

Vancouver

11-May-15

REGISTRY

No. S-149837
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRINITY WESTERN UNIVERSITY and BRAYDEN
VOLKENANT

PETITIONER

AND:

LAW SOCIETY OF BRITISH COLUMBIA

RESPONDENT

NOTICE OF APPLICATION

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

To: Trinity Western University
c/o Kevin L. Boonstra
100-32160 South Fraser Way
Abbotsford, B.C. V2T 1W5

And to: The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

And to: Attorney General of British Columbia
Deputy Attorney General
c/o Ministry of Justice
Legal Services Branch
Fifth Floor, 1301 865 Hornby Street
Vancouver, B.C. V6Z 2G3

TAKE NOTICE that an application will be made by West Coast LEAF to the presiding judge or master at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on Thursday, May 14, 2015 at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. That West Coast LEAF be granted leave to intervene in this proceeding and to make oral and written submissions;
2. That West Coast LEAF be granted leave to file an affidavit as described herein;
3. That there shall be no costs of this motion or costs of the hearing or the proceeding for or against West Coast LEAF; and
4. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

A. Background

5. Trinity Western University (“TWU”) is an evangelical Christian university in Langley British Columbia. As TWU has plead in this proceeding, it is an educational arm of the church. TWU requires students and staff to abide by a Community Covenant to assist in fostering an atmosphere that integrates faith and learning and facilitates moral and spiritual growth in a manner that is consistent with evangelical religious beliefs.
6. The Community Covenant *inter alia* requires students to abstain from “sexual intimacy that violates the sacredness of marriage between a man and a woman.” It also requires members of the TWU community to “treat all persons with respect and dignity, and uphold their God-given worth from conception to death.” The implication of this passage is that life begins at conception and female students and staff are expected to refrain from accessing abortion services while attending or working at TWU.
7. TWU’s Petition to the Court giving rise to this proceeding challenges the Law Society of British Columbia’s decision to declare that the School of Law at TWU is not an approved faculty of law for the purposes of the Law Society’s admission program (the “Decision”).
8. In its Petition, TWU alleges that the Law Society failed to properly balance relevant *Canadian Charter of Rights and Freedoms* (“Charter”) values with the statutory

objectives of the Law Society's governing statute, the *Legal Profession Act*, S.B.C. 1998, c. 9. TWU identifies the relevant *Charter* values as freedom of religion, freedom of expression, freedom of association, equality rights and section 32 of the *Charter*.

9. TWU also alleges that the Decision unjustifiably infringed TWU's freedom of religion, freedom of expression, freedom of association and its *Charter* right to be protected from discrimination.
10. The Law Society had pleaded in response that the Decision is within the bounds of, and is consistent with, its mandate as stipulated in section 3 of the *Legal Profession Act*. That mandate requires the Law Society to uphold and protect the public interest in the administration of justice by *inter alia* preserving and protecting the rights and freedoms of all persons and maintaining the integrity and honor of the legal profession. The Law Society has also plead that its Decision was consistent with its *Charter* obligations.
11. The Law Society has pleaded that the primary reason for the Decision was the Community Covenant's discriminatory impact on lesbian, gay and bisexual ("LGB") persons; however, it has further pleaded that the Decision is also justifiable because of the Community Covenant's effect on other historically disadvantaged groups, including women and unmarried couples and its discriminatory exclusion of members of other faiths or beliefs from attending TWU.
12. West Coast LEAF seeks leave to intervene in this Petition to address the validity of the Law Society's Decision in relation to the issue of whether the Community Covenant discriminates on the basis of sexual orientation, marital status and sex.

B. History and Experience of West Coast LEAF

13. 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 three main BC-based program areas: equality rights litigation, law reform and public legal education.

14. West Coast LEAF was created in April 1985, when the equality provisions of the *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 sections 15 and 28 of the *Charter* would be effective in guaranteeing women substantive equality.
15. West Coast LEAF currently has almost 350 members and approximately 130 volunteers. It typically employs five full-time and three part-time staff.
16. 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.
17. 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.
18. 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.

19. A second program area 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 women pursuant to both section 15 of the *Charter* and the United Nations *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), to which Canada is a signatory. West Coast LEAF's law reform work consists of conducting comprehensive research projects, drafting best practices and recommendations on legal reform, and making submissions to government and key decision makers.
20. Litigation is the third program area. West Coast LEAF, through litigation work with LEAF and on its own, has contributed to the development of equality rights jurisprudence including the definition of substantive equality in Canada and in British Columbia under both the *Charter* and human rights law, especially in reference to women's equality.
21. West Coast LEAF has intervened, or is intervening, in its own name in ten 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*, 2012 SCC 61; *Friedmann v. MacGarvie*, 2012 BCCA 445; *Inglis v. Ministry of Public Safety and Solicitor General of BC*, 2013 BCSC 2309; *Vilardell v. Dunham*, 2013 BCCA 65; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2015 BCSC 534; and *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2014 SCC 59. West Coast LEAF also intervened in coalition with two other organizations in *SWUAV v. Canada*, 2012 SCC 45.
22. Together with LEAF, West Coast LEAF has intervened in an additional 14 cases, including cases at the British Columbia Court of Appeal, the Ontario Court of Appeal, and the Supreme Court of Canada.
23. In the following cases in which LEAF intervened, LEAF had primary conduct of the intervention and West Coast LEAF provided 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; *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219; and *Blackwater v. Plint*, [2005] 3 S.C.R. 3.

24. In the following cases in which LEAF intervened, West Coast LEAF took the leading role in the intervention: *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.
25. 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.

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

26. 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.
27. West Coast LEAF seeks leave to intervene in this case because of fundamental *Charter* issues raised by the parties including:
 - (a) the relationship between equality and freedom of religion; and
 - (b) access to education for historically disadvantaged groups including sexual minorities and women.

28. West Coast LEAF has considerable experience and expertise in the questions of access to education for historically disadvantaged groups including sexual minorities and women, the need for reproductive choice in order to protect women's equality, and the relationship between women's equality and freedom of religion:
- (a) As described above, West Coast LEAF offers and develops public legal education programs in furtherance of the empowerment of women and other historically disadvantaged groups.
 - (b) As a part of its Women's Equality and Religious Freedom Project, West Coast LEAF formed a multi-faith advisory committee that considered a variety of questions related to women's equality and religion. It also conducted consultations with Vancouver area faith based communities of women about their experiences of the relationship between religious practice and women's equality. West Coast LEAF produced reports at each stage of this process.
 - (c) West Coast LEAF is a member of the Bountiful Roundtable, an ad hoc coalition of women's organizations pushing for greater legal and social protections for the women and girls in the polygamous community of Bountiful, BC.
 - (d) West Coast LEAF intervened in *Reference re: Criminal Code of Canada (B.C.)* 2011 BCSC 1588 to argue that the equality rights of women and girls mandate that criminal prohibition of polygamy be upheld insofar as it bans the practice of exploitative polygamy. The constitutionality of the polygamy provision was confirmed.
 - (e) In coalition with a group of women's healthcare providers, West Coast LEAF intervened in *R. v. Watson*, 2008 BCCA 340, in which the accused challenged legislation that created a no-protest zone around abortion clinics as being contrary to their right to freedom of expression. The Coalition successfully argued that any violation of the accused persons rights were justified because the impugned law protected the equality and security interests of women and service providers.
 - (f) West Coast LEAF has advocated for improved access to reproductive choice through a variety of means, including publication of a position paper on access to abortion and contraception published in March 2013.
29. West Coast LEAF is committed to promoting women's equality by protecting reproductive choice and equal access to education. West Coast LEAF's expertise in the area of women's substantive equality offers a unique and important perspective that

would be of assistance to this Court in the resolution of the issues raised in this case. In addition, West Coast LEAF offers a unique perspective to the issues raised where an individual is disadvantaged based on multiple intersecting grounds of discrimination.

30. In regards to TWU's proposed law school, West Coast LEAF has authored letters to the Federation of Canadian Law Societies, the Law Society of British Columbia and the Canadian Bar Association regarding the equality implications of TWU's Community Covenant.
31. On June 10, 2014, the Law Society of British Columbia held a special general meeting to permit members to vote on a resolution for the Benchers of the Law Society to declare that TWU is not an approved faculty of law. West Coast LEAF prepared oral submissions to present at that special general meeting; however, the debate was closed before these submissions were presented. West Coast LEAF's prepared submissions focused on the ways that TWU's Community Covenant discriminates on the basis of sex by prohibiting access to abortion. Its submissions included but were not limited to the following arguments:
 - (a) The Community Covenant forces female students and staff to forego their reproductive rights and liberties and is discriminatory against women; and
 - (b) The Community Covenant conscripts staff and students to police compliance with the Community Covenant and thereby further marginalizes female students in a discriminatory manner by reducing the support resources available to them and by making their peers and staff complicit in acts of discrimination.

D. West Coast LEAF's Proposed Submissions

32. West Coast LEAF seeks leave to intervene so that it may make submissions that the Law Society's Decision is consistent with the *Charter*. It will submit that the Law Society properly exercised its discretion in not approving TWU's School of Law given its discriminatory Community Covenant. The Community Covenant is contrary to the equality guarantee because it:

- (a) Discriminates based on sexual orientation and marital status given that it marks all sexual relationships that are not between heterosexual and married persons as reprehensible;
 - (b) Discriminates based on sex by rendering female students uniquely subject to penalty (including but not limited to expulsion) for exercising autonomy over their own bodies, by rendering female students uniquely subject to monitoring by members of the TWU community, by fostering discriminatory views of female personal autonomy, and by limiting female access to health care and support, including but not limited to legal abortion;
 - (c) Discriminates against women on intersecting grounds of sex, sexual orientation, and marital status; and
 - (d) Discriminates in a manner that is not demonstrably justified in a free and democratic society in accordance with the *Charter* and that is not justifiable on the basis of freedom of religion.
33. In regards to section 2(a) of the *Charter*, West Coast Leaf will submit that the scope of freedom of religion must incorporate the *Charter's* equality protections of women, including women of faith, as provided for in sections 15 and 28.
34. This proceeding concerns the Law Society's ability to take action in the face of a Community Covenant that places restrictions on sexual activity and autonomy of prospective and enrolled female students and female staff of TWU and that discriminates on one or multiple intersecting prohibited grounds. 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 broader implications of this case.
35. 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.

E. West Coast LEAF's Proposed Affidavit

36. West Coast LEAF also seeks leave to file an affidavit in this proceeding addressing the impact of the Community Covenant in relation to women's access to reproductive choice and access to abortion.

Part 3: LEGAL BASIS

37. West Coast LEAF applies pursuant to the inherent jurisdiction of this Court.

38. West Coast LEAF has met the test for intervention in this case given that:

- (a) West Coast LEAF has a substantial and genuine interest in this proceeding;
- (b) West Coast LEAF has a broad representative base and considerable experience as an intervener in women's equality litigation;
- (c) West Coast LEAF would provide a unique and helpful perspective by providing a submission on gender equality, sexual orientation and marital status all of which intersect and permeate the legal issues underlying the Amended Petition;

Friedmann v. MacGarvie 2012 BCCA 109 at para. 26

- (d) The issues in this petition are suitable for intervention as they require consideration of important *Charter* questions; and
- (e) West Coast LEAF's focused submission will not take the litigation away from those directly affected by it. In *R v. Kapp*, 2005 BCCA 247 at para. 11, the Court states: "Where public or constitutional issues are raised, the Court will be more inclined to grant intervenor status to an applicant that can make a useful contribution."

Hughes v. Hughes, 2013 BCCA 534 at paras. 10-12

Part 4: MATERIAL TO BE RELIED ON

39. Affidavit #1 of Francesca Marzari, filed May 8, 2015.

The applicant estimates that the application will take thirty minutes.

[Check the correct box.]

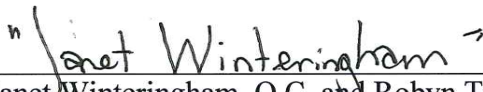
- This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the 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,
 - 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 the application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: May 11, 2015



 Janet Winteringham, Q.C. and Robyn Trask
 applicant lawyer for applicant

<i>To be completed by the court only:</i>	
Order made	
[]	in the terms requested in paragraphs of Part I 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:

- 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.

This document is filed by Winteringham MacKay Law Corporation, solicitors for West Coast LEAF, whose office address and address for delivery is Suite 620 – 375 Water Street, Vancouver, BC V6B 5C6 (Reference: Janet Winteringham/10046.002). Ph. 604 659 6060.