

Court File No:

FEDERAL COURT OF APPEAL

BETWEEN

EAST COAST HYDRAULICS & MACHINERY (2009) LIMITED

Applicant

and

INTERNATIONAL LONGESHOREMEN'S ASSOCIATION, LOCAL 1975

Respondent

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 28(1)(h) OF THE
FEDERAL COURTS ACT**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Halifax, Nova Scotia

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 file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, 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.

Date: _____

Issued by: _____

Address of local office:

TO: INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1976
c/o Ronald A. Pink K.C.
Pink Larkin Lawyers
1463 South Park Street, Suite 201
Halifax, NS B3J 3S9

AND TO: CANADA INDUSTRIAL RELATIONS BOARD
240 Sparks Street
4th Floor West
Ottawa, ON K1A 0X8

AND TO: ATTORNEY GENERAL OF CANADA
Halifax Local Registry Office
1801 Hollis Street, Suite 1720
Halifax, NS B3J 3N4

1. This is an application for judicial review in respect of the December 7, 2023 decision of the Canada Industrial Relations Board (the “CIRB”) in its file O37067-C with the Order Number 11888-U (the “Decision”) to certify the Respondent as the bargaining agent for a unit comprising various of the Applicant’s employees.
2. The Applicant makes application for:
 - a. An Order setting aside or quashing the Decision for lack of jurisdiction.
3. The Grounds for the application are:

Background

- a. East Coast Hydraulics & Machinery (2009) Limited (“ECH”) is a Limited Company established pursuant to the laws of Nova Scotia. ECH’s business is primarily related to providing repair services to hydraulic systems and machinery across a wide range of industries including the marine and forestry sectors. In limited circumstances as required, ECH also unloads product off the fishing vessels of a single client to whom it mainly provides hydraulic repair services.
- b. On October 3, 2023, the Respondent International Longshoremen’s Association, Local 1976 (the “Union”) made an application (the “Certification Application”) to the CIRB to be certified as the bargaining agent for a group consisting of:

All persons employed by the Employer in the longshoring industry in the Port of Mulgrave, Nova Scotia, including foremen and walking bosses but excluding office and clerical staff, managers, and those persons excluded by section 3(1) of the *Canada Labour Code*.
- c. ECH complied with its obligations and timelines upon receiving notice of the Application from the CIRB. This included completing all forms as set out by the CIRB Rules of Procedure No. 1. On October 16, 2023, ECH wrote to the CIRB with a copy to the Union’s counsel and it opposed the Application on the grounds that its primary business was not longshoring and that this was only an occasional function performed on an as needed basis for a single client. ECH filed its response to the Application by way of letter dated October 16, 2023.
- d. The Union filed a response on October 23, 2023.
- e. On October 26, 2023, an Industrial Relations Officer, on behalf of the CIRB, sent the Parties a letter outlining what had taken place in the process so

far. Therein the Officer summarized the disputes over the proposed bargaining unit description; which employees should be counted to assess support for the Application; and disputes over the inclusion of casual employees. The Officer did not address ECH's opposition to the application on the ground that its primary business was not longshoring.

- f. ECH additionally filed a letter with the CIRB on October 26, 2023, in response to the letter of the same date noted above, raising concerns regarding the Union's organizing tactics and raising the fact that, unlike the Union, it had not yet been able to consult legal counsel on the matter.
- g. On December 7, 2023, the CIRB issued the Decision which certified the Union as the bargaining agent for the unit as sought by the Union. The Decision finds that the employees in the proposed bargaining unit were engaged in longshoring when unloading vessels and that the proposed bargaining unit was appropriate for bargaining. The Decision was made based only on the written materials submitted by the Parties.
- h. On May 14, 2024, ECH filed a motion with the Federal Court of Appeal (File Number 24-A-17) requesting an extension to submit an application for judicial review of the Decision.
- i. The Federal Court of Appeal granted ECH's motion to extend the time to file an application for judicial review by way of an Order dated June 27, 2024.

The Decision is Incorrect as the CIRB had no Jurisdiction

- j. ECH says that every part of its operations falls under provincial jurisdiction and so the CIRB was incorrect in taking jurisdiction under the *Canada Labour Code*, RSC 1985, c L-2. ECH says the matter properly falls under the jurisdiction of the Nova Scotia Labour Board, pursuant to the *Nova Scotia Trade Union Act*, RSNS 1989, c 475.
- k. The vast majority of ECH's operations are in repairing mechanical hydraulic systems which falls clearly and squarely within the provincial head of power in respect of property and civil rights.
- l. ECH further says that to the extent that it occasionally unloads fishing vessels for a single client, this is part of the operational (rather than regulatory) side of the fishing industry, which also falls under provincial jurisdiction.
- m. ECH therefore says that there is no part of its operations which could fall

under the federal jurisdiction, and it was incorrect for the CIRB to make a determination of the matter and therefore assume jurisdiction.

- n. An administrative tribunal's jurisdiction over a matter goes to the heart of its fundamental ability to make a corresponding decision and so ECH says that regardless of whether the issue was explicitly raised in the original proceedings, a decision lacking jurisdiction must necessarily be incorrect and should be quashed on judicial review.

4. The Applicant relies on the following statutes and rules:

- a. *Constitution Act, 1867*, R.S.C. 1985, App II, No. 5;
- b. *Canada Labour Code*, R.S.C. 1985, c. L-2;
- c. *Federal Courts Act*, R.S.C. 1985, c. F-7;
- d. *Federal Courts Rules*, SOR/98-106;
- e. *Trade Union Act*, R.S.N.S. 1989, c. 475; and
- f. Such further and other grounds as counsel may advise and this Honourable Court may permit.


5. This Application will be supported by the following material:

- a. The Application and submissions of the Parties to the CIRB;
- b. Correspondence from the CIRB to the Parties;
- c. The Decision;
- d. Affidavits from the owners and managers of ECH as well as documentary evidence speaking to the ECH's operations;
- e. Such further and other evidence as counsel may advise and this Honourable Court may permit.

6. The Applicant requests the Canada Industrial Relations Board to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Canada Industrial Relations Board to the Applicant and to the Registry:

- a. Any documents and correspondence which the CIRB considered in making the Decision not explicitly referenced in this Notice of Application.

July 2, 2024


Nancy F. Barteaux, K.C.
Michael Conway
Barteaux Labour & Employment Lawyers Inc.
1701 Hollis Street, Suite L106
Halifax, NS B3J 3M8
Counsel for the Applicant,
East Coast Hydraulics & Machinery (2009)
Limited