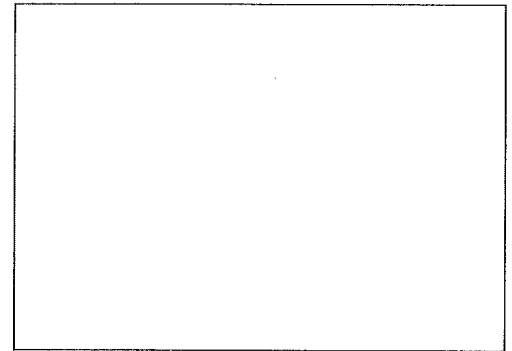




BC Human Rights Tribunal

1170 - 605 Robson Street
Vancouver BC V6B 5J3
Phone: 604-775-2000 Fax: 604-775-2020
Toll Free: 1-888-440-8844 TTY: 604-775-2021



Tribunal Stamp

WHEN TO USE THIS FORM

Use this form to make any request requiring an application, except an application to dismiss a complaint without a hearing (Form 7.2 – Dismissal Application). See STEP 1 for a list of common general applications.

The following requests do not require an application:

- More time to file a complaint response (unless you are told you must file an application)
• More time to file a submission on an application (unless you are told you must file an application)
• Order a witness to attend a hearing
• Cancel an order for a witness to attend a hearing
• Interpreter or other needs for a hearing
• Technical correction to a decision
• Get a certified copy of an order
• Get directions about filing a reply to an expert report
• Schedule a settlement meeting or case conference

GENERAL INSTRUCTIONS

If you are filling out online: your information will NOT be automatically saved by the Tribunal

– Click on Save at any time to save your form to your computer

If you are filling out by hand: print this form and use a dark pen and print legibly

File your application:

- Email your form to BCHumanRightsTribunal@gov.bc.ca attaching all additional pages and documents together in ONE scanned PDF format document
• OR print your form and attach your additional pages and documents and fax, mail or hand deliver them to us
• Keep a copy of your Application and all of your documents
• Send a copy of your Application to all other participants

Name of party or other participant making this application:

West Coast Women's Legal Education and Action Fund (West Coast LEAF)

Person completing this form (if different from above)

Table with 2 columns: FIRST NAME (Rajwant), LAST NAME (Mangat)

Name of complaint this application is about

Table with 2 rows: COMPLAINANT'S NAME (Morgane Oger), RESPONDENT'S NAME (Bill Whatcott)

Tribunal Case Number

16408

STEP 1: WHAT IS THE PURPOSE OF YOUR APPLICATION?

For more information about applications, including those listed below, Information Sheets are available at www.bchrt.bc.ca (by clicking on [Get Help with the Tribunal Process](#)) or by phoning or writing the Tribunal to request copies.

Information

Sheet No. **The purpose of the application is to (check one – use a separate Application for each request.):**

- | | | |
|------|---|-------------------------------------|
| GA1 | Limit publication of personal information in the complaint file (including the names of a party or witness in a decision) | <input type="checkbox"/> |
| GA2 | Defer a complaint | <input type="checkbox"/> |
| GA3 | Extend the time to file a response to a complaint | <input type="checkbox"/> |
| GA4 | Amend a complaint to add a new allegation (Form 3 Amendment attached) | <input type="checkbox"/> |
| GA5 | Add a respondent to a complaint | <input type="checkbox"/> |
| GA6 | Amend a response to a complaint (Form 3 Amendment attached) | <input type="checkbox"/> |
| GA7 | Join two or more complaints. | <input type="checkbox"/> |
| GA8 | File a further submission on an application (Submission attached) | <input type="checkbox"/> |
| GA9 | Order another party to disclose documents | <input type="checkbox"/> |
| GA10 | Order someone else (a third party) to disclose documents | <input type="checkbox"/> |
| GA11 | Suspend or limit disclosure | <input type="checkbox"/> |
| GA12 | Order another party to pay costs because of their improper conduct | <input type="checkbox"/> |
| GA13 | Intervene (participate as a non-party) in a complaint | <input checked="" type="checkbox"/> |
| GA14 | Adjourn a hearing | <input type="checkbox"/> |
| GA15 | Reconsider a decision | <input type="checkbox"/> |
| GA16 | Expedite or alter process | <input type="checkbox"/> |
| GA17 | Other general application: _____ | <input type="checkbox"/> |

SPECIFY

STEP 2: DETAILS OF APPLICATION (IF APPLICABLE)

If applying for any of the following, answer the question below:

- Limit publication of information in the complaint file (**What information?**)
- Add a respondent to the complaint (**Who?**)
- Order a party to pay costs for improper conduct (**Which party?**)
- Order a party or other person to disclose documents (**Who and what documents?**)

Pursuant to section 22.1 of the Human Rights Code, R.S.B.C. 1996, c. 210, West Coast LEAF seeks leave to intervene in Morgane Oger v. Bill Whatcott, Tribunal Case No. 16408. West Coast LEAF makes this application under Rule 13(4) of the Tribunal's Rules of Practice and Procedure. Enclosed with this form are West Coast LEAF's application materials providing further details about the nature and scope of the proposed intervention.

STEP 3: DO THE OTHER APPLICANTS AGREE TO YOUR APPLICATION?

Except when applying to intervene in a complaint, or add a respondent to a complaint:

List participants who agree to the application:

List participants who oppose:

List participants who take no position:

If you were not able to find out if the other participants agree, say what you did to find out:

STEP 4: LIST THE CONDITIONS FOR GRANTING THE APPLICATION

For each type of application, you need to show that certain conditions are met. For example:

The conditions for adjourning a hearing are that the request is reasonable and no other participants will be unduly prejudiced by the adjournment.

The condition for limiting publication of personal information is that the person's privacy interest outweighs the public interest in access to the Tribunal's proceeding.

Information Sheets list the conditions and explain what information to include. They are available at www.bchrt.bc.ca (by clicking on [Get Help with the Tribunal Process](#)) or by phoning or writing the Tribunal to request copies.

List what you need to show for the Tribunal to grant the application:

The Human Rights Code provides the Tribunal with jurisdiction to permit the participation of intervenors in the hearing of complaints.

Section 22.1 states: "A member or panel may, at the time after the complaint is filed and on the terms specified by the member or panel, allow any person or group of persons to intervene in the complaint, whether or not that person or group would be affected by an order made by the member or panel under section 37."

Under Rule 13(4) of the Tribunal's Rules of Practice and Procedure, applicants for intervenor status must demonstrate the following: (a) their interest in and any expertise regarding the issues they want to address; (b) how they want to participate; and (c) how their participation will be useful to the tribunal.

Please see attached Memorandum of Argument.

I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 4**.

STEP 5: PROVIDE DOCUMENTS TO SUPPORT YOUR APPLICATION

The Tribunal can only make a decision based on the information provided. It is up to you to provide the information you consider important to your application.

The Tribunal will accept information in any form. You may attach notes, statements or other documents.

Affidavits are usually preferable, especially if there is disagreement about important facts. An affidavit is a written statement made under oath or affirmation before a commissioner of oaths such as a lawyer or notary. It also may have documents attached to it called "exhibits."

List the documents you are attaching to this application:

1.	Memorandum of Argument of West Coast LEAF
2.	
3.	
4.	
5.	

I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 5**.

STEP 6: EXPLAIN WHY THE TRIBUNAL SHOULD GRANT THE APPLICATION

You must convince the Tribunal that it should make the decision you want (grant your application). Explain:

1. the facts (circumstances) that support your request
2. how your documents support your facts
3. how your facts meet the conditions for granting the application in **STEP 4**

Example: Request to Adjourn a Hearing

FACTS: *Yesterday, I was diagnosed with the flu. The hearing begins next Monday. I am too sick to prepare for the hearing and my doctor says I will not recover for two weeks.*

DOCUMENTS: *I have attached my doctor's note. It confirms I have the flu and my doctor's statement that I will not recover for two weeks.*

CONDITIONS FOR GRANTING APPLICATION MET: *My request is reasonable. I just found out I have the flu. I will not be able to prepare for the hearing and will be too sick to attend the hearing if the hearing is not adjourned. The other party will not be unduly prejudiced. This is the first time I have asked for the hearing to be adjourned. I only need the hearing delayed until I am recovered. This will only be a short delay.*

Explain why the Tribunal should grant the application:

See attached Memorandum of Argument.

I have attached more information in **numbered paragraphs** on extra page(s) marked **STEP 6**.

STEP 7: COMPLETE THE APPLICATION FORM

Check the following boxes:

- I have attached more information in **numbered paragraphs** on extra page(s). Total number of extra pages: _____
- I am sending a copy of this form and attachments to the other participants (unless this is an application to intervene in a complaint).
- I confirm that the information in this form is true and accurate to the best of my knowledge and belief.
- I am keeping a copy of this form and attachments.
- I have attached a Form 3 Amendment (if applying to amend) or the Submission (if applying to file a further submission).
- For new participants only, I attach my contact information.
Your postal address for delivery will be given to the other participants. The Tribunal will also give the participants your telephone, facsimile and cellular numbers, and email address, unless you tell it not to.
- For applications that affect a non-party (e.g. to add a respondent, to obtain documents from a third party), I have attached contact information for that person.

STEP 8: FILE THE APPLICATION FORM

File the application form and attached information and documents with the Tribunal by mail, fax, hand, courier, process server or email (with additional pages and documents together with ONE scanned PDF format document).

PRIVACY NOTICE

The personal information in this form may be disclosed to members of the public. This is because the Tribunal's process is public:

- The Tribunal publishes most decisions on its website
- The Tribunal publishes a hearing schedule (list of upcoming hearings) with the parties' names and the area and ground of a complaint
- After a complaint is on the hearing schedule, the public has access to information, including the complaint and response forms (except contact information)
- Hearings are open to the public.

You can ask the Tribunal to limit the information it makes public. However, the Tribunal will only do so if it decides that your privacy interests outweigh the public interest in access to the Tribunal's proceedings.

Tribunal Case No. 16408

IN THE MATTER of the *Human Rights Code*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before the
British Columbia Human Rights Tribunal

BETWEEN:

MORGANE OGER

COMPLAINANT

AND:

BILL WHATCOTT

RESPONDENT

FORM 7.1 – APPLICATION TO
INTERVENE

MEMORANDUM OF ARGUMENT

I. OVERVIEW

1. West Coast Legal Education and Action Fund (“West Coast LEAF”) applies under section 22.1 of the *Human Rights Code*, RSBC 1996, c. 210 (“Code”) for an order permitting it to intervene in *Morgane Oger v. Bill Whatcott* (BCHRT Case No. 16408).
2. West Coast LEAF submits that this complaint raises public law issues that engage its interest as an organization advocating on behalf of equality-seeking groups. West Coast LEAF has substantial expertise and interest in ensuring that Canadian law and the *Charter of Rights and Freedoms* (“Charter”) are interpreted and applied in a manner consistent with the principles of substantive equality. West Coast LEAF advocates on behalf of all women and people who experience gender-based discrimination, including where disadvantage is experienced along multiple and intersecting axes of marginalization.

3. West Coast LEAF submits that it will bring a useful and distinct perspective to bear on the BC Human Rights Tribunal's consideration of this complaint. West Coast LEAF's proposed submissions will focus on the interpretation of section 7 of the *Code* in conformity with section 15 of the *Charter*, and in light of the principles set out by the Supreme Court of Canada in *Saskatchewan v. Whatcott*, 2013 SCC 11 ("*Whatcott*").

II. THE COMPLAINT

4. This complaint concerns the scope of the *Code*'s protection from discriminatory publication found in section 7(1). Section 7(1) provides:

7(1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or that group or class of persons.

5. The complaint alleges that the respondent violated section 7(1)(a) and (b) of the *Code* when he distributed flyers attacking the complainant on the grounds of her gender identity and expression. The Tribunal will be called upon to assess the alleged section 7 violation as it concerns the complainant specifically and in light of the impact on transgender persons as a group or class.

6. The respondent invokes freedom of conscience and religion under section 2(a) and freedom of expression under section 2(b) of the *Charter* in responding to the complaint. The Tribunal will thus be called upon to consider its interpretation of section 7 of the *Code* in light of *Charter* values concerning freedom of belief, religion and expression.

III. LEGAL FRAMEWORK: APPLICATION TO INTERVENE

7. An order granting leave to intervene in a complaint before the BC Human Rights Tribunal (“Tribunal”) is discretionary, and may be made on any terms and conditions a Tribunal Member considers appropriate.¹

8. The Tribunal has recognized that intervenors may be able to assist in its consideration of a complaint by, among other things, helping the Tribunal understand “the context in which a complaint arises, the perspectives of individuals and groups other than the parties to the complaint, the factual and legal issues raised by a complaint, and the impact the Tribunal's decision may have on affected individuals and groups.”² An applicant seeking to intervene “may have to demonstrate that it has some expertise in relation to the issues raised in the case.”³

9. The Tribunal will take into account several factors when considering whether to exercise its discretion to grant intervenor status. It will not suffice for the potential intervenor to advance a different perspective in respect of an issue under consideration; the Tribunal “must determine how likely it is that the intervenor will make a useful contribution to its resolution.”⁴ The Tribunal will further balance the usefulness of a proposed intervenor’s contribution against the risk of an injustice to the parties. An intervenor must not “take the litigation away from the parties.”⁵ The Tribunal may place appropriate limits on the participation of a proposed intervenor to ensure there is no undue burden on the parties to the complaint.⁶

¹ *Hall v. B.C. (Ministry of Environment) (No. 4)*, 2008 BCHRT 437 (“*Hall*”) at para. 5.

² *Hall* at para. 6.

³ *Hall* at para. 6.

⁴ *Hall* at para. 7 citing *Hughson v. Town of Oliver (No. 1)*, 2000 BCHRT 11.

⁵ *Hall* at para. 7.

⁶ *Hall* at para 8. The Tribunal has applied these factors, summarized in *Hall*, in several decisions, including *Citizens for Safe Technology Society v. B.C. Hydro*, 2014 BCHRT 17, *Cook v. British Columbia (Ministry of Education)*, 2003 BCHRT 25; *Resident Hunters Assn. of British Columbia v. British Columbia (Ministry of Environment)* 2008 BCHRT 452; *Elmasry and Habib v. Roger's Publishing and MacQueen*, 2008 BCHRT 199.

IV. ARGUMENT

10. The following sections will identify West Coast LEAF and its interest in the complaint, summarize the submissions West Coast LEAF intends to make if granted leave to intervene, and explain why those submissions will be of assistance to the Tribunal in considering the public law issues arising in this complaint.

A. West Coast LEAF has particular expertise to share

11. West Coast LEAF has been an incorporated non-profit society in British Columbia and a federally registered charity since 1985. 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 closely with communities directly impacted, West Coast LEAF uses litigation, law reform, public legal education, and community outreach to make change across several areas of concern: access to healthcare; access to justice; economic security; gender-based violence; criminalization and imprisonment; and family law and parenting. The organization has a broad representative base.

12. West Coast LEAF acts to promote the equality of all women and gender-diverse persons in British Columbia regardless of race, national origin, immigration status, sexual orientation, family or marital status, disability, age, and socio-economic status. West Coast LEAF's work is informed by its recognition that intersecting and overlapping markers of historic disadvantage pose unique, complex challenges to achieving substantive equality in the law. West Coast LEAF has developed expertise in applying an intersectional lens to the implementation of constitutional rights, such that its legal arguments, educational programming, and law reform activities are informed by, and inclusive of, the breadth of women's experiences and the experiences of gender-diverse persons.

13. Litigation is one of West Coast LEAF's program areas. Through litigation, West Coast LEAF has contributed to the development of equality law and human rights jurisprudence. In coalition with others or on its own, West Coast LEAF has been granted leave to intervene in numerous cases, including cases before the BC Supreme Court,

the BC Court of Appeal and the Supreme Court of Canada. In its interventions, West Coast LEAF's submissions have focused on the application of principles of substantive equality and non-discrimination to the development and application of the law. To this end, West Coast LEAF has developed expertise on substantive gender equality and on the use of Charter equality rights and statutory human rights in the interpretation and assessment of legislation, common law, and state action.

14. West Coast LEAF has intervened in its own name in the following appellate proceedings: *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 and 2016 BCCA 423; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132; *Denton v. Workers Compensation Board*, 2017 BCCA 403; *BC Human Rights Tribunal v. Schrenk*, 2017 SCC 62; *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180; *R. v. Lloyd*, 2016 SCC 13; *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2014 SCC 59; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59; *Vilardell v. Dunham*, 2013 BCCA 64; *British Columbia (Ministry of Education) v. Moore*, 2012 SCC 61; *Friedmann v. MacGarvie*, 2012 BCCA 445; *SWUAV v. Canada*, 2012 SCC 45 and 2010 BCCA 439; and *Shewchuk v. Ricard*, [1986] B.C.J. No. 335, 28 D.L.R. (4th) 429 (BCCA).

15. West Coast LEAF has also intervened or participated in the following trial or judicial review proceedings and references: *British Columbia Civil Liberties Association and John Howard Society of Canada v. Canada*, 2018 BCSC 62; *Trinity Western University and Volkenant v. Law Society of British Columbia*, 2015 BCSC 2326; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2015 BCSC 534; *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309; and *Reference re Criminal Code of Canada (BC)*, 2011 BCSC 1588 (the Polygamy Reference).

16. Apart from participating in court proceedings, West Coast LEAF has been granted participant status in several inquiries engaging gender equality. In July 2017, West Coast LEAF was granted standing to participate in the Part II (institutional) and

Part III (expert) hearings of the National Inquiry into Missing and Murdered Indigenous Women and Girls presently underway. West Coast LEAF is actively participating in the National Inquiry by contributing its knowledge of how institutions and systems in British Columbia perpetuate stereotypes about Indigenous women, girls and Two Spirited people, and undermine their rights and safety. In 2011, West Coast LEAF was granted standing to participate in British Columbia's Missing Women Commission of Inquiry headed by Hon. Wally Oppal, Q.C. ("Oppal Inquiry"), which completed its work in November 2012. West Coast LEAF has also intervened (as part of a coalition of six organizations) in an inquiry before the Canadian Judicial Council: In the Matter of an Inquiry Pursuant to Section 63(1) of the *Judges Act* Regarding the Honourable Justice Robin Camp.

17. West Coast LEAF also engages in law reform work. West Coast LEAF's law reform initiatives seek to ensure that all legislation and policies in British Columbia support gender equality pursuant to the *Charter*, human rights legislation and international human rights 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, making submissions to governmental and other decision-makers on a range of issues impacting gender equality, and evaluating the progress of British Columbia towards equality for all women and gender-diverse persons.

18. 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. The program aims to transform public legal education, collaborate with diverse equality seeking groups, distribute public legal education materials, deliver workshops, and build upon other West Coast LEAF initiatives. West Coast LEAF's public legal education projects are based on collaboration with other groups and complement its litigation and law reform activities, based on the premise that the first step toward asserting rights is understanding them.

B. West Coast LEAF has a clear and demonstrated interest in the subject matter of the complaint

19. The Tribunal will be called upon to determine whether flyers distributed by Mr. Whatcott indicate discrimination, an intention to discriminate, or are likely to expose to hatred or contempt on the grounds of gender identity or expression in respect of Ms. Oger specifically, and transgender persons more generally. Consequently, the complaint engages principles of equality and non-discrimination enshrined in the *Charter* and protected by quasi-constitutional legislation such as the *Code*. The Tribunal will be called upon to interpret section 7 in a manner that is consistent with these and other values underlying the *Charter*.

20. West Coast LEAF is uniquely positioned to assist the Tribunal in considering the *Charter* rights and values engaged in this complaint, including to the extent that the complaint requires reconciliation or balancing between competing *Charter* values.

21. West Coast LEAF has extensive experience and investment in working to ensure that human rights law develops in accordance with standards of substantive equality. West Coast LEAF also has extensive experience in working to assist courts in interpreting and applying the law in a manner that takes account of the lived experiences of women, gender-diverse persons, and other marginalized and historically disadvantaged groups.

22. West Coast LEAF's work concerning the development of human rights and equality jurisprudence includes intervention in several key cases in which courts have been called upon to interpret discrimination under the *Code* or in which competing *Charter* values were invoked in connection with administrative decision-making:

- a. West Coast LEAF intervened in *Trinity Western University v. Law Society of British Columbia* at the BC Supreme Court (2015 BCSC 2326), BC Court of Appeal (2016 BCCA 423) and at the Supreme Court of Canada (2018 SCC 32) to argue that the university's community covenant discriminates on the basis of sex, sexual orientation and marital status;

- b. West Coast LEAF intervened at the Supreme Court of Canada in *BC Human Rights Tribunal v. Schrenk*, 2017 SCC 62, a case concerning the scope of the Tribunal's jurisdiction over complaints about discriminatory harassment regarding employment where the alleged harasser was not in a position of supervision or authority over the victim. West Coast LEAF argued that discrimination regarding employment must not be approached solely with regard to traditional notions of economic power disparities, as the negative impacts of discrimination and harassment go well beyond economic burdens to encompass psychological harms and the perpetuation of systemic inequality.
- c. West Coast LEAF intervened (in coalition with the Community Legal Assistance Society) at the trial and appellate courts in British Columbia in *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2017 BCCA 403, *rev'g* 2015 BCSC 534 to argue that a flexible, liberal and purposive approach is required to the types of evidence sufficient to prove *prima facie* discrimination.
- d. West Coast LEAF intervened in *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association*, 2014 SCC 70 to argue that a parental leave supplement employment benefits scheme that did not take account of the distinct burden of pregnancy, child-birth and post-partum recovery discriminated against birthing mothers.
- e. West Coast LEAF intervened in *Moore v. British Columbia (Education)*, 2012 SCC 61, to argue, among other things, that importing the requirements of section 15 *Charter* jurisprudence into the *prima facie* test for discrimination in the *Code* would increase the burden on equality claimants and would be contrary to the purpose of human rights law.
- f. In *Friedmann v. MacGarvie*, 2012 BCCA 445, West Coast LEAF intervened to argue that sexual discrimination is *per se* discrimination based on sex, and that once a finding of sexual harassment has been

made, no further analysis is required to find *prima facie* discrimination under the Code.

23. West Coast LEAF has also made contributions to the development of human rights law in British Columbia through its work in the areas of law reform and public legal education, as follows:

- a. Since 2009, West Coast LEAF has reported annually on British Columbia's overall action to remedy discrimination against women by issuing a report card assessing the province's performance against the United Nations' Convention on the Elimination of Discrimination against Women. As in past years, West Coast LEAF's 2017 CEDAW Report Card gives low to failing grades to BC's overall action to remedy discrimination against women.
- b. West Coast LEAF has repeatedly called on legislators at the provincial and federal levels to protect the human rights of trans* persons. For instance, in 2016, West Coast LEAF called on Members of the Legislative Assembly to pass *Bill M-222 Human Rights Code (Recognition of Gender Identity and Gender Expression) Amendment Act, 2016* in support of the ongoing evolution of the term sex in human rights law to clearly and expressly recognize protection for gender identity and gender expression in the Code. In 2014, West Coast LEAF called on Senators from British Columbia to pass *Bill C-279: An Act to amend the Criminal Code and the Canada Human Rights Act (Gender Identity)* to prevent discrimination against trans* persons and to provide trans* persons with protection from hate crimes.
- c. In November 2017, West Coast LEAF made submissions to Parliamentary Secretary Ravi Kahlon regarding the government's consultation on the formation of a new Human Rights Commission in British Columbia. West Coast LEAF's submissions emphasized the need

for a robust independent Commission to fully realize the promise of the *Charter* and the *Code*.

- d. In 2011, West Coast LEAF was invited to make submissions to the BC Human Rights Tribunal's review of its policies and procedures. West Coast LEAF submitted that access to a competent and effective tribunal with the ability to order meaningful remedies for human rights violations is a vital component of gender equality and the ability to participate in public life.
- e. In 2010, West Coast LEAF made submissions to the British Columbia Law Institute (BCLI) when BCLI was commissioned by the Ministry of Labour to conduct research and analysis of workplace dispute procedures, including the role of the BC Human Rights Tribunal. West Coast LEAF submitted that the elimination of the Human Rights Tribunal – the only specialized human rights administrative body in the province – would have a profoundly negative impact on vulnerable individuals, particularly those experiencing intersecting markers of disadvantage.
- f. For over a decade, West Coast LEAF has offered Youth in the Workplace workshops in the Lower Mainland, Kamloops and Nanaimo. These workshops are aimed at a young adult audience and examine employment rights, human rights and discrimination regarding employment across all protected grounds upon which discrimination is prohibited. The program provides tools and knowledge to help young people assert their rights in the context of complex power dynamics.

24. As shown in the foregoing discussion, West Coast LEAF has a demonstrable expertise and interest in the subject matter of the complaint, and in ensuring that principles of substantive equality are reflected in the application and scope of the *Code*.

C. West Coast LEAF's proposed submissions will be useful and distinct

25. West Coast LEAF seeks leave to intervene in this complaint to make arguments concerning the interpretation of section 7 of the *Code* in conformity with principles of substantive equality and non-discrimination protected by the *Charter*, the *Code* and relevant international human rights instruments and norms. West Coast LEAF's proposed submissions will also address the proper approach to reconciling or balancing potentially competing *Charter* rights and values where those are invoked in the context of section 7, as in this complaint.

26. In particular, West Coast LEAF intends to make submissions concerning:

- a. The real and apprehended harms to human dignity that result from hate expression;
- b. An understanding of hate expression as an act of discrimination in itself;
- c. The role and underlying purpose of section 7 in promoting and fostering substantive equality in British Columbia;
- d. The need for an analytically robust approach to reconciling or balancing potentially competing *Charter* rights or values which includes:
 - i. a determination that the rights alleged to be in competition are in fact actually engaged and that any such engagement of rights is substantial and non-trivial; and
 - ii. an appropriately robust characterization of the rights and values that are in fact engaged and of the effects of discriminatory publication and any limits placed on it; and
 - iii. the appropriate considerations in balancing freedom of religion and freedom of expression and the right to substantive equality.
- e. The application of the Supreme Court of Canada's 2011 decision in *Whatcott* on the issues before the Tribunal;

- f. The application of the Supreme Court of Canada's 2018 decision in *TWU* on the issues before the Tribunal.

27. West Coast LEAF will ensure that it provides the Tribunal with useful and unique submissions on the issues before it, and that it does not duplicate the submissions of another party or intervener.


V. ORDER REQUESTED

28. West Coast LEAF respectfully requests an order granting it leave to intervene in the hearing of the complaint on the following terms:

- a. West Coast LEAF is permitted to make oral submissions at the opening and close of the hearing of this complaint of such length as this Tribunal deems appropriate; and
- b. West Coast LEAF is permitted to file written submissions at the close of the hearing of the complaint of such length as this Tribunal deems appropriate.

All of which is respectfully submitted this 15 day of June, 2018.

SIGNED BY:




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