

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

BETWEEN:

**FREDERICK MOORE ON BEHALF OF JEFFREY P. MOORE**

APPELLANT

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA AS REPRESENTED BY THE MINISTRY OF EDUCATION, BOARD OF  
EDUCATION OF SCHOOL DISTRICT NO. 44 (NORTH VANCOUVER)  
FORMERLY KNOWN AS THE BOARD OF SCHOOL TRUSTEES OF SCHOOL  
DISTRICT NO. 44 (NORTH VANCOUVER)**

RESPONDENTS

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MOTION RECORD FOR LEAVE TO INTERVENE OF THE PROPOSED INTERVENER,  
WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND  
(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)

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**IN THE SUPREME COURT OF CANADA  
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BETWEEN:

**FREDERICK MOORE ON BEHALF OF JEFFREY P. MOORE**

APPELLANT

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA AS REPRESENTED BY THE MINISTRY OF  
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(NORTH VANCOUVER) FORMERLY KNOWN AS THE BOARD OF  
SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 44 (NORTH  
VANCOUVER)**

RESPONDENTS

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**NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE PROPOSED  
INTERVENER, WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND  
(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)**

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**TAKE NOTICE** that West Coast Women's Legal Education and Action Fund Association (West Coast LEAF) hereby applies to a Judge of this Court, at a date fixed by the Registrar pursuant to Rules 55-59 of the *Rules of the Supreme Court of Canada*, for an order granting leave to intervene in the present appeal, to file a factum of not more than ten (10) pages, and leave to present oral arguments not exceeding ten (10) minutes, or such further or other Order that the said Judge may deem appropriate;

**AND FURTHER TAKE NOTICE** that the following documentary evidence shall be submitted in support of this motion:

1. Affidavit of Catalina Rodriguez, affirmed December 15, 2011; and

2. Such further and other evidence as this Honourable Court may permit.

**AND FURTHER TAKE NOTICE** that the motion shall be made on the following grounds:

### **THE PROPOSED INTERVENER**

1. West Coast LEAF has been an incorporated non-profit society in British Columbia and a federally registered charity since 1985. The mission of West Coast LEAF is to achieve equality by changing historic patterns of systemic discrimination against women through British Columbia (BC) based equality rights litigation, law reform and public legal education. West Coast LEAF defines substantive equality for women in accordance with s.15 of the *Charter of Rights and Freedoms* (*Charter*) and the *Convention on the Elimination of all forms of Discrimination Against Women*.
2. West Coast LEAF seeks leave to intervene in this case to bring the perspectives of marginalized people, particularly women, to the development of human rights jurisprudence to ensure that the legal right to be free from discrimination develops in a fair and accessible manner.

### **WEST COAST LEAF'S PAST INVOLVEMENT IN PUBLIC INTEREST AND CHARTER LITIGATION**

3. West Coast LEAF has extensive experience bringing the lived experiences of its stakeholders to the Court and applying this perspective to arguments concerning both human rights legislation and s.15 of the *Charter*.
4. Through its litigation work with LEAF and on its own, West Coast LEAF has contributed to the development of equality rights jurisprudence and the meaning of substantive equality in Canada and in BC, in particular in its application to women's equality before and under the law.
5. West Coast LEAF has intervened in three legal matters in its own name, including the appeal court hearing of *SWUAV v. Canada*, 2010 BCCA 439 (*SWUAV*), and at the British Columbia Supreme Court in the *Reference re: Section 293 of the*

*Criminal Code of Canada*, 2011 BCSC 1588 (the Polygamy Reference). West Coast LEAF has been granted leave to intervene in coalition with two other organizations in the hearing of the *SWUAV* case at the Supreme Court of Canada (hearing scheduled for January 2012).

6. West Coast LEAF has also participated in interventions with LEAF in 12 cases, including cases at the BC Court of Appeal, the Ontario Court of Appeal and the Supreme Court of Canada: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120; *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, [2002] O.J. No. 1771 (C.A.); *Miller v. Canada (Attorney General)*, 2002 FCA 370; *R. v. Shearing*, [2002] 3 S.C.R. 33; *Canada (Attorney General) v. Lesiuk (C.A.)*, [2003] 2 F.C. 697 (C.A.); *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E.)*, [2004] 3 S.C.R. 381; *Blackwater v. Plint*, [2005] 3 S.C.R. 3; *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.) (Meiorin Grievance)*, [1999] 3 S.C.R. 3; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307; *Smith (Guardian ad litem of) v. Funk*, 2003 BCCA 449; *R. v. Demers*, 2003 BCCA 28; and most recently in *R. v. Watson*, 2008 BCCA 340 and *Rick v. Brandsema*, 2009 SCC 10.

#### **WEST COAST LEAF HAS A CLEAR INTEREST IN THE SUBJECT MATTER OF THE APPEAL**

7. West Coast LEAF is deeply concerned about the development of statutory human rights law because of the importance of human rights legislation in ensuring access to justice for the most vulnerable members of society. A substantive equality approach to the development of human rights jurisprudence is of utmost importance to women and other marginalized groups.

8. As detailed in the affidavit of Catalina Rodriguez, President of West Coast LEAF, dated December 15, 2011, West Coast LEAF, along with its national affiliate LEAF, has extensive experience working to ensure that human rights law develops in accordance with a standard of equality that is substantive and accessible. West Coast LEAF's



litigation program is focussed entirely on cases emerging from both human rights legislation and the *Charter*, as can be seen by the above referenced list of cases. In addition, West Coast LEAF has developed and delivers a workshop entitled Transforming Our Future, which is aimed at educating advocates on how to use the principles of anti-discrimination law in making social and legal change.

9. In August 2010, West Coast LEAF made submissions to the British Columbia Law Institute (BCLI) outlining concerns about its review of workplace dispute resolution mechanisms in BC. The BCLI was commissioned by the Ministry of Labour to conduct research and analysis of current provincial workplace dispute procedures, including the fate 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 BC – could have a profound negative impact upon individuals who experience discrimination and individuals vulnerable to discrimination, including people living in poverty and other marginalized groups.

10. In October 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 women's equality and ability to participate in the public life of this province.

11. In this case, West Coast LEAF will be consulting closely with its national affiliate organization, LEAF, which has engaged extensively with the legal community on the controversial issue of the doctrinal and jurisprudential distinction between human rights and *Charter* tests for discrimination.

12. In 2003 and 2004 LEAF engaged in a series of consultations with scholars and equality advocates and practitioners to consider the test articulated by the Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 143 and the post-*Law Charter* and statutory human rights equality jurisprudence. The project culminated in a published collection of articles by leading equality rights scholars and practitioners from across Canada analyzing the current state of equality

rights law in Canada: Fay Faraday, Margaret Denike and M. Kate Stephenson eds, *Making Equality Rights Real: Securing Substantive Equality Under the Charter* 2<sup>nd</sup> ed. (Toronto: Irwin Law, 2009). Two of the articles published in the collection specifically address issues raised in this appeal: see Leslie Reaume, "Postcards from O'Malley" and Andrea Wright, "Formulaic Comparisons: Stopping the *Charter* at the Statutory Human Rights Gate" at pp. 373-408 and 409-441 respectively.

13. In March 2007, LEAF published a detailed research paper on the importation of the *Law* test into statutory human rights jurisprudence: Karen Schucher and Judith Keene, "Statutory Human Rights and Substantive Equality – Why and How to Avoid the Injury to the Law Approach". This LEAF research paper was referred to by the Ontario Divisional Court in *Ontario (Director, Disability Support Program) v. Tranchemontagne*, [2009] O.J. No. 1613 at para.96.

14. In November 2007 and in 2010, LEAF held further consultations with leading scholars and practitioners to carefully consider developments in *Charter* and human rights equality jurisprudence. The importation of the s.15(1) *Charter* test for substantive equality into the *prima facie* discrimination analysis in human rights law remains controversial in the Canadian legal community.

15. West Coast LEAF is uniquely positioned to assist this Honourable Court in understanding the implications of this case on future equality claimants, with particular regard to the doctrinal distinction between *Charter* and human rights law on equality and the test for undue hardship.

16. West Coast LEAF has a demonstrable interest in ensuring that the principles of substantive equality are reflected in the application of human rights legislation. West Coast LEAF's proposed submissions, with our particular focus on substantive equality, are both useful and distinct from the other proposed interveners and the parties to this dispute.

## WEST COAST LEAF'S POSITION IN THIS APPEAL

17. This case deals with a complaint to the British Columbia Human Rights Tribunal brought by Frederick Moore on behalf of his son Jeffrey Moore against the British Columbia Ministry of Education and the Board of Trustees of School District No. 44. Jeffrey Moore was a student in the School District who had dyslexia, a severe learning disability. Moore alleged that the Ministry and the School Board breached section 8(1) of the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 201 by failing to adequately accommodate his disability. The majority of the Court of Appeal found that the respondents did not deny the complainant an accommodation or service nor did they discriminate against him in that regard because and he and other severely learning disabled students were given the same opportunity to receive a general education as was given to all other students. The case raises a number of issues concerning the rights of persons with disabilities and the correct interpretation of the statutory protection against discrimination in BC.

18. West Coast LEAF seeks leave to intervene to make two arguments, both related to the test for discrimination to be applied under the BC *Human Rights Code*.

19. If granted leave to intervene, West Coast LEAF will argue that the distinction between the human rights and *Charter* tests for discrimination must remain doctrinally distinct, as held by the dissenting reasons at the Court below. A blurring of the distinction between the two tests increases the burden on equality claimants and is contrary to the purpose of human rights law.

20. There is a lack of consensus in courts across Canada on whether and to what extent the s.15(1) *Charter* analysis governs the determination of *prima facie* discrimination in the context of statutory human rights claims, particularly those involving a public respondent. This Court's judgment on the approach to *prima facie* discrimination will have far-reaching implications for the adjudication and determination of statutory human rights claims in BC and nationally. As an organization committed to promoting substantive equality, with significant expertise in both *Charter* and human

rights jurisprudence, West Coast LEAF seeks leave to contribute to the exploration of these important issues by the Court.

21. If granted leave, West Coast LEAF will also argue that, where respondents seek to justify discriminatory conduct or a failure to accommodate a rights-based claim on the basis of a lack of funds, the test for undue hardship should be rigorously applied. West Coast LEAF will argue that the test for undue hardship in the context of economic constraints requires careful scrutiny. Where a respondent seeks to justify discrimination because equality is unaffordable, the Human Rights Tribunal is entitled to examine the veracity of that claim in light of all cuts implemented (or not implemented, as the case may be).

22. The test for undue hardship has significant implications for equality seekers, such as women and people with disabilities, and West Coast LEAF will place its arguments in regard to undue hardship in this broader societal context. West Coast LEAF will argue that the respondents must prioritize spending decisions in accordance with the requirements of the *Human Rights Code*, regardless of the economic climate. West Coast LEAF has a clear and demonstrable interest in ensuring that the test for undue hardship is not overly broadened to infringe upon claimants rights to be free from discrimination.

### **ORDER REQUESTED**

23. West Coast LEAF respectfully requests an order granting it leave to intervene in the present appeal for the purposes of presenting arguments by way of a factum and oral submissions according to the following terms:

- a. The Coalition will accept the record as is and will not file any additional evidence;
- b. The Coalition will serve and file a factum of no more than 10 pages on such date as the Court may determine to be appropriate;

- c. The Coalition will make oral submissions of no more than 10 minutes; and
- d. The Coalition will not seek costs nor will costs be awarded against it.

Dated at Ottawa, Ontario this 19th day of December, 2011

SIGNED BY:



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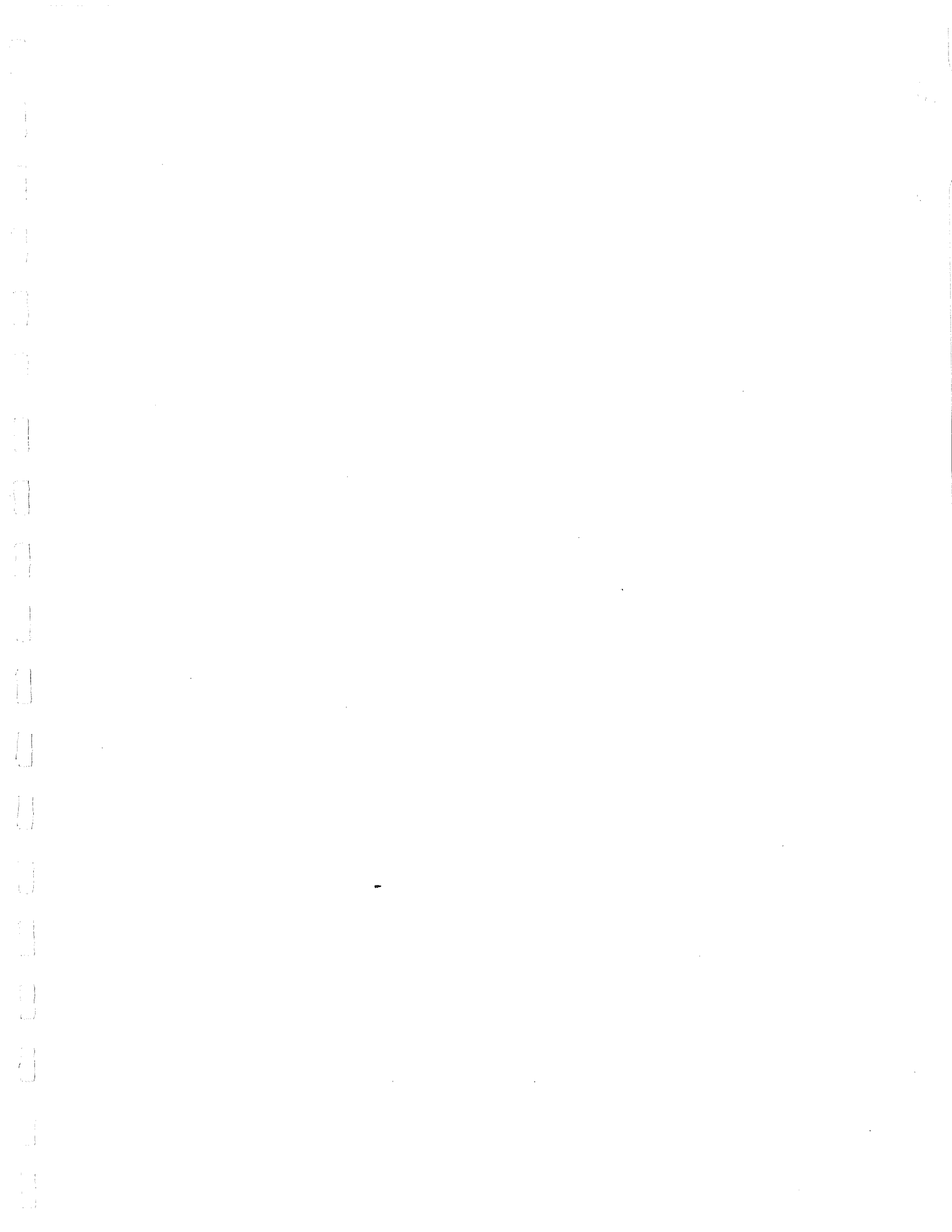
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**NOTICE TO THE RESPONDENT TO THE MOTION:** A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar as the case may be.



IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

FREDERICK MOORE ON BEHALF OF JEFFREY P. MOORE

APPELLANTS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA AS REPRESENTED BY THE MINISTRY OF  
EDUCATION, BOARD OF EDUCATION OF SCHOOL DISTRICT NO.44  
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SCHOOL TRUSTEES OF SCHOOL DISTRICT NO.44 (NORTH  
VANCOUVER)

RESPONDENTS

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AFFIDAVIT OF CATALINA RODRIGUEZ

(In support of West Coast LEAF's Application for Leave to Intervene)  
(Pursuant to Rules 47, 55, 56(b) and 57(1) of the Rules of the Supreme Court of  
Canada)

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1. I, Catalina Rodriguez, of the City of Vancouver, in the Province of British Columbia, AFFIRM AS FOLLOWS:
2. I am the President of the West Coast Legal Education and Action Fund Association, and as such have 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.



3. I was called to the bar in British Columbia in 2006. I have been on the Board of Directors of West Coast LEAF since 2008, and have been on the Executive of the Board since 2009.

4. This appeal involves the application of the discrimination analysis from the BC *Human Rights Code* to a case involving the provision of education services to a severely dyslexic child in the public school system. West Coast LEAF has a demonstrable historical and current interest in ensuring that discrimination law works to eliminate and condemn systemic discrimination and promote substantive equality for all people, and seeks leave to intervene on that basis.

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

5. West Coast LEAF is an incorporated non-profit society in British Columbia and a federally registered charity. The mission of West Coast LEAF is to achieve equality by changing historic patterns of systemic discrimination against women through BC based equality rights litigation, law reform and public legal education.

6. West Coast LEAF formed in April of 1985, when the equality provisions of the *Canadian Charter of Rights and Freedoms* ("*Charter*") came into force. West Coast LEAF is an affiliate of the national organization Women's Legal Education and Action Fund (LEAF). Both LEAF and West Coast LEAF grew out of a group of women who were working in the early 1980s on ensuring that ss.15 and 28 of the *Charter* contained language that would effectively protect women's substantive equality.

7. West Coast LEAF currently has approximately 200 members, approximately 130 volunteers, seven full-time staff persons and one part-time staff person.

8. West Coast LEAF seeks to represent the equality interests of all British Columbian women, regardless of race, national origin, immigration status, sexual preference or identity, family or marital status, disability or ability, age, socio-economic status or any other personal characteristic.

9. Central to West Coast LEAF's mandate and legitimacy as an equality rights organization is our commitment to work on a consultative and collaborative basis to ensure that all West Coast LEAF legal arguments and programs are informed by the diversity of women's experiences. The consultative process ensures that West Coast LEAF's arguments are as inclusive as possible, and that the organization remains accountable to its stakeholders.

10. West Coast LEAF also develops its legal arguments and programs in consultation and collaboration with leading equality rights academics and practitioners to ensure that its arguments and program work are of the highest calibre possible.

11. Public legal education is one of West Coast LEAF's three key project areas. The goal of West Coast LEAF's public legal education program is to help British Columbians learn about their equality rights while empowering them to access their legal rights and think critically about the law. West Coast LEAF recognizes that if women are informed about their equality rights, they will be able to take an active role in asserting their rights and be more able to mobilize to shape the laws that define them. The program aims to transform public legal education, collaborate with diverse equality seeking groups, distribute public legal education materials and build upon other West Coast LEAF initiatives. West Coast LEAF's public legal education projects are based on the premise that our constitutional rights are meaningful and enforceable in court, and that the first step to enforcing our rights is understanding them.

12. Public legal education initiatives include: a workshop entitled Transforming Our Future aimed at educating adults and community organizations about *Charter* rights and the strategies that can be used to enforce those rights; a workshop entitled No Means No, aimed at educating children and youth about their rights and obligations under the law regarding consent to sexual activity; and a workshop entitled Youth in the Workplace aimed at educating youth about their rights as employees.

13. Another of West Coast LEAF's key project areas is law reform. West Coast LEAF engages in law reform initiatives designed to work towards ensuring that all legislation in British Columbia complies with guarantees of equality for woman pursuant

to both s.15 of the *Canadian Charter of Rights and Freedoms*, and the United Nations *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), to which Canada is a signatory. Law reform initiatives include making written submissions to (and meeting with) the Attorney General of BC and other key law-makers to share West Coast LEAF's legal analysis of certain legislation or bills, making submissions to standing committees of the Legislature, researching and writing reports on issues of concern to women in BC, in particular in the area of family law, and drafting an annual report card on BC's compliance with the 2008 concluding comments on Canada from the UN CEDAW Committee.

14. Our third key project area is litigation. West Coast LEAF has intervened in three legal matters in its own name, including the appeal court hearing of *SWUAV v. Canada*, 2010 BCCA 439, and at the British Columbia Supreme Court in the *Reference re: Criminal Code of Canada (B.C.)*, 2011 BCSC 1588 (the Polygamy Reference). West Coast LEAF has been granted leave to intervene in coalition with two other organizations in the hearing of the *SWUAV* case at the Supreme Court of Canada (hearing scheduled for March 2012). West Coast LEAF has also participated in interventions with LEAF in 12 cases, including cases at the BC Court of Appeal, the Ontario Court of Appeal and the Supreme Court of Canada.

15. In the following cases, West Coast LEAF's involvement included providing general information and support to LEAF: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120; *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, [2002] O.J. No. 1771 (C.A.); *Miller v. Canada (Attorney General)*, 2002 FCA 370; *R. v. Shearing*, [2002] 3 S.C.R. 33; *Canada (Attorney General) v. Lesiuk (C.A.)*, [2003] 2 F.C. 697 (C.A.); *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E.)*, [2004] 3 S.C.R. 381; and *Blackwater v. Plint*, [2005] 3 S.C.R. 3.

16. In the following cases, West Coast LEAF's involvement was substantial, and involved management of the intervention, including managing relations with coalition

partners, covering costs in most cases, facilitating the subcommittee (which is the internal organizational body that instructs counsel) and providing administration and staff support: *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.) (Meiorin Grievance)*, [1999] 3 S.C.R. 3; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307; *Smith (Guardian ad litem of) v. Funk*, 2003 BCCA 449; *R. v. Demers*, 2003 BCCA 28; and, most recently, *R. v. Watson*, 2008 BCCA 340 and *Rick v. Brandsema*, 2009 SCC 10.

17. In all of these cases, West Coast LEAF and LEAF have focussed their submissions on the application of principles of substantive equality for women to the issue at bar. Through its litigation work with LEAF and on its own, West Coast LEAF has contributed to the development of the meaning of substantive equality and of equality rights jurisprudence in Canada and in British Columbia.

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

18. West Coast LEAF has developed substantial expertise in the area of substantive equality for women, in particular regard to s.15(1) of the *Charter*, and in applying these principles to legislation, common law, and state action impacting upon women's equality. In addition, West Coast LEAF has developed extensive expertise in human rights law and the application of this law to women and marginalized populations.

19. West Coast LEAF's litigation program is focussed entirely on cases emerging from these two legal areas, as can be seen by the above list of cases. In addition, West Coast LEAF teaches a workshop entitled *Transforming Our Future*, which is aimed at educating advocates on how to use the principles of anti-discrimination law in making social and legal change.

20. In August 2010, West Coast LEAF made submissions to the British Columbia Law Institute (BCLI) outlining concerns about its review of workplace dispute resolution mechanisms in BC. The BCLI was commissioned by the Ministry of Labour to conduct research and analysis of current provincial workplace dispute procedures, including the

fate 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 BC – could have a profoundly negative impact upon individuals who experience discrimination and individuals vulnerable to discrimination, including people living in poverty and other marginalized groups.

21. In October 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 women's equality and ability to participate in the public life of this province.

22. In this case, West Coast LEAF will be consulting closely with its national affiliate organization, LEAF. In 2003 and 2004 LEAF engaged in a series of consultations with scholars and equality advocates and practitioners to consider the test articulated by the Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 143 ("*Law*") test and the post-*Law* s.15(1) *Charter* and statutory human rights equality jurisprudence. The project culminated in the published collection of articles by leading equality rights scholars and practitioners from across Canada analyzing the current state of equality rights law in Canada: Fay Faraday, Margaret Denike and M. Kate Stephenson eds, *Making Equality Rights Real: Securing Substantive Equality Under the Charter* 2<sup>nd</sup> ed. (Toronto: Irwin Law, 2009). Two of the articles published in the collection specifically address issues raised in this appeal: see Leslie Reaume, "Postcards from O'Malley" and Andrea Wright, "Formulaic Comparisons: Stopping the *Charter* at the Statutory Human Rights Gate" at pp.373-408 and 409- 441 respectively.

23. In March 2007, LEAF published a detailed research paper on the importation of the *Law* test into statutory human rights jurisprudence: Karen Schucher and Judith Keene, "Statutory Human Rights and Substantive Equality – Why and How to Avoid the Injury to the Law Approach". This LEAF research paper was referred to by the

Divisional Court in Ontario (*Director, Disability Support Program*) v. *Tranchemontagne*, [2009] O.J. No. 1613 at para.96.

24. In November 2007 and in 2010, LEAF held further consultations with leading scholars and practitioners to carefully consider developments in *Charter* and human rights equality jurisprudence. The importation of the s.15(1) *Charter* test for substantive equality into the *prima facie* discrimination analysis in human rights law remains controversial in the Canadian legal community.

25. The outcome of the case at bar is significant for the realization of West Coast LEAF's mandate. Ensuring that the test for discrimination under human rights law does not overly broaden the government's (and other respondents') ability to argue that accommodating difference amounts to undue hardship is squarely within the interests of women's equality.

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

26. If granted leave to intervene, West Coast LEAF will argue that a respondent's ability in a human rights complaint to justify infringing a complainant's right to accommodation on the basis of cost must be narrowly construed. West Coast LEAF will argue that the test for undue hardship in the context of economic constraints requires careful scrutiny. Where a respondent seeks to justify discrimination because equality is unaffordable, the Human Rights Tribunal is entitled to examine the veracity of that claim in light of all financial constraints implemented (or not implemented, as the case may be). A respondent must prioritize spending decisions in accordance with the requirements of the *Human Rights Code*, regardless of the economic climate.

27. West Coast LEAF has a demonstrable and historical interest in ensuring that the test for discrimination under human rights legislation remains accessible and fair for equality rights claimants.

28. West Coast LEAF will also argue that the discrimination analysis under the *Human Rights Code* must remain separate and distinct from the discrimination analysis

under the *Charter*. A blurring of the distinctions between the two tests increases the burden on equality claimants and is contrary to the purpose of human rights law.

29. West Coast LEAF seeks leave to intervene in this appeal because of the importance of a fair and accessible discrimination analysis under human rights legislation, and because its expertise in the areas human rights and constitutional law offers a unique and important perspective that would be of assistance to this Court in the resolution of the issues raised in this appeal.

30. The Applicant undertakes to work in cooperation with the parties and other possible interveners, and will not attempt to detract from the particular issues at stake between the parties to the litigation.

31. The Applicant's request for leave to intervene in this appeal is limited to making written and oral submissions on the questions of law upon which leave to appeal has been sought. The Applicants are not seeking leave to adduce fresh evidence.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 15<sup>th</sup> day December, 2011.

  
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A Commissioner for taking Oaths in British Columbia

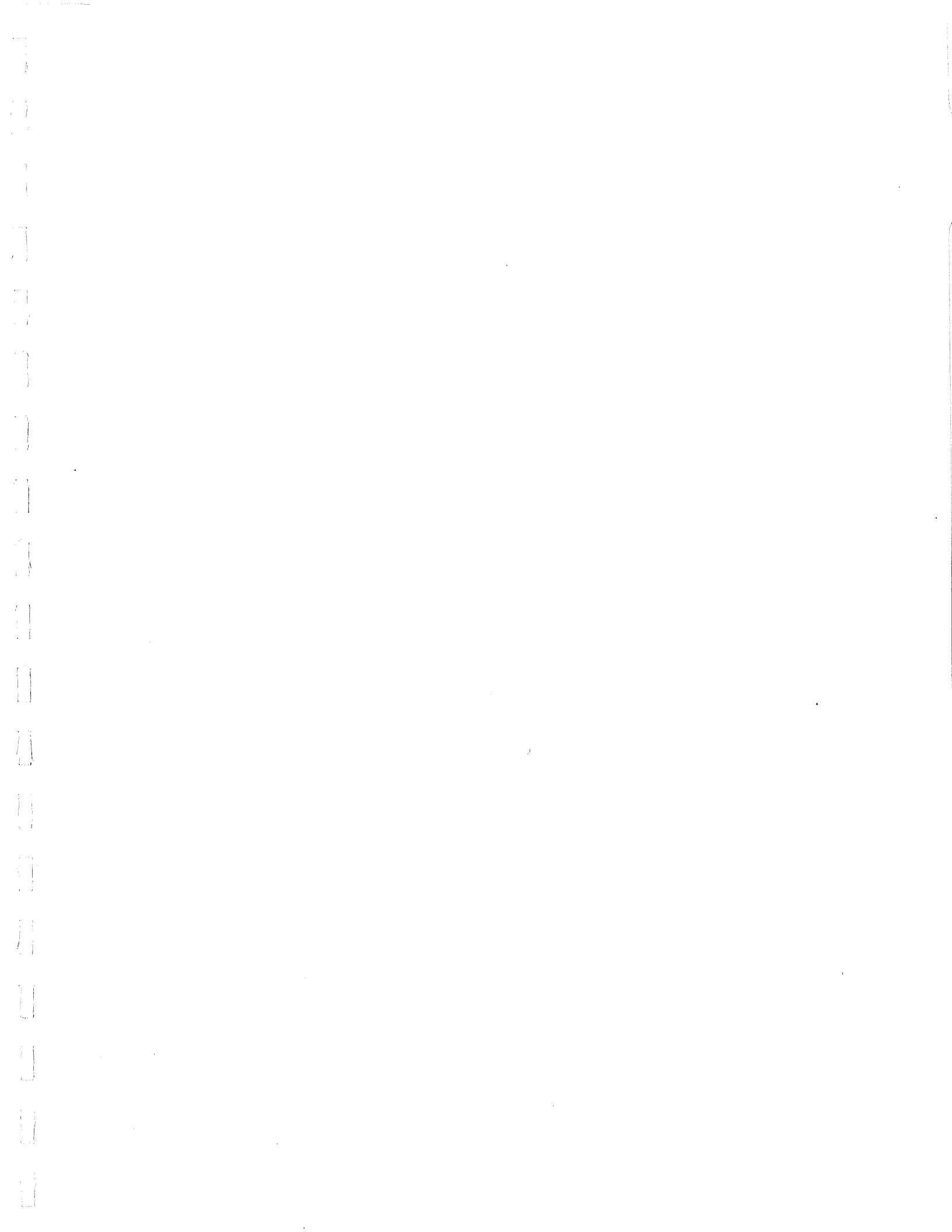
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Notary Public in and for the Province of British Columbia

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CATALINA RODRIGUEZ





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

BETWEEN:

**FREDERICK MOORE ON BEHALF OF JEFFREY P. MOORE**

APPELLANTS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA AS REPRESENTED BY THE MINISTRY OF  
EDUCATION, BOARD OF EDUCATION OF SCHOOL DISTRICT NO.44  
(NORTH VANCOUVER) FORMERLY KNOWN AS THE BOARD OF  
SCHOOL TRUSTEES OF SCHOOL DISTRICT NO.44 (NORTH  
VANCOUVER)**

RESPONDENTS

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**ORDER**

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\_\_\_\_\_  
The Honourable Justice

\_\_\_\_\_  
Date

THIS MOTION, made by the moving party, West Coast Women's Legal Education and Action Fund (West Coast LEAF) for an order granting them leave to intervene in the present appeal, pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, was considered this day at Ottawa.

ON READING the affidavit of Catalina Rodriguez, affirmed and filed, and upon reviewing the motion record filed by the moving party,

1. THIS COURT ORDERS that the moving party, West Coast LEAF, is hereby granted leave to intervene in this appeal.
2. THIS COURT ORDERS that the moving party, West Coast LEAF is hereby granted leave to file a factum of up to 10 pages.
3. THIS COURT ORDERS that the moving party, West Coast LEAF is hereby granted leave to participate in oral argument and make submissions to the Court for up to 10 minutes.
4. THIS COURT ORDERS that there will be no order as to costs.

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The Honourable Justice

Frederick Moore on behalf of Jeffrey P. Moore

v.

Her Majesty the Queen in right of the Province of British Columbia as Represented by the Ministry of Education, Board of Education of School District No. 44 (North Vancouver) formerly known as the Board of School Trustees of School District No. 44 (North Vancouver)

APPELLANT

RESPONDENTS

Court File Nos.: 34040 & 34041

IN THE SUPREME COURT OF CANADA

**ORDER**

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**Counsel for the Proposed Intervener  
West Coast LEAF**

Frederick Moore on behalf of Jeffrey P. Moore v.

Her Majesty the Queen in right of the Province of British Columbia as Represented by the Ministry of Education, Board of Education of School District No.44 (North Vancouver) formerly known as the Board of School Trustees of School District No.44 (North Vancouver)

RESPONDENTS

Court File Nos.: 34040 & 34041

APPELLANT

IN THE SUPREME COURT OF CANADA

MOTION RECORD OF THE MOVING PARTY, WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND (WEST COAST LEAF)

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