

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

CHIEF STEVE COURTOREILLE ON BEHALF OF HIMSELF
AND THE MEMBERS OF THE MIKISEW CREE FIRST NATION

Appellants

- and -

THE GOVERNOR GENERAL IN COUNCIL, MINISTER OF ABORIGINAL AFFAIRS
AND NORTHERN DEVELOPMENT, MINISTER OF FINANCE, MINISTER OF THE
ENVIRONMENT, MINISTER OF FISHERIES AND OCEANS, MINISTER OF
TRANSPORT, AND MINISTER OF NATURAL RESOURCES

Respondents

AFFIDAVIT OF JUSTIN ANISMAN

(Sworn September 7, 2017)

(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

I, Justin Anisman, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a co-founder and member of the Board of Directors of Advocates for the Rule of Law (“ARL”), and as such have personal knowledge of the matters deposed to herein.

ARL

2. ARL is a non-partisan Canadian think-tank dedicated to promoting the rule of law in Canada and abroad. It was founded in 2014 and our members come from diverse backgrounds and have divergent political views. What unites us is a shared belief in the rule of law, and the following ten propositions which flow from that basic concept:

- (i) Constitutionalism: The Constitution is the supreme law of the land and can only be amended pursuant to its own amending formula. All government power is derived from and limited by the Constitution;
- (ii) Everything is permitted except that which is proscribed by law, and no individual should be deprived of life, liberty, security of the person or enjoyment of property unless that person has been afforded a fair hearing before an independent and impartial tribunal;
- (iii) Laws should be legislated by the legislature, executed by the executive and applied by an independent judiciary;
- (iv) Laws should be of general application and should avoid exemptions and regulatory discretion wherever possible;
- (v) Statutes should establish rights, obligations and prohibitions in clear and precise language;
- (vi) Laws that are not enforced or enforceable undermine faith in the rule of law;

- (vii) The courts should strictly apply judicial precedents except where the precedent is clearly wrong and/or has proven unworkable in practice;
- (viii) Statutes should be interpreted by looking to the ordinary meaning of the text in its full statutory context;
- (ix) Legal disputes should be decided in accordance with general principles, not the sympathies of the particular case; and
- (x) All legislative and administrative actions should be subject to judicial review; but the role of the courts is “to apply the law, not to make it.”

3. ARL’s mission is to ensure that the rule of law is upheld by laws that are predictable and consistently applied. As the supreme law of the land, the interpretation and application of the Canadian Constitution is a significant interest to and focus of ARL. However, ARL’s mandate and focus is not limited to the Canadian Constitution and extends to rule of law issues that arise in other areas of law, including but not limited to administrative law, criminal law, tort, and contract law. It also includes rule of law issues in both constitutional and non-constitutional aspects of Aboriginal law.

4. ARL seeks to foster dialogue and promote education on a broad range of rule of law issues and, to that end, ARL’s members routinely publish articles, attend conferences, and make media appearances. ARL’s website can be found at <http://www.ruleoflaw.ca/>

5. As part of its efforts to promote dialogue and education on rule of law issues, ARL also partnered with the Canadian Constitution Foundation, a registered charity dedicated to defending the constitutional freedoms of Canadians, to form the Runnymede Society in 2016. The

Runnymede Society is a law-school-based membership group that specializes in holding provocative and enlightening debates and educational symposia across Canada focused on constitutional and other the rule of law issues.

6. Since commencing operations in 2014, ARL has continued to grow and it was recently incorporated as a Canadian not-for-profit corporation. Its six-member Board of Directors includes myself (a civil litigator at Mason Caplan Dizgun Roti LLP) and the following individuals:

- (i) Dr. Dwight Newman, Professor of Law and Canada Research Chair in Indigenous Rights in Constitutional and International Law, University of Saskatchewan;
- (ii) Asher Honickman, a civil litigator and partner at Matthews Abogado LLP in Toronto;
- (iii) Matthew Gurney, a print and broadcast journalist with AM640 and Global News (and previously at the National Post);
- (iv) Alana Daley, a civil litigator at Matthews Abogado LLP in Toronto; and
- (v) Michael Katz, a Chartered Professional Accountant/Certified Public Accountant in Toronto.

ARL's Interest in this Appeal

7. ARL has a strong interest in this Appeal as it raises unique issues about the rule of law and the interpretation of and interaction between certain constitutional principles in the law-

making process. Specifically, this Appeal considers the scope of Parliamentary sovereignty and the separation of powers and whether there is a duty to consult Aboriginal peoples before introducing and/or passing new laws that may affected asserted or established rights under section 35 of the *Constitution Act, 1982*, and, if so, the scope of that duty and the remedies available if it is breached.

8. ARL has a significant concern about using constitutional provisions and/or principles to amend or invalidate other constitutional provisions and/or principles and the broader implications that this could have on our constitutional framework and the rule of law. ARL is also concerned about ensuring orderly and timely law making processes and concerned about how recognizing a duty to consult, particularly for legislation of general application, could significantly impede legislative processes across Canada that are critical to the rule of law.

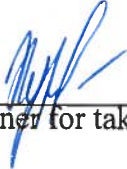
The Assistance to be Provided by ARL

9. I believe that ARL can make submissions that will be of assistance to the Court in the resolution of the appeal, by offering a different perspective from that of the parties. The parties in this appeal are primarily concerned with their respective interests (the Mikisew Cree's Aboriginal and treaty rights and federal jurisdiction and law-making powers). In contrast, ARL is concerned with the broader implications that this Appeal could have on the rule of law in terms of how conflicts between constitutional provisions and/or principles are resolved, the respective roles of courts and legislatures, and ensuring orderly and timely law-making processes throughout Canada.

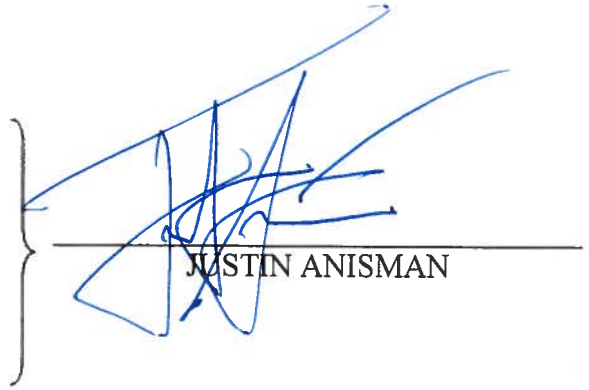
10. An outline of ARL's submissions is contained in its Memorandum of Argument. ARL does not intend to repeat or duplicate the submissions of the parties or other interveners. ARL

undertakes not to seek to enlarge the record or raise any new issues in the appeal. It will not seek costs and asks that it not be held liable for the costs of any other party or intervener on this motion or on the appeal.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 7th day of September, 2017.



A Commissioner for taking Affidavits



JUSTIN ANISMAN

Anastassiya Puryga, a Commissioner, etc.,
Province of Ontario,
for LarsenLaw & Associates
Expires October 13, 2019

CHIEF STEVE COURTOREILLE et al.
Plaintiffs

THE GOVERNOR GENERAL IN COUNCIL et al.
Defendants

S.C.C. Court File No.: 37441

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(ON APPEAL FROM THE FEDERAL
COURT OF APPEAL)**

**AFFIDAVIT OF JUSTIN ANISMAN
(Sworn September 7, 2017)**

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