Court of Appeal File No. CA042770

COURT OF APPEAL

ON APPEAL FROM the decision of Justice Sharma, British Columbia Supreme Court, dated April 10, 2015 (*Vancouver Area Network of Drug Users v. British Columbia Human Rights Tribunal,* 2015 BCSC 534)

BETWEEN:

VANCOUVER AREA NETWORK OF DRUG USERS
On behalf of people who are, or appear to be, street homeless and/or drug addicted
RESPONDENT
(Petitioner)

AND:

DOWNTOWN VANCOUVER BUSINESS IMPROVEMENT ASSOCIATION
APPELLANT
(Respondent)

-and-

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL and CITY OF VANCOUVER
RESPONDENTS

Court to Appeal File No: CA042777

BETWEEN:

VANCOUVER AREA NETWORK OF DRUG USERS
On behalf of people who are, or appear to be, street homeless and/or drug addicted
RESPONDENT
(Petitioner)

AND:

CITY OF VANCOUVER
APPELLANT
(Respondent)

-and-

BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL and DOWNTOWN VANCOUVER BUSINESS IMPROVEMENT ASSOCIATION
RESPONDENTS

FACTUM OF THE INTERVENER, THE COALITION OF WEST COAST LEAF and THE COMMUNITY LEGAL ASSISTANCE SOCIETY

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CHRONOLOGY OF DATES RELEVANT TO THE APPEAL

August 28, 2015	The Coalition of West Coast LEAF and the Community Legal Assistance Society were granted leave to intervene by Justice Stromberg-Stein in Chambers.

OPENING STATEMENT

This case is about treatment of a vulnerable group of people in the public spaces of our city. The Human Rights Tribunal ("Tribunal") was asked to determine whether a program that removed the "street homeless" from an area within downtown Vancouver discriminated on the grounds of race, colour, ancestry and mental or physical disability, contrary to the *Human Rights Code,* R.S.B.C. 1996, c. 210 ("*Code*").

The Tribunal found that the street homeless was a group disproportionately composed of Aboriginal people and/or people with disabilities, including addiction, whose members were adversely treated when they were forced to move from parks and sidewalks. However, the Tribunal held that there was no connection between the group's *Code*-protected characteristics and their adverse treatment, and therefore no *prima facie* discrimination. The Tribunal's conclusions on the meaning and application of the connection requirement in the *prima facie* test were overturned on judicial review.

The coalition of West Coast LEAF and the Community Legal Assistance Society ("Coalition") intervenes on the meaning of the connection requirement in the test for *prima facie* discrimination and what evidence is sufficient to prove it. Consistency with the purposes of human rights law and judicial recognition of the diverse ways in which discrimination may be embedded in seemingly neutral practices demands that there be no categorical limits on what types of connection will establish *prima facie* discrimination. A similarly flexible approach applies to consideration the evidence. The kinds of evidence sufficient to prove a connection will vary with the nature of the discrimination claim. In particular, group complaints of adverse effects discrimination often involve statistical evidence, and complaints of racial discrimination often require judicial notice of notorious social facts. There is no rule that statistical evidence, a fact of which judicial notice is taken, or any other category of evidence is insufficient on its own to establish connection and *prima facie* discrimination. The Coalition submits that such a requirement is inconsistent with the purposes of human rights law. A tribunal must always consider <u>all</u> evidence probative of connection to determine whether the respondent must justify its conduct.

PART 1 – STATEMENT OF FACTS

1. The Coalition relies on the facts as found by the Tribunal and as summarized by the chambers judge.

2. The Coalition was granted leave to intervene in this appeal and file a factum by order of Stromberg-Stein J.A., dated August 28, 2015. The Court also granted the Coalition leave to apply to the panel hearing these appeals for permission to make oral submissions, and ordered that there shall be no costs awarded for or against the Coalition.

PART 2 - ISSUES ON APPEAL

3. The Appellants' facta identify three issues on appeal: (1) what is the correct standard of review?; (2) what is the legal test for *prima facie* discrimination?; and (3) when that test is applied, what evidence is sufficient to satisfy it? To these, the DVBIA adds a fourth issue: Did the chambers judge effectively import "street homelessness" into the *Code* as a protected ground? The Coalition's factum addresses the second and third issues.

PART 3 - ARGUMENT

I. The test for *prima facie* discrimination

4. Human rights legislation has been described as "the final refuge of the disadvantaged and the disenfranchised" and the "last protection of the most vulnerable members of society". Decades of discrimination law have honed the courts' understanding of the forms discrimination can take, and have cemented an approach that focuses on the effects of rules, standards and practices that, whether intentionally or unintentionally, deny people the right to substantively equal treatment. The animating norm is substantive, rather than formal, equality. As with equality claims brought under s. 15 of the *Charter,* this approach:

> .. recognizes that persistent systemic disadvantages have operated to limit the opportunities available to members of certain groups in society and seeks to prevent conduct that perpetuates those disadvantages.
>
> *Kahkewistahaw First Nation v. Taypotat,* 2015 SCC 30 at para. 17; *Zurich Insurance Co. v. Ontario (Human Rights Commission),* [1992] 2 S.C.R. 321 at para. 18

5. In all claims of discrimination under statutory human rights laws, the question is the same:

> does the practice result in the claimant suffering arbitrary — or unjustified — barriers on the basis of his or her membership in a protected group. Where it does, discrimination will be established.
>
> *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 60

6. Discrimination can manifest in many ways. For example, "direct discrimination" occurs when a standard or practice is discriminatory on its face. "Systemic discrimination" occurs where institutions, practices and norms of a system result in discriminatory disentitlement on a larger scale. "Adverse effects discrimination", the type of discrimination alleged in this case, occurs where a facially neutral practice or standard discriminates in effect.

7. There is a two-step test for all types of discrimination claims. First, the complainant group has the burden of proving *prima facie* discrimination. The second step shifts the evidentiary burden to the respondent to show a "*bona fide* and reasonable justification" for the treatment.

> *Moore* at para. 33; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center),* 2015 SCC 39 ["***Bombardier***"] at paras. 34-37

8. Proof of *prima facie* discrimination requires a complainant group to demonstrate three elements: (1) the group is characterized by one or more of the enumerated grounds protected by the *Code* (the "protected characteristics"); (2) it has been subject to adverse treatment in an area governed by the *Code* (in this case, a service or facility

customarily offered to the public); and (3) it is reasonable to infer that the protected ground was a factor in the adverse treatment (the "connection requirement"). It is the third element - the connection requirement - that is in issue in this case.

Moore at para. 33; *Bombardier* at para. 35

9. The purpose of the *prima facie* discrimination analysis generally, and of the connection requirement in particular, is to link the protected ground(s) with the adverse treatment such that, if the conduct of the respondent is not explained or justified, discrimination will be found. Connections will not always be obvious, so courts must be alive to the many indirect and subtle ways in which protected group characteristics are embedded in harmful treatment.

10. Precisely because of the multiple ways in which adverse treatment can be linked to protected characteristics and give rise to *prima facie* discrimination, the Supreme Court of Canada has cautioned that proof of connection should not be onerous or place too heavy a burden on a complainant. The connection need not be "close", "intentional" or "causal." A complainant is required only to show:

> that there is a *connection* between a prohibited ground of discrimination and the distinction, exclusion or preference of which he or she complains, or, in other words, that the ground in question was a *factor* in the distinction, exclusion or preference.

Bombardier at paras. 49 - 51 (emphasis in original)

11. There is no exhaustive definition of "connection", and it may be established in a number of ways, including with reference to intention, causation and effect.

12. Although proof of intention or causation is never necessary, where there is such evidence, it can certainly establish connection. For example, if a hotel owner testifies that he refused to rent a room to a gay couple because their sexual orientation offended his religious beliefs, his intention establishes connection. Even without his testimony, a hotel policy of not renting to same-sex couples causally connects a protected ground with adverse treatment.

13. A connection between the protected characteristic and the adverse treatment can also be established by focusing on the effect of the treatment on a complainant. If the adverse treatment has a disproportionate or quantitatively greater impact on a group or class characterized by a *Code*-protected characteristic, there is a connection sufficient to establish *prima facie* discrimination. For example, if an aerobic capacity test for forest firefighters means that significantly more women than men will not meet the standard, there is a connection between sex and the adverse impact of imposing the test, even if some men will also fail the test and some women will pass it.

> *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 ["***Meoirin***"]

14. A connection between the protected characteristic and the adverse treatment may also be established by evidence that demonstrates a differential or qualitatively different effect on people with the *Code*-protected characteristic than on others because it exacerbates their conditions of disadvantage. Often an adverse effect has both qualitative and quantitative components, and the terms disproportionate impact and differential effect are used interchangeably. For example, in the *Charter* context, the cancellation of a program permitting provincially incarcerated mothers to keep their newborns with them was found to be discriminatory on the basis of race and ethnicity because the high proportion of Aboriginal incarcerated women resulted in a disproportionate impact, and the fact that Aboriginal women are often parenting alone resulted in a differential and more acute effect.

> *Inglis v. British Columbia (Minister of Public Safety),* 2013 BCSC 2309, see e.g. paras. 551-552 and 562

II. Evidence of connection in the test for *prima facie* discrimination

15. Recognizing the insidious nature of discrimination and the barriers to marginalized groups seeking to expose it, courts have held that tribunals must take a flexible, liberal and purposive approach to the types of evidence sufficient to prove *prima facie* discrimination. Categorical limitations on the types of evidence that are

necessary to prove a human rights complaint are inconsistent with this approach. As the Federal Court of Appeal noted in *Johnstone*:

> ... a *prima facie* case must be determined in a flexible and contextual way, and the specific types of evidence and information that may be pertinent or useful to establish a *prima facie* case of discrimination will largely depend on the prohibited ground of discrimination at issue.
>
> *Johnstone v. Canada (Border Services)*, 2014 FCA 110 at para. 84

16. The nature of the particular discrimination claim being made affects the kind of evidence the complainant must tender to establish the connection necessary to a *prima facie* case. For example, claims of direct discrimination allege that a standard or practice is discriminatory on its face. In such cases, the connection between the adverse treatment and the protected ground is found on the face of the standard; no additional evidence is required.

17. Further, where a complaint is brought by an individual, the individual must lead evidence to show that there was an adverse effect on her that was connected to her protected characteristic. For example, in *Bombardier*, the complainant alleged that he was the victim of discrimination when Bombardier denied him a training opportunity because the United States would not grant him a security clearance. The complainant did not adduce evidence that would link the specific denial of his security clearance to his identity as a Muslim man. His complaint failed on that basis.

18. By contrast, the claim in this case is a representative group complaint alleging adverse effects discrimination. A representative group complaint is made when a complaint is brought under the *Code* on behalf of a group, of which the complainant may not be a member. As explained above, adverse effect discrimination claims arise where facially neutral practices have discriminatory effects.

Code, s. 21(4); *Meoirin* at para. 19

19. The Coalition submits that the nature of the discrimination claim advanced before the Tribunal in this case meant that evidence from an affected individual was not required in order to establish connection. Further, statistical evidence and/or judicial notice or inference from social context could have satisfied the connection requirement.

A. Individual testimony is not required in a representative complaint

20. The *Code* allows representative complaints to be brought on behalf of a group. This mechanism recognizes that some individuals are so vulnerable that they may be unable to pursue human rights complaints on their own, and ensures that they are not denied access to the protection of human rights laws. In representative complaints, the evidence must be considered in light of the social context underlying the reasons for the representative complaint.

> *Code*, s. 21(4); *Construction and Specialized Workers' Union Local 1611 v. SELI Canada Inc.*, 2007 BCHRT 423 ["***SELI***"] at para. 68

21. In keeping with this principle, this Court has held that it is not necessary for a person who is the subject of a representative complaint to testify in order to find that discrimination has occurred and to support an award of damages. Where the affected person does not testify, the trier of fact must weigh all evidence, including taking judicial notice where appropriate, with a view to achieving the purposes of the *Code* to "eliminate discriminatory barriers".

> *Silver Campsites Ltd. v. James*, 2013 BCCA 292 [*"**James**"*] at paras. 36-37 and 40

22. Likewise in this case, it was not necessary for individual members of the group to testify. As Justice Sharma noted in her reasons, to deny a claim for discrimination for the sole reason that a particular individual member of a vulnerable group could not or did not testify would be "remarkably insensitive". It runs contrary to the purposes of human rights legislation. In the Coalition's submission, it is an argument that must be decisively rejected. To do otherwise would undermine important protection for vulnerable individuals and groups central to the purpose of human rights protection.

Vancouver Area Network of Drug Users v. British Columbia Human Rights Tribunal, 2015 BCSC 534 ["**JR Decision**"] at para. 89

B. The role of statistical evidence in adverse effect complaints

23. The Coalition submits that statistical evidence can provide sufficient evidence of a connection between the protected grounds and adverse treatment. Statistical evidence may be particularly important in complaints alleging discrimination based on the adverse effects of facially neutral rules. The classic example of this is *Griggs v. Duke Power Co.* (1971), 401 U.S. 424, in which a group of African American employees alleged that a rule requiring employees to have completed high school or to pass a standardized test discriminated on the ground of race. The statistical evidence showed that, in 1960, only 12% of African American males had completed high school compared to 34% of white males, and only 6% of African Americans passed the standardized tests compared to 58% of white people. Therefore, a person was less likely to be hired if he was African American. The Court held that the facially neutral rule had a disproportionate impact on African Americans in violation of their civil rights.

24. Similarly, in *Chapdelaine v. Air Canada,* [1987] C.H.R.D. No. 12, female pilots claimed that Air Canada's rule requiring pilots to be at least 5'6" tall discriminated on the ground of sex. Statistics showed that, in 1978, over 82% of women in Canada between 20 and 29 years old were under 5'6" tall, compared to 11% of men. Therefore, a woman was more likely to fail the height standard. The Tribunal concluded that the facially neutral standard was *prima facie* discriminatory on the ground of sex.

25. Another example is *Meoirin*, where the union filed a grievance on behalf of a female forest firefighter, alleging that an aerobic fitness requirement discriminated on the ground of sex. The evidence showed that, "owing to physiological differences, most women have lower aerobic capacity than most men". The statistics were that 65-70% of men passed the required aerobic test on their first attempt, but only 35% of women did, making women less likely to qualify to be a forest firefighter. The Court found that this disproportionate screening out of female candidates established *prima facie* discrimination.

Meoirin at paras. 11, 13 and 69

26. These three examples highlight two important points about the role of statistical evidence in establishing *prima facie* discrimination. First, the adverse treatment may be over or under inclusive relative to the enumerated grounds at issue. This principle has been explained by the Supreme Court of Canada as follows:

> ...discrimination does not require uniform treatment of all members of a particular group. It is sufficient that ascribing to an individual a group characteristic is one factor in the treatment of that individual ...In nearly every instance of discrimination the discriminatory action is composed of various ingredients with the result that some members of the pertinent group are not adversely affected, at least in a direct sense, by the discriminatory action. To deny a finding of discrimination in [such circumstances] is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive. It is to argue, for example, that an employer who will only hire a woman if she has twice the qualifications required of a man is not guilty of sex discrimination if, despite this policy, the employer nevertheless manages to hire some women.

Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252 at para. 62

27. In the examples outlined above, it was not necessary to show that no African Americans or women could meet the discriminatory requirements in the above cases. Equally, there was no need to establish that only individuals characterized by enumerated grounds were affected. Some 66% of white men and 89% of African American men would not have finished high school in *Griggs,* and up to 35% of men would not have passed the aerobic standard in *Meoirin*, whereas about 35% of women would have passed. The connection is established despite the fact that some people in the group at issue do not experience the adverse effect and some people who are not in the group do experience the adverse effect. It is established based on the likelihood of people being disadvantaged by reason of their protected characteristics.

28. Statistical correlations are also accepted as establishing the connection element in sex-based wage discrimination cases. Whether the protection is for equal pay for

same or substantially similar work, or equal pay for work of equal value, a job group or class may be statistically "male" or "female" even if it is not exclusively composed of men or women.

> *Canada Post Corp. v. Public Service Alliance of Canada,* 2010 FCA 56 at para. 185, per Evans J.A. in dissent, whose reasons were adopted wholly by the Supreme Court of Canada in 2011 SCC 57

29. In other words, the courts have established that a statistical correlation need not be perfect; it need only be meaningful. Where it is so found, it may be sufficient *on its own* to establish a connection between protected characteristics and adverse treatment. Nothing more is required.

30. Second, as found by the chambers judge, the same statistical evidence can be used to satisfy both the first and the third elements of the *prima facie* test for discrimination. That is, the statistical evidence that is brought forward by a claimant group to establish that the group is characterized by a protected ground is also probative of and can be sufficient to establish that the ground was a factor in the adverse treatment. As the Tribunal explained in *Bitonti*, "statistics are used to establish a *prima facie* case of discrimination; they show that the impugned rule or requirement selects applicants in a pattern that relates to a ground of discrimination."

> JR Decision at para. 74; *Bitonti* v. *College of Physicians & Surgeons of British Columbia*, [1999] B.C.H.R.T.D. No. 60 at para. 123

31. In the case examples, shorter stature and lower aerobic capacity were found to be sufficiently correlated with being female that complaints about distinctions based on these characteristics were properly framed as complaints of sex discrimination. The same evidence that proved the disproportionate impact on women proved the connection requirement. In *Bitonti*, "place of medical training" was accepted as sufficiently correlated to "place of origin" such that a group of foreign medical graduates could rely on that protected ground and establish a connection to the difficulties they faced in accessing training and licencing opportunities.

Bitonti at para 176

32. Statistical evidence, like all evidence, must be probative of the issue it is adduced to prove. In *Kahkewistahaw First Nation*, a case relied upon by the DVBIA, the statistics presented by the claimant were too general to support the specific equality violation that was alleged. In such circumstances, the statistics were insufficient to prove a violation of Mr. Taypotat's equality rights. However, where such evidence is probative, it may stand alone as proof of a discriminatory practice or pattern, without requiring something more.

Kahkewistahaw First Nation at para. 24

33. Contrary to the thrust of the Appellants' submissions, the fact that all homeless people may not be Aboriginal and/or disabled, and that some people subject to removal may not have been Aboriginal or disabled, does not mean that the complainant failed to establish the connection requirement. Connection does not require a perfect correlation. Moreover, as the cases cited above demonstrate, statistical evidence is sufficient to establish the requisite connection; it does not simply demonstrate "potential" connection, such that further evidence of an "actual" connection is required.

34. Requiring a comparative analysis within the affected group to establish a differential effect on protected members of the group compared to non-protected members of the group, as the Tribunal did in this case, misunderstands these principles and invokes a formalism that is contrary to the goal of substantive equality. In *Moore,* the Supreme Court of Canada rejected an approach that would have required the complainant to prove a differential effect on Jeffrey Moore compared to other students with special needs. The Court explained that such an approach would preclude proper consideration of the fundamental issue: whether Jeffrey had genuine access to an education. The comparison concerned access to education for all students.

Moore at para. 31

35. In the present case, a comparison between street homeless who are Aboriginal or disabled with street homeless who are not is just as inappropriate. The fundamental issue is whether the claimant group had genuine access to public space in downtown Vancouver, and the comparison is to the public at large.

JR Decision at para. 118

C. Connection can be established by drawing inferences from notorious social facts

36. Decision makers must take judicial notice of notorious social facts that inform the question of whether discrimination has likely occurred. History and jurisprudence have demonstrated that the link between the protected characteristic and adverse treatment can be deeply entrenched in seemingly neutral policy or practice, and may not lend itself easily to proof, particularly by traditional means. As explained by Doherty J.A. in *R. v. Parks*, "[t]he existence and extent of [matters such as] racial bias are not issues which can be established in the manner normally associated with the proof of adjudicative facts".

R. v. Parks (1993), 15 O.R. (3d) 324 (C.A.), cited in *R. v. Williams*, [1998] 1 S.C.R. 1128 ["***Williams***"] at para. 35; see also *R.* v. *Brown* (2003), 64 O.R. (3d) 161 (C.A.) at para. 44

37. In the *Charter* context, the Supreme Court of Canada has explained the fact-finder's proper approach to evidence and deducing discrimination as follows:

> First, I should underline that none of the foregoing discussion implies that the claimant must adduce data, or other social science evidence not generally available, in order to show a violation of the claimant's dignity or freedom. Such materials may be adduced by the parties, and may be of great assistance to a court in determining whether a claimant has demonstrated that the legislation in question is discriminatory. However, they are not required. A court may often, where appropriate, determine on the basis of judicial notice and logical reasoning alone whether the impugned legislation infringes s. 15(1). It is well established that a court may take judicial notice of notorious and undisputed facts, or of facts which are capable of immediate and accurate demonstration, by resorting to readily accessible sources of indisputable accuracy.... There will frequently be instances in which a court may appropriately take judicial notice, of some or all of the facts necessary to underpin a discrimination claim, and in which the court should engage in a process of logical

> reasoning from those facts to arrive at a finding that s. 15(1) has been infringed as a matter of law.
>
> *Law* v. *Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 77 (emphasis added); *Radek v. Henderson Development (Canada) Ltd.,* 2005 BCHRT 302 at para. 482(d); *Williams,* at para. 35

38. Where discriminatory prejudice or historical marginalization is notorious within a community or has been judicially recognized as such, a decision maker should properly take judicial notice of it. In *Williams,* the Supreme Court of Canada explained:

> Judicial notice is the acceptance of a fact without proof. It applies to two kinds of facts: (1) facts which are so notorious as not to be the subject of dispute among reasonable persons; and (2) facts that are capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy... The existence of racial prejudice in the community may be a notorious fact within the first branch of the rule... Widespread racial prejudice, as a characteristic of the community, may therefore sometimes be the subject of judicial notice...
>
> *Williams* at para. 54; see also *James* at para. 37

39. *Bombardier* is consistent with these principles. In that case, the Court cautioned against relying on the social context of discrimination against a group generally to find that the individual complainant had been discriminated against in the specific way he alleged. Based on the allegations in that case, something more was required. Nowhere in *Bombardier* does the Court say that *Law* should no longer be followed or that judicial notice of social facts cannot be sufficient to prove the connection requirement. It remains open to the trier of fact to consider all evidence, and take judicial notice of social context, to assess whether there is any connection between protected characteristics and adverse treatment.

> *Bombardier* at para.69

40. In this case, the actions of the Downtown Ambassadors must be examined having regard to the social context in which they occurred, including the notorious connection between Aboriginal identity, disability and homelessness, to establish

whether a group marked by protected characteristics was denied meaningful access to public space.

41. Specifically, the Coalition submits that the link between Aboriginal identity and systemic marginalization resulting in disproportionately high rates of homelessness is so notorious as to not be the subject of dispute among reasonable persons. Indeed, the Supreme Court of Canada has mandated that judicial notice be taken of the systemic marginalization of Aboriginal people:

> Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society ... To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.
>
> *R. v. Ipeelee*, 2012 SCC 13 at para. 60

42. Similarly, the link between disabilities, notably addiction, and homelessness is also so notorious as to qualify for judicial notice. In *Canada (Attorney General) v. PHS Community Services Society*, the Supreme Court of Canada described the homeless population of Vancouver's Downtown Eastside as "crippled by disability and addiction".

> *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para. 8

43. The Tribunal in this case was required to consider this notorious social context along with the rest of the evidence before it, which included evidence of targeting, statistical evidence, expert evidence and oral testimony, to determine whether *prima facie* discrimination was established. The purposes set out in section 3 of the *Code* cannot be achieved unless decision-makers take a robust and flexible view of how a discriminatory connection might manifest, and consider all of the evidence that may prove it.

PART 4 - NATURE OF ORDER SOUGHT

44. As an intervenor, the Coalition seeks no order from this Court regarding the outcome of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Vancouver, Province of British Columbia, this 1st day of October, 2015.

Counsel for the intervenor:

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"D. Cousineau"
Devyn Cousineau

Amita Vulimiri

LIST OF AUTHORITIES

Statute	**Paragraph Nos.**
Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11	4, 14, 37
Human Rights Code, R.S.B.C. 1996, c. 210	3-18, 20-22, 26, 30, 43

APPENDIX "A"

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11, s. 15

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

APPENDIX "B"

Human Rights Code, R.S.B.C. 1996, c. 210, ss. 2, 3, 8, 21

2 Discrimination in contravention of this Code does not require an intention to contravene this Code.

3 The purposes of this Code are as follows:

(a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

(b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

(c) to prevent discrimination prohibited by this Code;

(d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;

(e) to provide a means of redress for those persons who are discriminated against contrary to this Code;

(f) and (g) [Repealed 2002-62-2.]

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

(2) A person does not contravene this section by discriminating

(a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or

(b) on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

21 (1) Any person or group of persons that alleges that a person has contravened this Code may file a complaint with the tribunal in a form satisfactory to the tribunal.

(2) and (3) [Repealed 2002-62-7.]

(4) Subject to subsection (5), a complaint under subsection (1) may be filed on behalf of

(a) another person, or

(b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.

(5) A member or panel may refuse to accept, for filing under subsection (1), a complaint made on behalf of another person or a group or class of persons if that member or panel is satisfied that

(a) the person alleged to have been discriminated against does not wish to proceed with the complaint, or

(b) proceeding with the complaint is not in the interest of the group or class on behalf of which the complaint is made.

(6) A member or panel may proceed with 2 or more complaints together if a member or panel is satisfied that it is fair and reasonable in the circumstances to do so.