PSAC's commitments to:

- (a) Promote human rights issues through educational and sensitization measures aimed at PSAC members and public awareness programs;
- (b) Support collective bargaining proposals for articles which further PSAC's human rights goals, including but not limited to protection against personal harassment; protection for workers who are or become disabled; child care; equal pay for work of equal value; joint and equal participation in union-management employment equity programs; improvements to current "no discrimination" and "sexual harassment" articles;
- (c) Pressure the employer at all levels to end discriminatory practices against equity groups, including women; implement special measures to eliminate barriers to employment for members of equity groups, and redress past and present systemic discrimination against women which has an adverse impact on PSAC's membership;
- (d) Continue to lobby for changes in legislation to achieve full bargaining rights in the public service and to strengthen the *CHRA* and the *Employment Equity Act*, and;
- (e) Participate with other groups with similar goals to improve benefits and conditions for diverse women and other disadvantaged groups in Canada.

Harewood Affidavit, MR Tab 2 at para 11

PART II - ISSUES

10. The issue to be determined on this motion is whether PSAC ought to be granted leave to intervene. The determination of this issue depends on the answers to the following two questions:

- (a) Does PSAC have an interest in this appeal and will it be directly affected by the outcome?
- (b) If so, will PSAC's submissions in the appeal be useful and different from those of the other parties?

Rules of the Supreme Court of Canada, supra, Rule 55, 57; *R v Finta*, [1993] 1 SCR 1138 at 1142

PART III - ARGUMENT

A. PSAC has an Interest and Will Be Directly Affected by the Outcome of this Proceeding

11. PSAC has an active and concrete interest in the matters at issue in this case. As bargaining agent for over 162,000 employees whose pensions are regulated by the *PSSA*, PSAC is uniquely positioned to provide the Court with insights based on its work representing members who are directly impacted by the interpretation and application of pension legislation in the federal public service. PSAC's federal public service members, especially women who reduce their hours due to childcare responsibilities, will be directly affected by the Court's decision regarding the constitutionality of the RCMP pension scheme, given its close resemblance to the *PSSA* provisions which regulate their pensions and their ability to buy back periods of leave without pay.

Harewood Affidavit, MR Tab 2 at paras 5-8

12. In *Professional Institute of the Public Service of Canada v Canada (Attorney General)* ["*PIPSC*"], the Ontario Court of Appeal recognized that unions have a direct interest in the statutory pension regimes affecting the rights and interests of their members:

Here it is true that the appellants cannot compel the employers to bargain collectively about pensions. However, the pension legislation attacked in these actions would change important conditions of employment for the appellants' members. Challenging the legality of such a change on behalf of their members comes within the core function we expect of unions in representing their members and their interests. Viewed in this way, the appellants' representational role requires them to be directly interested in this legislation in a way that goes well beyond the interest a member of the general public might have.

PIPSC (2002), 222 DLR (4th) 438 at paras 50, 49

13. As with the legislation dealing with pension surpluses under the *PSSA* and *RCMP SA* in the *PIPSC* case, PSAC has a direct stake in this Court's determination of the present appeal in its representational capacity as the bargaining agent for members who are now subject to legislation which is substantively identical to the legislation being challenged by the Appellants.

Harewood Affidavit, MR Tab 2 at para 8

14. PSAC will bring significant expertise to this appeal on pension issues. PSAC has a long history of representing members with respect to the interpretation and application of the *PSSA*. Particularly, PSAC has developed its expertise through several decades of advising members with pension issues, providing submissions to the federal government with respect to proposed pension reforms, negotiating human rights accommodations and significant pay equity settlements that impact pension benefits with government employers, and providing members with representation in their interactions with the Government of Canada Pension Centre. PSAC's representational work on pensions includes experience in applying an intersectional gendered analysis that recognizes how facially neutral pension schemes, such as the *PSSA*, may contribute to income inequality against women in all their diversity.

Harewood Affidavit, MR Tab 2 at para 9

15. PSAC will also bring expertise to the pension issues raised in this Appeal based on its history of advocacy, education and lobbying on the broader concerns

underlying income inequality within Canadian society. This includes PSAC's efforts to address the pay gap between women and men by promoting proactive pay equity legislation and to bargain for benefit schemes that address historic and current disadvantages faced by women and other equity groups.

Harewood Affidavit, MR Tab 2 at para 10

16. In addition, PSAC has a demonstrable and historical interest in the equality rights jurisprudence. Particularly, PSAC has developed a substantial expertise in the interpretation and application of the *Charter* and *CHRA* through its representation of federal government employees in human rights matters. PSAC regularly pursues human rights matters on behalf of its members before the Canadian Human Rights Tribunal and before other federal tribunals and decision-makers across the country. In this role, PSAC has provided representation to members in a number of landmark decisions involving the interpretation and application of the *CHRA*, including on matters related to family status accommodation in the federal public service.¹

Harewood Affidavit, MR Tab 2 at paras 12-14

17. Finally, PSAC has intervened on a number of occasions in legal proceedings involving *Charter* and equality rights issues before this Court.²

Harewood Affidavit, MR Tab 2 at para 15

18. Through its litigation and advocacy work, PSAC has sought to advance equality rights jurisprudence and to contribute to the development of a liberal and meaningful approach to interpreting section 15 of the Charter.

¹ See e.g. *Johnstone, supra*; *Public Service Alliance of Canada v Treasury Board (1998)*, 32 CHRR D/349; *Barr v Treasury Board (Department of National Defence)*, 2006 PSLRB 85; *Mellon v Human Resources Development Canada*, 2006 CHRT 3;; *Public Service Alliance of Canada v Canada Post Corp.*, 2011 SCC 57; *Turner v Canada Border Service Agency*, 2012 FCA 159

² *Delisle v Canada (Attorney General)*, [1999] 2 SCR 989; *Bell Canada v Canadian Telephone Employee Assn.*, [2003] 1 SCR 884; *Canada (Human Rights Commission) v Canadian Airlines International Ltd.*, [2006] 1 SCR 3; *Mounted Police Association of Ontario*, 2015 SCC 1; *Meredith v Canada (Attorney General)*, 2015 SCC 2; *Saskatchewan Federation of Labour*, 2015 SCC 4; *British Columbia Teachers' Federation*, 2016 SCC 49; *Québec (Attorney General) v Alliance du personnel professionnel et technique de la santé des services sociaux et al*, 2018 SCC 17; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31

Harewood Affidavit, MR Tab 2 at para 16

B. PSAC Brings a Useful and Different Perspective Before this Court

19. PSAC seeks to make submissions before this Court that will provide a distinct contribution to the determination of the issues in the present appeal. Broadly speaking, PSAC seeks leave to intervene to argue that:

- (a) The RCMP pension scheme must be interpreted within the context of the broader federal public service pension legislation. Given that the relevant pension mechanisms under the *PSSA* are substantively identical to those at issue in the present appeal, it is relevant to consider how the *PSSA* pension plan has been interpreted and applied to issues of reduced hours, leave without pay, and service buyback within prior cases. It is similarly important to situate the analysis of the RCMP pension scheme within the historical development of federal public service pension legislation, particularly in light of the long-standing recognition of the gendered impact of the federal public service pension benefit schemes;
- (b) The inclusion of childcare obligations within the protected human rights ground of family status has received broad acceptance since the early 2000s, including from human rights tribunals, labour arbitrators, and courts. The evolving jurisprudence on this issue provides a framework for analyzing how legislation, like a facially neutral workplace rule, may conflict with family responsibilities and impose burdens on or withhold benefits from parents in a manner different from those who do not share their status. Moreover, recent decisions and legal scholarship on family status highlight the analytical errors and stereotyping inherent in framing the childcare decisions of parents, particularly those of working mothers, as voluntary choices. The family status case law therefore provides particular assistance in the assessment of the Appellants' intersectional argument; and,

- (c) The courts below erred and failed to properly apply human rights principles by treating the Appellants as part-time employees. While the Appellants have addressed the issue of employment status from the perspective of the right to return to full-time hours in their submissions, human rights law in the labour and employment context also confirms the obligation on employers to maintain full-time employment status as an aspect of the duty to accommodate. Akin to this Court's analysis in cases such as *Hydro-Québec v SCFP-FTQ* and *McGill University*, courts and labour arbitrators have held that full-time employment status must be maintained, pursuant to human rights legislation, where a return to full-time hours is reasonably foreseeable. Applying this analysis in the present case confirms that the Appellants remained full-time employees while temporarily reducing their hours to care for their children, which is a human rights-protected reason.

20. If granted leave, PSAC will expand upon these submissions.

21. Furthermore, PSAC has a unique perspective as well as significant expertise as the largest bargaining agent under the *FPSLRA* and *PSSA*, as outlined above. The Federal Court has confirmed that, even where a particular interest may be adequately defended by one of the parties, a proposed intervener may nevertheless be granted intervener status because of its special knowledge and expertise. This Court has also recognized that interveners with specific experience and knowledge in an area have a useful role to play before the Court by providing submissions regarding the broader context which may be outside the direct experience of the parties themselves.

See: Benoit v Canada, 2001 FCA 71 at paras 17-18; International Association of Immigration Practitioners v Canada, 2004 FC 630 at para 20; R v Finta, supra at 1143-1144; Harewood Affidavit, MR Tab 2 at paras 6-9

22. PSAC can offer a markedly different perspective on the rights at issue. Unlike the Appellants, PSAC, as a bargaining agent, directly represents employees in all matters, including pension issues and human rights, across the federal public

service. Accordingly, PSAC provides a unique and important perspective that would be of assistance to this Court in the resolution of the issues raised in this appeal.

Harewood Affidavit, MR Tab 2 at paras 3-5, 9, 12, 19

C. No Prejudice to the Parties

23. Finally, PSAC maintains that there would be no prejudice to the parties if the within motion is granted. PSAC takes no position on the facts in issue and is committed not to repeat arguments made by other parties. If granted leave to intervene in this appeal, PSAC will accept the existing Record and confine its participation to matters arising out of its perspective and experience.

PART IV – SUBMISSIONS ON COSTS

24. PSAC requests that there be no costs either in PSAC's favour or against it arising from this motion or the appeal.

PART V – ORDER REQUESTED

25. PSAC seeks an Order:

- (a) Granting PSAC intervener status, including leave to file a factum and to present oral arguments at the hearing of the appeal before this Honourable Court; and
- (b) Ensuring there shall be no costs either in PSAC's favour or against it arising from this motion or the appeal.

Dated at Ottawa, this 6th day of September, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP/s.r.l.

Per: 

Andrew Raven/Andrew Astritis/Morgan Rowe

Solicitors for the Proposed Intervener, PSAC

PART VI – TABLE OF AUTHORITIES**Para where cited****Statutes**

<i>Canadian Human Rights Act</i> , RSC, 1985, c H-6	2
<i>Federal Public Sector Labour Relations Act</i> , SC 2003, c 22	2
<i>Public Service Superannuation Act</i> , RSC, 1985, c P-36	2
<i>Royal Canadian Mounted Police Superannuation Act</i> , RSC, 1985, c R-11.....	5
<i>Royal Canadian Mounted Police Superannuation Regulations</i> , CRC, c 1393.....	5
<i>Rules of the Supreme Court of Canada</i> , SOR/2002-156, as amended.....	1, 10

Cases

<i>Benoit v Canada</i> , 2001 FCA 71	21
<i>Fraser et al v Canada (Attorney General)</i> , 2017 FC 557	6
<i>Fraser et al v Canada (Attorney General)</i> , 2018 FCA 223	6
<i>International Association of Immigration Practitioners v Canada</i> , 2004 FC 630	21
<i>Johnstone v Canada Border Services Agency</i> , 2010 CHRT 20, affirmed <i>Canada (Attorney General) v Johnstone</i> , 2014 FCA 110.....	2
<i>Professional Institute of the Public Service of Canada v. Canada (Attorney General)</i> (2002), 222 DLR (4th) 438 (Ont CA).....	12
<i>R v Finta</i> , [1993] 1 SCR 1138.....	10, 21

PART VII – LEGISLATION

Rules of the Supreme Court of Canada, SOR/2002-156, as amended – Rules 55, 57, 59

<p>55 Any person interested in an application for leave to appeal, an appeal or a reference may make a motion for intervention to a judge.</p>	<p>55 Toute personne ayant un intérêt dans une demande d'autorisation d'appel, un appel ou un renvoi peut, par requête à un juge, demander l'autorisation d'intervenir.</p>
<p>57 (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.</p> <p>(2) A motion for intervention shall</p> <p>(a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and</p> <p>(b) set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.</p>	<p>57 (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.</p> <p>(2) La requête expose ce qui suit :</p> <p>a) la position que cette personne compte prendre relativement aux questions visées par son intervention;</p> <p>b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.</p>
<p>59 (1) In an order granting an intervention, the judge may</p> <p>(a) make provisions as to additional disbursements incurred by the</p>	<p>59 (1) Dans l'ordonnance octroyant l'autorisation d'intervenir, le juge peut :</p> <p>a) prévoir comment seront supportés les dépens</p>

<p>appellant or respondent as a result of the intervention; and</p> <p>(b) impose any terms and conditions and grant any rights and privileges that the judge may determine, including whether the intervener is entitled to adduce further evidence or otherwise to supplement the record.</p> <p>(2) In an order granting an intervention or after the time for serving and filing all of the memoranda of argument on an application for leave to appeal or the facta on an appeal or reference has expired, a judge may authorize the intervener to present oral argument at the hearing of the application for leave to appeal, if any, the appeal or the reference, and determine the time to be allotted for oral argument.</p> <p>(3) An intervener is not permitted to raise new issues unless otherwise ordered by a judge.</p>	<p>supplémentaires de l'appelant ou de l'intimé résultant de l'intervention;</p> <p>b) imposer des conditions et octroyer les droits et privilèges qu'il détermine, notamment le droit d'apporter d'autres éléments de preuve ou de compléter autrement le dossier.</p> <p>(2) Dans l'ordonnance octroyant l'autorisation d'intervenir ou après l'expiration du délai de signification et de dépôt des mémoires de demande d'autorisation d'appel, d'appel ou de renvoi, le juge peut, à sa discrétion, autoriser l'intervenant à présenter une plaidoirie orale à l'audition de la demande d'autorisation d'appel, de l'appel ou du renvoi, selon le cas, et déterminer le temps alloué pour la plaidoirie orale.</p> <p>(3) Sauf ordonnance contraire d'un juge, l'intervenant n'est pas autorisé à soulever de nouvelles questions.</p>
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