



NO. S087858
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**AMANDA INGLIS, DAMIEN INGLIS (by his litigation guardian
Amanda Inglis), MARIE PETE, NATASHA LESOPOY,
NATAYA LESOPOY (by her litigation guardian Natasha
Lesopoy), PATRICIA BLOCK, and KAYLA STONE**

PLAINTIFFS

AND:

**MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL
OF BRITISH COLUMBIA, ATTORNEY GENERAL OF
BRITISH COLUMBIA, and LISA ANDERSON AS WARDEN
OF ALOUETTE CORRECTIONAL CENTRE FOR WOMEN**

DEFENDANTS

NOTICE OF APPLICATION

Names of applicant: West Coast Women's Legal Education and Action
Fund (West Coast LEAF)

To: Amanda Inglis, Damien Inglis (by his litigation guardian Amanda
Inglis), Marie Pete, Natasha Lesopoy, Nataya Lesopoy (by her
litigation guardian Natasha Lesopoy), Patricia Block and Kayla
Stone

D. Geoffrey Cowper, Q.C., Solicitor
Faskin Martineau DuMoulin LLP
2900 – 595 Burrard Street
Vancouver, B.C.

And to: Minister of Public Safety and Solicitor General of British Columbia
Attorney General of British Columbia
Lisa Anderson as Warden of Alouette Correctional Centre for
Women

Nancy E. Brown, Barrister and Solicitor
E.W. (Heidi) Hughes, Barrister & Solicitor
Civil Litigation/Constitutional & Administrative Law Groups
Ministry of Attorney General
Legal Services Branch
P.O. Box 9280, Stn. Prov. Govt.
1001 Douglas Street
Victoria, B.C.

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on August 21, 2012 at 9:45 a.m. for the Orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order that West Coast LEAF be granted leave to intervene in this proceeding;
2. An Order providing that there shall be no costs of this motion or costs of the hearing or the proceeding for or against the proposed intervener; and
3. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

The Case as Pleaded

1. Between 2004 and 2008, the Alouette Correctional Centre for Women ("ACCW") provided a program that accommodated women giving birth while incarcerated by allowing infants to remain with their mothers in the months following their birth. The Mother-Baby Program ("Program") served twelve mother-baby pairs over that period.
2. The ACCW cancelled the Program in 2008, citing concerns regarding risks to infants. No incidents of risks to infants were reported over the duration of the Program. An evaluation by Ruth Elwood Martin, MD, FCFP and Amy Salmon,

PhD in 2007 showed that the Program improved perinatal health and social outcomes for babies and mothers. The Program was cancelled shortly after the appointment of Lisa Anderson as Warden of ACCW.

3. While the Program was in operation, incarcerated mothers gave birth at the Fir Square facility at BC Women's Hospital. After ACCW cancelled the Program, staff at BC Women's Hospital expressed concern to ACCW that the cancellation of the Program would put the well-being of incarcerated mothers and their babies at risk. ACCW subsequently stopped referring incarcerated women to BC Women's Hospital, sending them to other facilities, such as Ridge Meadows Hospital or Royal Columbian Hospital, instead.

4. The alleged impacts of the cancellation of the Program include: disruption of the psychological integrity of mothers and babies by depriving them of the opportunity to bond; deprivation of health benefits of breastfeeding to babies; and an additional legal burden imposed on mothers to regain custody of their child post-incarceration since the infant will have been apprehended at birth by the Ministry of Children and Family Development ("MCFD"). These effects have a disproportionately adverse effect on Aboriginal mothers and babies because Aboriginal women are disproportionately represented in the population of ACCW.

5. Five women, three of whom are Aboriginal, and two of their infants filed this constitutional claim against the Solicitor General, the Attorney General and the Warden of ACCW. The claim alleges that the cancellation of the Program violates the Plaintiffs' *Charter* rights under ss.15 (equality), 7 (life, liberty, and security of the person) and 12 (freedom from cruel and unusual punishment).

6. The Plaintiffs do not challenge the apprehension of babies by MCFD if, on the facts of a particular case, apprehension is in the best interests of the particular child. The Plaintiffs challenge incarceration of the mother as a basis for apprehension.

History and Experience of West Coast LEAF

7. West Coast LEAF is an incorporated non-profit society in British Columbia and a federally-registered charity. West Coast LEAF's mission 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.

8. West Coast LEAF was created in April 1985, when the equality provisions of the *Canadian Charter of Rights and Freedoms* ("Charter") came into force. West Coast LEAF is an affiliate of a national organization, Women's Legal Education and Action Fund (LEAF). Both LEAF and West Coast LEAF grew out of the efforts of a group of women who, starting in the early 1980s, worked to ensure that ss.15 and 28 of the *Charter* would be effective in guaranteeing women substantive equality.

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

10. West Coast LEAF acts to promote 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.

11. West Coast LEAF is committed to working on a consultative and collaborative basis with other equality-seeking groups to ensure that West Coast LEAF's legal arguments, education programs and law reform activities are informed by and inclusive of the diversity of women's experiences. West Coast LEAF also consults and collaborates with leading equality rights academics and practitioners to ensure the consistently high calibre of its work.

12. Public legal education is one of West Coast LEAF's three program areas. West Coast LEAF's public legal education program aims to help British Columbians learn what their legal equality rights are, how to access those rights,

and to think critically about the law as it affects them. West Coast LEAF believes that with such education, women will be able to take an active role in asserting their rights and shaping the laws that affect 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 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.

13. A second program is law reform. West Coast LEAF's law reform initiatives seek to ensure 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.

14. Litigation is the third program area. Together with LEAF, West Coast LEAF has intervened in 17 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 provided general information and support to LEAF, which had primary conduct of the intervention: *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 took the leading role: *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; *R. v. Watson*, 2008 BCCA 340; and *Rick v. Brandsema*, 2009 SCC 10.

17. West Coast LEAF has intervened (or is currently intervening) in its own name in four legal proceedings: *SWUAV v. Canada*, 2010 BCCA 439; *Reference re: Criminal Code of Canada (B.C.)*, 2011 BCSC 1588 (the Polygamy Reference); *British Columbia (Ministry of Education) v. Moore*, at the Supreme Court of Canada (decision pending), on appeal from 2010 BCCA 478; and *Friedmann v. MacGarvie*, at the BC Court of Appeal (hearing pending), on appeal from 2011 BCSC 1147. West Coast LEAF also intervened in coalition with two other organizations at the Supreme Court of Canada in the appeal of *SWUAV* (decision pending).

18. In all of these cases, West Coast LEAF and LEAF have focused 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 British Columbia and in Canada.

B. West Coast LEAF's Expertise and Interest in the Litigation

19. West Coast LEAF has developed expertise on the concept of substantive gender equality and, in particular, on the use of *Charter* equality rights in the interpretation and assessment of legislation, common law, and state action from a substantive equality perspective.

20. This case concerns the rights of women incarcerated in provincial correctional facilities and their babies. LEAF and West Coast LEAF have experience with and expertise in the rights of incarcerated women, including:

- a) In 1995, LEAF made three submissions regarding federally incarcerated women to the Commission of Inquiry into Certain Events at the Prison for Women in Kingston;
- b) From approximately 2003 to 2007, West Coast LEAF conducted "No Means No" workshops on the law of consent to sexual activity for at-risk youth held at the Burnaby Correctional Facility;
- c) LEAF made a submission to Parliament on or about 2007 entitled "Rethinking the Treatment of Federally Sentenced Women in a Substantive Equality Context";
- d) In 2007, West Coast LEAF received and documented specific allegations of inappropriate invasive medical procedures on girls in correctional facilities. West Coast LEAF corresponded with the Minister of Children and Family Development regarding these allegations. As a result, Ministry investigated the matter.
- e) In 2012, West Coast LEAF (in coalition with two other organizations) corresponded with the Representative for Children and Youth regarding the BC government's decision to centralize incarceration of girls in the province, and called on the Representative to intervene.
- f) In 2012, West Coast LEAF and LEAF co-wrote submissions on *Bill C-10: The Safe Streets and Communities Act*, calling on the Minister to delay passage of the bill pending consideration the impacts of the proposed legislation on women and Aboriginal peoples, with particular consideration to *Charter* obligations.

21. Since 2009, West Coast LEAF has published annual reports on, among other things, the treatment of incarcerated women by the province, assessed in light of international standards. West Coast LEAF's 2009 Report Card gave the province a "C" on its treatment of women and girls in prison.

22. West Coast LEAF also has expertise on the interaction of laws concerning removal of children from their parents. In May 2010, together with other

organizations, West Coast LEAF filed a complaint with the Ombudsperson of British Columbia regarding the reduction in shelter allowance for parents whose children were in temporary care. West Coast LEAF and others argued that the reduction in shelter allowance often resulted in delays in family reunification, which had a discriminatory impact on poor and marginalized women.

23. In 2012, West Coast LEAF conducted a courtwatch program of child protection proceedings in Provincial Court. The goal of the program was to examine the treatment and experiences of marginalized women going through these proceedings. A report on the courtwatch will be produced later this year.

24. The claims advanced in this case require interpretation and application of constitutional rights to claimants with multiple and intersecting disadvantaging characteristics, including poverty, race/ethnicity, gender and incarceration. West Coast LEAF has particular interest in ensuring that constitutional rights are interpreted meaningfully for women whose multiple and intersecting characteristics may obscure the extent to which laws disadvantage them. In particular, West Coast LEAF's experience in the interpretation and application of principles of substantive equality may assist the Court in its consideration of the implications of its analysis beyond the immediate effects on the plaintiffs.

25. West Coast LEAF seeks leave to intervene in this case because of the importance of the issues it raises to West Coast LEAF's constituents, and because its expertise in substantive gender equality offers a unique and important perspective that would assist this Court in its deliberations in this case.

Part 3: LEGAL BASIS

26. This application is made pursuant to Part 8 of the *BC Supreme Court Civil Rules* and the inherent jurisdiction of this Court.

27. West Coast LEAF submits that its expertise in the interpretation and application of s. 15 of the *Charter* and the interpretation of s. 7 of the *Charter* in a

manner consistent with ss. 15 and 28 will assist the Court in resolving the constitutional issues in this case.

28. If granted leave to intervene, West Coast LEAF will argue that cancellation of the program:

- a) Infringes the s. 7 rights of infants by jeopardizing their physical safety and psychological integrity in a manner that does not accord with the principles of fundamental justice;
- b) Infringes the s. 7 rights of mothers by seriously compromising their psychological integrity in a manner that does not accord with the principles of fundamental justice;
- c) Infringes the s. 15 rights of mothers on the grounds of gender and family status in that incarcerated mothers are subject to state removal of their babies;
- d) Infringes the s. 15 rights of infants on the ground of family status in that they are removed from their mothers on the basis of a maternal characteristic that is irrelevant to their best interests; and
- e) Cannot be justified under s. 1

29. West Coast LEAF does not intend to make arguments concerning s. 12 of the *Charter*. West Coast LEAF will work to ensure that its submissions do not duplicate those of the parties.

West Coast LEAF's Proposed Involvement in the Hearing

30. The Applicant seeks leave only to make written and oral submissions on the issues before the Court. It does not seek leave to adduce evidence.

Part 4: MATERIAL TO BE RELIED ON

Affidavit #1, C. Rodriguez, sworn on July 4, 2012.

The applicant(s) estimate(s) that the application will take 10 minutes.

[Check the correct box]

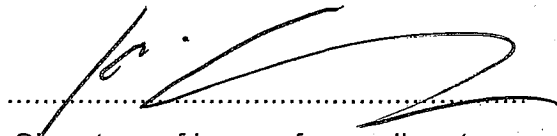
[] This matter is within the jurisdiction of a master.

[X] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7 (12) of the Supreme Court Civil Rules.

Date: August 8, 2012



Signature of lawyer for applicant
Kasari Govender

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:

.....
.....
.....

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:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- 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

[B.C. Reg. 119/2010, Sch. A, s. 43]

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COLUMBIA and LISA ANDERSON AS WARDEN OF ALOUETTE
CORRECTIONAL FACILITY FOR WOMEN**

DEFENDANTS

NOTICE OF APPLICATION

West Coast Women's Legal Education and Action Fund

Kasari Govender
Solicitor for the proposed intervenor
555 – 409 Granville Street
Vancouver, B.C. V6C 1T2
(604) 684-8772 ext.111 (phone)
(604) 684-1543 (fax)
exec@westcoastleaf.org

Nitya Iyer
Solicitor for the proposed intervenor
Lovett Westmacott
200-736 Granville St.
Vancouver BC V6Z 1G3
(604) 684-922