



# FORCE FILED

No S230534  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, C. 241

BETWEEN:

**VANCOUVER ABORIGINAL CHILD AND  
FAMILY SERVICES SOCIETY**

PETITIONER

AND:

**R.R. and  
BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL**

RESPONDENTS

### NOTICE OF APPLICATION

**Name of applicant:** West Coast Legal Education and Action Fund Association (“West Coast LEAF”)

To: Vancouver Aboriginal Child and Family Services Society

And to: R.R.

British Columbia Human Rights Tribunal

Attorney General of British Columbia

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Monday, June 5, 2023 at 9:45 a.m. for the orders set out in Part 1 below:

#### **Part 1: ORDERS SOUGHT**

1. An order granting leave for the applicants to intervene on the following terms:

- a. West Coast LEAF be granted leave to intervene in this proceeding;
- b. West Coast LEAF be permitted to file a written argument of no more than 15 pages;
- c. West Coast LEAF be permitted to make oral submissions of no longer than 60 minutes;  
and

- d. West Coast LEAF are neither entitled to, nor liable for, costs from any party in this proceeding.
2. Such further and other orders as this Honourable Court may deem just.

## **Part 2: FACTUAL BASIS**

### **A. Overview**

3. This is a judicial review of a decision of the Human Rights Tribunal (the “Tribunal”) in which the Tribunal found the Petitioner Vancouver Aboriginal Child and Family Services Society (“VACFSS”) discriminated against the Petition Respondent R.R. contrary to s. 8 of the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the “Code”). The decision is indexed at *R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 6)*, 2022 BCHRT 116.

Affidavit #1 of Rajwant Mangat sworn May 11, 2023 (“Mangat Affidavit #1”), Exhibit A

4. The Applicant West Coast LEAF intervened in the Tribunal’s proceeding, and now applies to intervene in this judicial review from the Tribunal’s decision.
5. In this judicial review, the Court will be called upon to consider *inter alia* the scope of the Tribunal’s role in relation to matters arising in the child welfare context, including whether the *Child Family and Community Services Act*, R.S.B.C. 1996, c. 46 (the “CFCSA”) immunizes decision-making by child welfare agencies relating to custody and access to children from review under the *Code*. The Court is also asked to consider the extent to which systemic discrimination in the child welfare system against Indigenous peoples, and particularly Indigenous women with disabilities, may be considered in the adjudication of an individual complaint of discrimination by an Indigenous parent or caregiver.
6. These issues engage the legitimate interests and expertise of West Coast LEAF. Many of the grounds of review in the Petition are directly connected to those matters which were the focus of West Coast LEAF’s intervention before the Tribunal.

### **B. West Coast LEAF’s Intervention before the Tribunal in this Case**

7. On August 25, 2017, R.R. filed a complaint with the Tribunal alleging VACFSS discriminated against her on the basis of race, ancestry, colour, and mental disability contrary to s. 8 of the *Code*.

Mangat Affidavit #1, Exhibit A, at paras. 4, 135

8. R.R. is an Afro-Indigenous woman, an intergenerational survivor of residential school, and a person with mental health disabilities related to trauma. She is a single-mother to children with complex needs. In August 2016, VACFSS apprehended R.R.’s four children. VACFSS retained custody over the children and strictly regulated R.R.’s access to them for nearly three years.

Mangat Affidavit #1, Exhibit A, at paras. 3-4

9. On December 5, 2019, West Coast LEAF applied for leave to intervene in the Tribunal proceeding pursuant to s. 22.1 of the *Code*. The Tribunal granted West Coast LEAF leave to intervene with respect to the following matters:

- a) Systemic discrimination against Indigenous families and, in particular, Indigenous mothers with disabilities in the child welfare system, including the broader colonial context in which interactions between Indigenous mothers and the child welfare system occur;
- b) The protection from systemic discrimination under the *Code* and evidentiary burdens in claims raising systemic factors, including the need for social context to inform the Tribunal's understanding of the issues raised in the complaint; and
- c) The need for an interpretation of sections 2 and 3 of the *CFCSA* as well as "best interests of the child" under that *Act* that conforms with international legal principles, including BC's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Mangat Affidavit #1, Exhibit C, at p. 3  
Mangat Affidavit #1, Exhibit B

10. In the January 24, 2020 decision granting West Coast LEAF leave to intervene, the Tribunal concluded that West Coast LEAF "has a unique and helpful perspective to bring to the Tribunal" with respect to the social and historical context of the complaint.

Mangat Affidavit #1, Exhibit B, at para. 21

11. The Tribunal held that "West Coast LEAF approaches the context underlying this complaint from a different perspective from [VACFSS], which is part of the child welfare system, as well as RR, who is an individual engaged in that system and trying to advance her own legal claim of discrimination".

Mangat Affidavit #1, Exhibit B, at para. 22

12. The Tribunal held further that West Coast LEAF has "demonstrable expertise in equality and the context of this complaint".

Mangat Affidavit #1, Exhibit B, at para. 21

13. In its final decision dated November 22, 2022, the Tribunal concluded that "VACFSS's decisions to retain custody and restrict R.R.'s access to her children were informed by stereotypes about her as an Indigenous mother with mental health issues, including trauma, and her conflict with the child welfare system". The Tribunal also found that "[b]ecause of R.R.'s Indigeneity and trauma, she had a heightened need to be empowered and included in decisions respecting her children and to have complete, ongoing, and accurate information about their wellbeing". VACFSS did not meet these needs. They instead treated R.R. "with escalating assertions of power and control, reducing and suspending her access to the children, limiting her communication with their caregivers, and ultimately prolonging their time in

care”. The Tribunal found that none of the adverse impacts on R.R. could be justified as reasonably necessary to protect R.R.’s children.

Mangat Affidavit #1, Exhibit A, at para. 8

14. In adjudicating the complaint, the Tribunal considered *inter alia* that “[t]he *CFCSA* applies equally to all children and families in the province” but “its impacts on Indigenous people are unique and cannot be separated from the Canadian colonial project founded on the denial of Indigenous title and laws, and deliberate efforts to assimilate and eradicate Indigenous culture, tradition, language, and people”. As such, “[t]he historic and current context of Indigenous people within Canada’s child welfare systems – which is undisputed – is critical to situating the events giving rise to this complaint”.

Mangat Affidavit #1, Exhibit A, at para. 34

15. The Tribunal concluded that the system created by the *CFCSA* is rooted in a Eurocentric approach to child welfare, and adopted West Coast LEAF’s submission that the system’s narrow focus on risk assessment has “justified the development of BC’s risk-adverse, command-and-control system”, which “is often at cross-purposes with securing the overall well-being and safety of Indigenous children and families as understood from the perspective of Indigenous communities”.

Mangat Affidavit #1, Exhibit A, at para. 313

16. The Tribunal explained that it was taking an intersectional approach to R.R.’s complaint “which accounts for the interrelationship between multiple identities, and power structures, that shape people’s lives”. In doing so, the Tribunal adopted the submission of West Coast LEAF that “each of Indigeneity, sex, and mental health disability can be considered as its own risk class within the child welfare system, especially where it intersects with poverty”. The Tribunal must therefore “be alive to cases – as here – where these characteristics overlap, with compounding effects”.

Mangat Affidavit #1, Exhibit A, at paras. 286-287

17. The Tribunal further concluded that, “as West Coast LEAF points out, the [*Convention on the Rights of the Child* and the *UN Declaration on the Rights of Indigenous Peoples*] ‘make clear that rights, rather than legislative entitlements, are at stake in child welfare services and decisions’”. This means that “the government, child protection authorities, and decision makers like this Tribunal have positive obligations to ensure the rights of Indigenous children and caregivers in the child welfare system, as well as the collective rights of Indigenous communities”.

Mangat Affidavit #1, Exhibit A, at para. 47

**Part 3: LEGAL BASIS**

**A. The Test for Leave to Intervene**

18. The Supreme Court of British Columbia may grant intervenor status as an exercise of its inherent jurisdiction. The Court may grant intervenor status where (1) the applicant has a direct interest in the proceeding or (2) the proceeding raises public law issues that legitimately engage the applicant's interests and the applicant brings a different and useful perspective to those issues that will be of assistance to the Court.

*British Columbia Civil Liberties Association v. Canada (Attorney General)*,  
2018 BCCA 282, at para 14 (“*BC Civil Liberties*”)

*British Columbia v. Imperial Tobacco Canada Ltd*, 2016 BCCA 203 (in Chambers)  
rev'd on other grounds, 2016 BCCA 363 (“*Imperial Tobacco*”), at para. 8.

19. West Coast LEAF seeks intervenor status in this judicial review on the basis that the proceeding raises public law issues that engage its long-standing interest and expertise promoting the rights and interests of parents and caregivers engaged in the child welfare system, and contributing to the development of human rights law consistent with principles of substantive equality.

Mangat Affidavit #1, at para. 8

20. The factors that will be considered when deciding whether to grant a party intervenor status on this basis are:

- 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 in the judicial review?
- 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 judicial review by raising issues not raised by the parties?

*BC Civil Liberties*, at para. 14

21. The court may also, where appropriate, consider factors relating to the orderly and efficient administration of justice.

*BC Civil Liberties*, at para. 15

22. Finally, an intervenor's role is not to support the position of a particular party or to make submissions on the outcome of the proceeding. Rather, the role of an intervenor is to make principled submissions on pertinent points of law.

*Imperial Tobacco*, at para. 15

## **B. The Factors Weigh in Favour of Granting the Application**

### **i. West Coast LEAF has a broad representative base and a legitimate interest in the issues raised in this judicial review**

23. 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. West Coast LEAF uses legally rooted strategies including litigation, law reform and public legal education informed by community engagement strategies to dismantle gender-based discrimination and move toward gender justice by advancing access to justice, healthcare and economic security, promoting freedom from gender-based violence, protecting the rights of people who are criminalized, and supporting child and family wellbeing.

Mangat Affidavit #1, at para. 9

24. West Coast LEAF acts to promote the equality interests of all women and gender diverse persons in British Columbia, including where disadvantage is experienced along multiple and intersecting axes of marginalization on the basis of race, national origin, immigration status, Indigeneity, sexual orientation, gender identity, family or marital status, disability or ability, age, socioeconomic status or any other personal characteristic. 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.

Mangat Affidavit #1, at para. 11

25. 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.

Mangat Affidavit #1, at para. 12

26. West Coast LEAF has considerable experience as an intervenor or interested party before the Supreme Court of Canada, the BC Court of Appeal, and the BC Supreme Court, as well as before administrative tribunals and committees and boards of inquiry. In addition to its intervention work, West Coast LEAF is currently litigating a constitutional challenge to BC's family law legal aid regime before the BC Supreme Court.<sup>1</sup>

Mangat Affidavit #1, at paras. 14-19

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<sup>1</sup> For a more detailed discussion of West Coast LEAF's litigation activities, please see Mangat Affidavit #1, at paras. 14-19

27. In addition to its litigation work, 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 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.

Mangat Affidavit #1, at para. 12

28. 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 addressing the overrepresentation of Indigenous families.<sup>2</sup>

Mangat Affidavit #1, at para. 20

29. The forgoing demonstrates West Coast LEAF’s legitimate interest in the issues raised in this proceeding, specifically, the applicability of the *Code* to matters arising in the child welfare context, and the proper approach to adjudication of human rights complaints like R.R.’s in light of intersecting processes of systemic discrimination against Indigenous people, women, and people with disabilities.

**ii. West Coast LEAF’s Proposed Submissions**

30. West Coast LEAF’s proposed submissions will focus on the following issues raised in the petition:

- a. Whether parents and caregivers should be able to seek redress under the *Code* in relation to discriminatory decision-making by child welfare agencies, and the scope of the Tribunal’s role in matters arising in the child welfare context; and

Petition Response of the Human Rights Tribunal filed March 16, 2023  
 (“Tribunal Response”), at paras. 84, 104

Petition of VACFSS filed January 23, 2023 (“VACFSS Petition”), at  
 paras. 1, 51, 61-71, 72-81

Petition Response of the Attorney General of British Columbia  
 filed May 12, 2023 (“AGBC Response”), paras. 3, 5

- b. The relevance and importance of considering systemic discrimination against marginalized parents in the child welfare system when adjudicating individual complaints of discrimination, such as the complaint in this case.

VACFSS Petition, at paras. 92-94  
 AGBC Response, para. 76

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<sup>2</sup> For a detailed overview of West Coast LEAF’s work to support families engaged in the child welfare system and advocating for child welfare reform, please see Mangat Affidavit #1, at para. 20

31. Specifically, West Coast LEAF proposes to make the following submissions:

- a. First, when determining the scope of the Tribunal’s role in matters arising within the child welfare system, the Court should consider the historical and social context within which the system is situated. This context includes historical and ongoing colonization, systemic discrimination, racism, and misogyny, and profound power imbalances between child welfare agencies and marginalized parents facing ongoing separation from their children. This context is relevant to the Court’s analysis of the factual and legal relevance of consent orders under the *CFCSA*, and the practical ability for marginalized parents to address discriminatory treatment by child welfare agencies through processes or accountability mechanisms under the *CFCSA*.

Tribunal Response, at paras. 100-108  
VACFSS Petition, at paras. 61-71, 72-81  
AGBC Response, at paras. 3, 5, 37-38, 53-55, 62-71

- b. Second, in order to promote a substantive approach to equality, decision-makers must be able to consider relevant systemic discrimination in the adjudication of individual complaints under the *Code*. Specifically, in cases like this, it is necessary for decision-makers to understand overlapping systems of discrimination that operate to disadvantage Indigenous people in order to (1) identify how facially neutral decision-making or policies implemented by child welfare agencies can impact Indigenous families in discriminatory ways, (2) understand how adverse impacts experienced by Indigenous parents and caregivers may be connected to those grounds protected under s. 8 of the *Code*, and (3) avoid perpetuating the very systems of discrimination, racism and misogyny that the *Code* seeks to address, including biases and stereotypes about the parenting abilities of Indigenous women and women with disabilities.

VACFSS Petition, at paras. 92-94  
AGBC Response, para. 76

- c. Third, international legal principles set forth in the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples* should be considered in addressing the interpretation of the issues raised in these proceedings, including the scope of the Tribunal’s jurisdiction in matters involving the child welfare system as it intersects with the *CFCSA*’s statutory focus on the “best interests of the child”, and the application of relevant statutory requirements by child welfare agencies in relation to Indigenous families under the *CFCSA*.

VACFSS Petition, paras. 70, 87, 90  
AGBC Response, paras. 2, 24, 52, 57, 59, 61

32. In proposing these submissions, West Coast LEAF does not seek to expand the scope of the petition. West Coast LEAF seeks only to add their unique perspective and expertise on the issues already before the Court.



**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Rajwant Mangat, made 11 May 2023;
2. such further and other materials as counsel may advise and this Honourable Court permits.

The applicant estimates that the application will take 1 hour.

[Check the correct box.]

- This matter is within the jurisdiction of a master.  
 This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: May 24, 2023



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Signature of lawyer for the applicant

**Robin J. Gage**

Tel: 778-557-2405

Email: rgage@arvayfinlay.ca

This NOTICE OF APPLICATION is filed by Solicitors for the Applicant West Coast LEAF, Arvay Finlay LLP, Barristers and Solicitors, whose place of business and address for service is 360 – 1070 Douglas Street, Victoria, British Columbia, V8W 2C4. Telephone: 250.380.2788.

**To be completed by the court only:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

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Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above