

**IN THE SUPREME COURT OF CANADA
(On appeal from the Federal Court of Appeal)**

BETWEEN:

FRIENDS OF THE EARTH – LES AMI(E)S DE LA TERRE

Applicant

- and -

**THE MINISTER OF THE ENVIRONMENT AND
THE GOVERNOR IN COUNCIL**

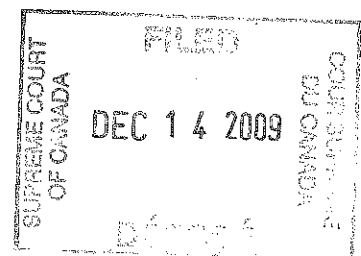
Respondents

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the Applicant, Friends of the Earth - Les Ami(e)s de la Terre, hereby applies for leave to appeal to the Court, pursuant to s.40 of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*, from the judgment of the Federal Court of Appeal, made October 15, 2009, Court File No. A-572-08, and for costs or any further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

1. The judgments below raise issues of public importance and important issues of law;
2. The order from which leave to appeal is sought raises the fundamental question of whether legislation enacted by Parliament imposing obligations on a minority government



ought to be regarded as beyond the remit of the courts on the basis that the obligations are “non-justiciable”;

3. An Act of Parliament that imposes mandatory obligations on the executive must be respected. All government action must comply with the law. If it does not, it is the role of the courts to ensure that the executive acts within the limits set by Parliament;

4. There is a conflict between the decisions of the courts below and this Court regarding the approach to be taken to the political context of questions before the court. This Court has held that justiciability turns on whether a question has a sufficient legal component to warrant judicial intervention, not whether the issue is one of political controversy;

5. In this case, the courts below refrained from ensuring that the executive complied with an Act of Parliament based in part on the political context of the legislation. However, the legislation mandated that the executive take certain actions (which it did not). The legislation itself provided a sufficient legal component to support review by the courts to ensure that the rule of law is maintained;

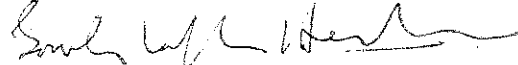
6. The courts below erroneously conflated enforceability with justiciability. It was an error to assess the justiciability of an issue on the basis of the court’s ability to enforce the legislation at issue;

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

Dated at Toronto, Ontario this 11th day of December, 2009.



Andrew K. Lokan



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Solicitors for the Respondents

NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.

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