

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

BETWEEN:

1250264 ONTARIO INC.

APPLICANT

-and-

PET VALU CANADA INC.

RESPONDENT

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the applicant applies for leave to appeal to the Court under s. 40 of the *Supreme Court Act* and Rule 25 of the Supreme Court Rules, from the order of the Court of Appeal for Ontario, File No. C59956, made on January 14, 2016, and for any further or other order that the Court may deem appropriate;


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

1. The Superior Court of Justice granted judgment to the plaintiff in relation to certain certified common issues in a class proceeding after considering a voluminous record over the course of two separate hearings by an experienced class actions judge;

2. The core issues in this case that were resolved in favour of the plaintiff involved questions of honesty and truthfulness between a franchisor and franchisee;
3. The Superior Court of Justice made numerous findings of fact against the franchisor, including that it “never told its franchisees the truth” about issues that were “fundamental” to the relationship;
4. The Ontario Court of Appeal reversed the result in this case while disturbing none of the findings of fact made by the Superior Court of Justice;
5. The Ontario Court of Appeal’s decision in this case imperils the incremental development of good faith pursuant to this Court’s decision in *Bhasin v. Hryniw*, 2014 SCC 7;
6. The Ontario Court of Appeal’s analysis will lead to confusion between the duty of honesty and a duty of disclosure;
7. The Ontario Court of Appeal’s approach to fair dealing and good faith is contrary to principles of statutory interpretation applicable to franchise laws;
8. This Court has not granted leave to appeal in any decision involving franchise law issues of any significance since the decision of *Jirna v. Mister Donut of Canada*, [1975] 1 S.C.R. 2;
9. There is an appropriate record on which to decide these questions, as the facts of this case involve a full merits determination by the Superior Court of Justice; and
10. Such further and other grounds as may be allowed by this Honourable Court.

Dated at Toronto, Ontario this 11th day of March, 2016

SIGNED BY:



Jean-Marc Leclerc

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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 the day on which a file is opened by the Court following the filing of the application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.