

**VANCOUVER**

**APR 13 2022**

**COURT OF APPEAL  
REGISTRY**

Court of Appeal File No.: CA47901

**COURT OF APPEAL**

ON APPEAL FROM the order of Mr. Justice Brongers of the Supreme Court of British Columbia pronounced on the 12<sup>th</sup> day of November, 2021.

BETWEEN:

**T.L.**

**APPELLANT  
(Applicant)**

AND:

**Attorney General of British Columbia  
and Jennifer Burns, Delegate of the Director  
under the *Child, Family, and Community Service Act***

**RESPONDENTS  
(Respondents)**

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**NOTICE OF MOTION**

(In support of the Application for Leave to Intervene)  
(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

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**TO:** T.L.

**AND TO:** Her Solicitors

Paul D. LeBlanc, Susan E. Ross and John Trueman  
1057 3<sup>rd</sup> Avenue  
Prince George, BC V2L 3E3  
Email: leblanclaw@outlook.com

**TO:** The Attorney General of British Columbia and Jennifer Burns

**AND TO:** Their Solicitor

Emily Lapper  
Ministry of Attorney General  
Legal Services Branch  
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**TAKE NOTICE THAT AN APPLICATION** will be made by the West Coast Legal Education and Action Fund ("West Coast LEAF") to the presiding justice at 400 - 800 Hornby Street, Vancouver, British Columbia, at 9:30 a.m. on Tuesday, May 17, 2022, for an order pursuant to Rule 36(1) of the *Court of Appeal Rules*, B.C. Reg. 297/2001 that:

- a) West Coast LEAF has leave to intervene in the appeal and the style of cause is amended accordingly;
- b) West Coast LEAF is entitled to file a factum of not more than 10 pages in length;
- c) West Coast LEAF may apply to the division hearing the appeal for leave to make oral submissions at the hearing of the appeal;
- d) West Coast LEAF is entitled to receive electronic copies of the appeal record, transcripts, appeal book, factums, replies, books of authorities and any other documents filed by the parties; and
- e) No costs be awarded for or against West Coast LEAF in respect of this application or the appeal itself.

**AND TAKE NOTICE THAT** in support of the application will be read the affidavit of Rajwant Mangat affirmed on April 12, 2022.

The applicant does not anticipate that this application will be contested.

Dated: April 13, 2022

This application will take no more that 30 minutes to be heard.

This application is filed by:

  
Sarah Runyon and Kate Feeney

Counsel for the Proposed Intervenor, West Coast LEAF  
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**AFFIDAVIT OF RAJWANT MANGAT**

(In support of the Application for Leave to Intervene)  
(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

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I, RAJWANT MANGAT, Barrister & Solicitor, of the City of Vancouver, in the Province of British Columbia, AFFIRM AS FOLLOWS:

1. I am the Executive Director of the West Coast Legal Education and Action Fund Association ("West Coast LEAF"), and as such have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief in which case I verily believe them to be true.
2. I am authorized to provide this affidavit in support of West Coast LEAF's application for leave to intervene in this proceeding.

3. I was called to the Bar of Ontario in 2004 and to the Bar of British Columbia in 2011. I joined West Coast LEAF as the Director of Litigation in March 2016. I became the Executive Director on September 3, 2019.

4. This appeal raises important concerns regarding the scope of the *Charter's* privacy protection for parents engaged by British Columbia's child welfare system. The Appellant has specifically asked this Court to consider whether the Petition judge erred in finding that s. 96(1) of the *CFCSA* strikes a reasonable balance between a parent's privacy interest and the interests of the state in obtaining the parent's sensitive health information.

5. As described in more detail below, West Coast LEAF has long-standing interest and expertise in child welfare advocacy and reform, including with respect to the rights of marginalized parents within British Columbia's child welfare system. West Coast LEAF participated as an intervenor in this proceeding in the court below and made written and oral submissions at the hearing of the judicial review.

6. West Coast LEAF seeks leave to intervene in this appeal based on this interest and expertise and its ability to provide a unique and useful perspective to aid the Court in its consideration of the issues on appeal.

#### **A. Background and Expertise of West Coast LEAF**

7. West Coast LEAF is a non-profit society incorporated in British Columbia and registered federally as a charity. West Coast LEAF's mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination in British Columbia. Working in collaboration with community, West Coast LEAF uses litigation, law reform, and public legal education to seek systemic change. West Coast LEAF's work takes place in six areas of focus: freedom from gender-based violence, access to healthcare, access to justice, economic security, justice for those who are criminalized, and the right to parent.

8. West Coast LEAF was formed in April 1985 when the equality provisions of the *Charter* came into force. From its founding until 2014, West Coast LEAF operated as an

affiliate of a national organization, Women's Legal Education and Action Fund ("LEAF National") and much of its litigation work was carried out under the auspices of LEAF National. Beginning in 2009, West Coast LEAF began to carry out litigation in its own name.

9. During the last fiscal year, West Coast LEAF had approximately 460 members. As of April 11, 2022, West Coast LEAF employs 12 permanent staff members. It also relies on the support of approximately 200 volunteers to carry out its work.

10. West Coast LEAF acts to promote the equality interests of all women and people who experience gender-based discrimination in British Columbia, including where gender intersects with other axes of marginalization such as Indigeneity, race, national origin, immigration status, sexual orientation, family status, disability, age, and class. It is committed to working in consultation and collaboration with other equality-seeking groups to ensure that West Coast LEAF's legal positions, law reform activities, and educational programming are informed by, and inclusive of, the diversity of human experience.

11. Litigation is one of West Coast LEAF's three program areas. Through litigation, West Coast LEAF has contributed to the development of equality rights jurisprudence and the meaning of substantive equality in Canada, both in specific challenges to discriminatory or unconstitutional laws or government actions, as well as in matters where statutory interpretation compromises the realization of substantive equality through the adverse effects of such interpretation. West Coast LEAF works to ensure that the law incorporates an intersectional analysis of discrimination and disadvantage.

12. West Coast LEAF has intervened, or is intervening, in its own name in the following appeals before this Court and the Supreme Court of Canada:

- (a) *Attorney General of British Columbia v. Council of Canadians with Disabilities*, SCC File No. 39430 (appeal heard January 12-13, 2022; judgment reserved) and 2020 BCCA 241;



- (b) *Barendregt v. Grebliunas*, SCC File No. 39533 (appeal allowed December 12, 2021 with reasons to follow) (jointly with Rise Women's Legal Centre);
- (c) *Ross McKenzie Kirkpatrick v. Her Majesty the Queen*, SCC File No. 39287 (appeal heard November 3, 2021; judgement reserved);
- (d) *A.S. v. Her Majesty the Queen, et al.*, SCC File No. 39516 (appeal heard October 5-6, 2021; judgment reserved) (jointly with Women Against Violence Against Women Rape Crisis Centre ("WAVAW"));
- (e) *Her Majesty the Queen v. J.J.*, SCC File No. 39133 (appeal heard October 5-6, 2021; judgment reserved) (jointly with WAVAW) (;
- (f) *Colucci v. Colucci*, 2021 SCC 24 (jointly with LEAF National);
- (g) *A.B. v. C.D.*, 2020 BCCA 11;
- (h) *Michel v. Graydon*, 2020 SCC 24;
- (i) *Bent v. Platnick*, 2020 SCC 23, and *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 (jointly with Atira Women's Resource Society, B.W.S.S. Battered Women's Support Services Association, and WAVAW);
- (j) *British Columbia Civil Liberties Association and John Howard Society of Canada v. Canada (Attorney General)*, 2018 BCCA 282 (jointly with the Native Women's Association of Canada);
- (k) *Law Society of British Columbia v. Trinity Western University and Volkenant*, 2018 SCC 32 and 2016 BCCA 423;
- (l) *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132, leave to appeal to SCC refused, SCC File No. 38157 (January 31, 2019) (jointly with Community Legal Assistance Society);
- (m) *Denton v. Workers Compensation Board*, 2017 BCCA 403, leave to appeal to SCC refused, SCC File No. 37923 (October 25, 2018) (jointly with Community Legal Assistance Society);
- (n) *Schrenk v. British Columbia Human Rights Tribunal*, 2017 SCC 62;

- (o) *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180;
- (p) *R v. Lloyd*, 2016 SCC 13;
- (q) *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association*, 2014 SCC 59;
- (r) *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59;
- (s) *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 and *Villardell v. Dunham*, 2013 BCCA 65;
- (t) *British Columbia (Ministry of Education) v. Moore*, 2012 SCC 61;
- (u) *Friedmann v. MacGarvie*, 2012 BCCA 445; and
- (v) *Downtown Eastside Sex Workers United Against Violence v. Canada*, 2012 SCC 45 (jointly with Justice for Children and Youth and ARCH Disability Law Centre).

13. Interventions brought by LEAF National, originating in British Columbia, in which West Coast LEAF was involved, include:

- (a) *Rick v. Brandsema*, 2009 SCC 10;
- (b) *Blackwater v. Plint*, 2005 SCC 58 (as part of a coalition with the Native Women's Association of Canada and the DisAbled Women's Network of Canada);
- (c) *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78 (co-intervening with the DisAbled Women's Network of Canada);
- (d) *R. v. Shearing*, 2002 SCC 58 ("Shearing");
- (e) *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 ("Little Sisters");
- (f) *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44;
- (g) *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)*, [1999] 3 S.C.R. 3 (S.C.C.) (as part of a coalition with the

DisAbled Women's Network of Canada and the Canadian Labour Congress);

- (h) *Eldridge v. British Columbia*, [1997] 3 S.C.R. 624 (S.C.C.) ("Eldridge") (co-intervening with the DisAbled Women's Network of Canada);
- (i) *R. v. O'Connor*, [1995] 4 S.C.R. 411 (S.C.C.) (as part of a coalition with the Aboriginal Women's Council, the Canadian Association of Sexual Assault Centres, and the DisAbled Women's Network of Canada);
- (j) *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 (S.C.C.);
- (k) *R. v. Sullivan*, [1991] 1 S.C.R. 489 (S.C.C.); and
- (l) *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (S.C.C.).

14. West Coast LEAF has been granted leave to intervene or to participate as an interested party before the BC Supreme Court, an administrative decision-maker, or an inquiry in the following cases:

- (a) *R.R. v. Vancouver Aboriginal Child and Family Services Society*, BCHRT File No. 16765 (hearing is ongoing);
- (b) *T.L. v British Columbia (Attorney General)*, 2021 BCSC 2203;
- (c) *Oger v. Whatcott*, 2019 BCHRT 58;
- (d) *British Columbia Civil Liberties Association and John Howard Society of Canada v. Canada (Attorney General)*, 2018 BCSC 62;
- (e) *National Inquiry into Missing and Murdered Indigenous Women and Girls* (Order dated August 17, 2017 granting participant status in Part II and Part III hearings) (final report released June 2019) and the *BC Missing Women Commission of Inquiry* headed by Hon. Wally Oppal, Q.C. (report released November 2012);
- (f) *In the Matter of an Inquiry Pursuant to Section 63(1) of the Judges Act Regarding the Hon. Justice Robin Camp* (Canadian Judicial Council) (report released November 29, 2016) (as part of a national coalition of six organizations);



- (g) *Trinity Western University and Volkenant v. Law Society of British Columbia*, 2015 BCSC 2326;
- (h) *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2015 BCSC 534 (jointly with the Community Legal Assistance Society);
- (i) *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309; and
- (j) *Reference re Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588 (the *Polygamy Reference*).

15. Apart from its intervention work, West Coast LEAF is currently representing the plaintiff in a constitutional challenge to the adequacy of BC's family law legal aid regime before the BC Supreme Court: *Single Mothers Alliance of BC and Nicolina Bell v. British Columbia* (BCSC File No. S1733843) (Notice of Civil Claim filed April 26, 2017). The plaintiff is alleging infringements of ss. 7 and 15 of the *Charter* as well as s. 96 of the *Constitution Act, 1867*.

16. West Coast LEAF's second program area is law reform. West Coast LEAF's law reform initiatives seek to ensure that all legislation and policies comply with guarantees of sex and gender-based equality found in the *Charter*, human rights legislation, and relevant international instruments to which Canada is a signatory. West Coast LEAF's law reform work consists of conducting comprehensive community-based research and analysis, drafting best practices and policy recommendations, and making submissions to governmental and other decision-makers on a range of issues impacting equality-seeking groups.

17. Public legal education rounds out West Coast LEAF's major program areas. West Coast LEAF's educational programming aims to help residents of British Columbia understand and access their equality rights, and to think critically about the law as it affects them. West Coast LEAF's public legal education projects complement and support its litigation and law reform activities, based on the premise that the first step toward asserting rights is understanding them.

## **B. West Coast LEAF's Expertise and Interest in the Appeal**

18. West Coast LEAF has engaged in extensive work across its program areas to support families engaged in the child welfare system and advocate for child welfare reform, with a particular focus on promoting prevention-based and decolonizing approaches to child welfare, as well as eliminating systemic discrimination in the child welfare system against Indigenous families and other families who experience overlapping forms of marginalization. In summary:

- (a) West Coast LEAF is an intervenor in an ongoing hearing before the BC Human Rights Tribunal, *RR v. Vancouver Aboriginal Child and Family Services Society*. R.R. alleges that Vancouver Aboriginal Child and Family Services Society—a delegated Aboriginal agency of the Ministry of Children and Family Development—denied her custody of and access to her children because of discriminatory assumptions about her ability to parent as an Indigenous mother with mental health disabilities. West Coast LEAF was granted leave to make submissions with respect to the social context underlying the complaint, including systemic discrimination against Indigenous families.
- (b) West Coast LEAF is mid-way through a three-year project, entitled the Child Welfare Advocacy Communities of Practice Project, which is aimed at building community capacity to support and advocate for families engaged in the child welfare system, as well as create systemic change. The project is currently structured around working groups of parent's counsel lawyers, front-line child welfare advocates, and Indigenous parents, caregivers, and community members.
- (c) In April 2022, West Coast LEAF and Keeping Families Together (a collective of frontline advocates and parents impacted by the child welfare system) made a joint submission to the Ministry of Children and Family Development's consultation on its redesign of its contracted residential services. We urged the Ministry to pursue transformative changes which

prioritize prevention, least intrusive measures for child welfare interventions, and the maintenance of family, community, and cultural ties.

- (d) In June 2021, West Coast LEAF was an intervenor in this proceeding before the court below. It made written and oral submissions about the social and colonial context of B.C.'s child welfare system and the relevance of that context to assessing the reasonableness of searches and seizures under s. 96 of the *CFCSA*.
- (e) In September 2019, West Coast LEAF published a law reform report titled *Pathways in a Forest: Indigenous guidance on prevention-based child welfare*. This report, which was developed collaboratively with Indigenous elders, caregivers, and organizations, describes the ways in which the child welfare system can shift from an apprehension-based model to a prevention-based model.
- (f) In June 2019, West Coast LEAF made submissions to the province's Budget 2020 consultations, which called on the province to fund financial and community supports for families involved in the child welfare system.
- (g) In March 2018, West Coast LEAF prepared a briefing note calling on the Ministry of Child and Family Development to improve policies and administrative practices to avoid stigmatizing families in need of support services. West Coast LEAF also made submissions to the Ministry of Social Development and Poverty Reduction's BC Poverty Reduction Strategy, calling on the strategy to pay specific attention to the need for families at risk to receive support services without delay or stigma.
- (h) In February 2017, West Coast LEAF made submissions to the Standing Committee on Children and Youth on the *Representative for Children and Youth Act*, urging the committee to recommend maintaining the statutory

jurisdiction of the Representative for Children and Youth to monitor, review and audit child protection services in British Columbia.

- (i) In July 2016, West Coast LEAF published a law reform report titled *High Stakes: The impacts of childcare on the human rights of women and children*. This report called on the province to take urgent action to provide childcare immediately to those families with the greatest need, including families at risk of engagement with the child protection system.
- (j) In September 2014, West Coast LEAF published a law reform report titled *Able mothers: the intersection of parenting, disability and the law*. This report explored systemic discrimination against mothers with disabilities in British Columbia, including in their interactions with the child welfare system.
- (k) Between 2008 and 2018, West Coast LEAF published an annual CEDAW Report Card, which monitored BC's compliance with the UN's Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"). In 2019, West Coast LEAF expanded the focus of this monitoring to include an assessment of BC's progress on ensuring gender-based equality for all people who experience marginalization on the basis of their gender expression and identity. Both the earlier project and the 2019/2020 Report Card graded BC's progress toward substantive equality in areas including child welfare.

### **C. West Coast LEAF's Proposed Intervention**

19. If granted leave to intervene, West Coast LEAF will argue that the social context of parents within the child welfare system is a paramount consideration with respect to each issue under appeal. I have reviewed the proposed submissions in the Memorandum of Argument included in this Application Record and confirm that it is an accurate reflection of West Coast LEAF's proposed submissions should leave to intervene in this appeal be granted.

21. I make this affidavit in support of West Coast LEAF's application for leave to intervene and for no other or improper purpose.

  
A Commissioner for Taking Oaths  
in British Columbia

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*Rajwant Mangat*  
RAJWANT MANGAT

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**VANCOUVER**  
**APR 13 2022**  
**COURT OF APPEAL**  
**REGISTRY**

Court of Appeal File No.: CA47901

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BETWEEN:

**T.L.**

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under the *Child, Family, and Community Service Act***

**RESPONDENTS**  
(Respondents)

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**MEMORANDUM OF ARGUMENT of WEST COAST LEAF**

(In support of the Application for Leave to Intervene)

(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

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## **A. OVERVIEW**

1. West Coast Legal Education and Action Fund ("West Coast LEAF") applies under Rule 36 of the *Court of Appeal Rules* for an order that it be granted leave to intervene in this appeal and that the style of cause be amended accordingly, on the following terms:
  - a. West Coast LEAF is entitled to file a factum of not more than 10 pages in length;
  - b. West Coast LEAF may apply to the division hearing the appeal for leave to make oral submissions at the hearing of the appeal;
  - c. West Coast LEAF is entitled to receive electronic copies of the appeal record, transcripts, appeal book, factums, replies, books of authorities and any other documents filed by the parties; and
  - d. No costs be awarded for or against West Coast LEAF in respect of this application or the appeal itself.
2. This appeal raises important concerns regarding the scope of the *Charter's* privacy protection for parents engaged by British Columbia's child welfare system.
3. West Coast LEAF participated as an intervenor in this proceeding in the court below. If granted leave to intervene in this appeal, it will continue to bring a systemic perspective to the case and draw upon its interest and expertise in the child welfare system to make a valuable contribution to the issues under appeal.

## **B. THE ISSUE ON APPEAL**

4. West Coast LEAF relies on the facts as set out in paragraphs 1 to 39 of the Appellant's Factum.
5. This appeal concerns the search and seizure of the appellant's confidential health records by a social worker pursuant to s. 96(1) and (2) of the *Child, Family*

and Community Services Act ("the CFCSA"). As described by the Appellant, s. 96 of the CFCSA authorizes social workers to conduct broad and virtually standardless sweeps of an individual's most intimate and personal information that in other contexts would be subject to stringent and detailed privacy protections.<sup>1</sup>

6. By asking this Court whether "the Petition judge erred in concluding that searches and seizures authorized by s. 96 of the CFCSA are reasonable under s. 8 of the *Charter*," the appellant has called into question the constitutional validity of this legislative provision.<sup>2</sup> The legal issues in this case transcend the interests of the parties before this Court and reflect upon the implications of a parent's constitutionally protected right to be free from unreasonable search and seizure in the context of the child welfare system.

### C. LEGAL FRAMEWORK – INTERVENOR APPLICATIONS

7. An order granting leave to intervene in an appeal is discretionary and may be made on any terms and conditions the Court considers appropriate.<sup>3</sup>
8. In determining whether to grant leave to intervene to an applicant, the court will generally consider the following factors:
  - a. Does the applicant have a direct interest in the litigation? or,
  - b. Can the applicant make a valuable contribution or bring a fresh perspective to a consideration of the issues?<sup>4</sup>
9. Where the case raises issues of public interest or constitutional law, the court is more likely to grant intervenor status where that applicant can make a useful contribution to the case at bar, even where there is no direct interest.<sup>5</sup>

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<sup>1</sup> Appellant's Factum, para. 1.

<sup>2</sup> Appellant's Factum, para. 43.

<sup>3</sup> *Carter v Canada (Attorney General)*, 2012 BCCA 502 (Chambers) at para. 11.

<sup>4</sup> *Freidman v MacGarvie*, 2012 BCCA 109 (CanLII) [*Freidman*] at paras 12-19; *R v Kapp*, 2005 BCCA 247 (Chambers) [*Kapp*] at para 11.

<sup>5</sup> *MacMillan Bloedel Ltd. v. Mullin* (1985), 66 B.C.L.R. 207 (C.A.) as cited in *Kapp*, supra at para. 11.

10. The factors considered by the Court in deciding whether to exercise its discretion to grant leave to intervene on public interest grounds include the following:
  - a. Does the proposed intervenor have a broad representative base?
  - b. Does the case legitimately engage the proposed intervenor's interests in the public law issue raised on appeal?
  - c. Does the proposed intervenor have a unique and different perspective that will assist the court in the resolution of the issues?
  - d. Does the proposed intervenor seek to expand the scope of the appeal by raising issues not raised by the parties?<sup>6</sup>

#### **D. ARGUMENT**

11. While West Coast LEAF does not have a direct interest in the outcome of the litigation, it has an indirect, substantial interest in the constitutional issues under appeal. It can build on its intervention in the court below to bring a systemic perspective to the appeal, and make useful and different contributions to the issues before the Court without taking the litigation away from the parties.
12. West Coast LEAF can assist the court in evaluating the constitutional validity of s. 96 and its corresponding implications for the child welfare regime through drawing on its varied work in the areas of child welfare advocacy and reform, as well as its long-standing litigation work affecting the meaning of substantive equality under British Columbia and Canadian law.

##### ***i. West Coast LEAF and its Interest in the Appeal***

13. West Coast LEAF is a non-profit society incorporated in British Columbia and registered federally as a charity. West Coast LEAF's mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination in British Columbia. Working in collaboration with

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<sup>6</sup> *Beaudoin v. British Columbia (Attorney General)* 2022 BCCA 66 at para. 11.

community, West Coast LEAF uses litigation, law reform, and public legal education to make change. West Coast LEAF aims to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and, the right to parent.<sup>7</sup>

14. West Coast LEAF acts to promote the equality interests of all women and people who experience gender-based discrimination, including where gender intersects with other axes of marginalization such as Indigeneity, race, national origin, immigration status, sexual orientation, family or marital status, disability, age, and class. It works in consultation and collaboration with other equality-seeking groups to ensure that West Coast LEAF's legal positions, law reform activities, and educational programming are informed by, and inclusive of, the diversity of human experience.<sup>8</sup>
15. West Coast LEAF has intervened, or is intervening, in its own name in numerous cases, including cases before this Court, the British Columbia Supreme Court, and the Supreme Court of Canada. West Coast LEAF is also presently representing the plaintiff in a legal challenge to the adequacy of family law legal aid services in British Columbia under ss. 7 and 15 of the *Charter* and s. 96 of the *Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3.<sup>9</sup>
16. West Coast LEAF's legal submissions have been shaped by the organization's long-standing expertise in applying principles of substantive equality to the development, interpretation, and application of laws affecting the lives of women and people who experience gender-based discrimination. West Coast LEAF strives to bring an intersectional analysis of gender inequality before the courts, grounded in the understanding that gender inequality often overlaps with and is compounded by other forms of marginalization.<sup>10</sup>

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<sup>7</sup> Affidavit of Rajwant Mangat, affirmed April 12, 2022, at para. 7.

<sup>8</sup> *Ibid* at para. 10.

<sup>9</sup> *Ibid* at para. 12-15.

<sup>10</sup> *Ibid*, at para. 11.

17. In this case, the Court is called upon to assess the reasonableness of s. 96 of the *CFCSA* in the context of a child welfare system which disproportionately intervenes in the lives of Indigenous families and other families who experience overlapping forms of marginalization.
18. As detailed in Rajwant Mangat's affidavit, West Coast LEAF has engaged in extensive and varied litigation and law reform work in relation to the child welfare system. Its advocacy has focused on promoting prevention-based and decolonizing approaches to child welfare, as well as eliminating systemic discrimination in the child welfare system against Indigenous families and other families who experience overlapping forms of marginalization.<sup>11</sup>
19. In May 2021, West Coast LEAF was granted leave to intervene in this proceeding before the court below. It made written and oral submissions about the social and colonial context of B.C.'s child welfare system and the relevance of that context to assessing the reasonableness of searches and seizures under s. 96 of the *CFCSA*.

***ii. West Coast LEAF's Proposed Contribution on Appeal***

20. If granted leave to intervene, West Coast LEAF will argue that when assessing the reasonableness of the search and seizure regime under s. 96 of the *CFCSA*, the social context of parents within the child welfare system is a paramount consideration at every step of the analysis. West Coast LEAF's interrelated submissions are summarized below.

***The Need to Consider the Social Context of Parents in the Reasonableness Analysis***

21. A social context-infused approach to the reasonableness analysis is consistent with the Supreme Court of Canada's consideration of social context when assessing racialized experiences of arbitrary detention in *R v. Le*, 2019 SCC 34,

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<sup>11</sup> *Ibid.*, at para. 18.

as well as the evolution of appellate level jurisprudence assessing the rights of vulnerable parents in the child welfare context.<sup>12</sup>

22. Such an approach is also consistent with substantive equality and the need to appreciate the equality dimensions of privacy encroachments by the state.<sup>13</sup> As recently observed by the Ontario Court of Appeal, courts who are not sufficiently mindful of the “reality and material circumstances” of parents in the child welfare context risk exacerbating pre-existing inequities and harms.<sup>14</sup>

*The Social Context of Parents in the Child Welfare Context and its Relevance to the Issues under Appeal*

23. The disadvantage of parents whose rights are implicated by s. 96 of the *CFCSA* is widely accepted. Judicial notice can be taken of the colonial underpinnings of British Columbia’s child welfare system and the vast overrepresentation of Indigenous families within it.<sup>15</sup> Moreover, courts have long recognized that child welfare systems disproportionately engage parents who experience marginalization for reasons including poverty, class, single parenthood (mostly single motherhood), Indigeneity, race, and/or disability.<sup>16</sup>
24. The circumstances of marginalized parents form part of the dynamics of the child welfare system.<sup>17</sup> As illustrated by s. 96 of the *CFCSA*, child welfare agencies and workers exercise broad discretionary powers under the *CFCSA*’s legislative regime. In interaction with social hierarchies, the legislative regime results in

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<sup>12</sup> See *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46 (“G.(J.)”); *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48 (“K.L.W.”); *Kawartha-Haliburton Children’s Aid Society v. M.W.*, 2019 ONCA 316 (“M.W.”); and *M.L. v. B.T.*, 2022 ONCA 240 (“M.L.”).

<sup>13</sup> *R. v. Mills*, [1999] 3 SCR 668 (*Mills*), at paras. 90-92.

<sup>14</sup> *M.W.*, *supra* note 12, at paras. 68-69.

<sup>15</sup> *R. v. Ipeelee*, 2012 SCC 13, at para. 60.

<sup>16</sup> See *G.(J.)*, *supra* note 12, at para. 89 (majority reasons) and para. 114 (concurring reasons); *K.L.W.*, *supra* note 12, at para. 72 (majority reasons) and paras. 13-14 (dissenting reasons); *M.W.*, *supra* note 12, at paras. 68-69, and *M.L.*, *supra* note 12, at para. 40.

<sup>17</sup> *M.W.*, *supra* note 12, at paras. 68-69.



profound power differentials between marginalized parents and child welfare agencies and workers.<sup>18</sup>

25. The issues under appeal must be situated within the social context described above.
26. First, the level of the privacy interest at stake must be understood in relation to marginalized parents and especially parents with disabilities. Marginalized parents' lives may be more heavily documented by the state under conditions of multiple inequalities,<sup>19</sup> their health records may contain more sensitive and/or stigmatizing information, and the success of their therapeutic relationships with health care providers may require a higher degree of trust.
27. Second, the strength of s. 96's procedural safeguards must be sufficient to ensure fairness for marginalized parents who are especially vulnerable to bias and/or abuses of power.<sup>20</sup> Prior judicial authorization in this context ensures that a child welfare agency acts within their authorized role and offers procedural fairness to parents.<sup>21</sup>
28. Finally, consideration of social context underscores the misalignment between the *CFCSA*'s protective purpose and the scope of the s. 96 regime. In the absence of meaningful procedural or evidentiary safeguards, the s. 96 regime in fact undermines the *CFCSA*'s purpose by risking arbitrary (and alienating) interference in the lives of Indigenous and other marginalized families.
29. West Coast LEAF will make the above submissions with particular attention to the privacy, dignity, and substantive equality of mothers and other parents who experience gender-based discrimination, including those with mental health disabilities.

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<sup>18</sup> *M.W.*, *supra* note 12, at paras. 68-69.

<sup>19</sup> *Mills*, *supra* note 13, at paras. 90-92.

<sup>20</sup> *G.(J.)*, *supra* note 12, at para. 114 (concurring reasons).

<sup>21</sup> *M.L.*, *supra* note 12, at para. 40.

*iii. West Coast LEAF's Submissions would be Useful and Distinct*

30. West Coast LEAF's intervention would be useful and distinct because of its systemic perspective, which transcends the interests of the parties. As in the court below, West Coast LEAF would make a valuable contribution to the issues before the Court by placing them in their larger context and by highlighting the significance and implications of this case for all parents engaged by the child welfare system.

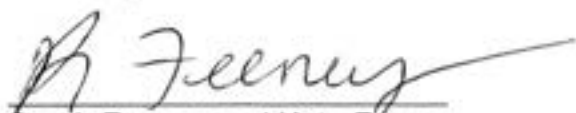
**E. CONCLUSION**

31. This appeal concerns issues of broad public and common interest. West Coast LEAF's interest in the litigation directly engages its mandate as a legal organization advocating for the equality rights of women and people who experience gender-based discrimination.
32. This case falls squarely within West Coast LEAF's expertise. It can draw from its extensive and varied experience in the child welfare system when contextualizing the reasonableness of searches and seizures under s. 96 of the CFCSA.
33. West Coast LEAF has strong experience as an intervenor before this court and others, and will not take the litigation away from the parties or raise new evidence or issues. It will work in cooperation with the parties and any other intervenors to ensure that its submissions are not duplicative.

**F. ORDER REQUESTED**

34. West Coast LEAF respectfully requests that it be granted leave to intervene in the present appeal on the terms described in paragraph 1.

All of which is respectfully submitted.  
Dated: April 12, 2022



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