

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

**ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

**ATTORNEY GENERAL OF QUÉBEC
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity**

RESPONDENTS
(Appellants on Cross-Appeal)

AND:

**MOUVEMENT LAÏQUE QUÉBÉCOIS
FRANÇOIS PARADIS, in his official capacity**

RESPONDENTS

(Style of cause continued on next page)

MOTION RECORD
OF WEST COAST LEGAL EDUCATION AND ACTION FUND ASSOCIATION
(Pursuant to Rules 47(1)(a) and 55-59 of the *Rules of the Supreme Court of Canada*)

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AND BETWEEN:

**WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

**ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS,
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

APPELLANTS
(Respondents on Cross-Appeal)

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(Appellants on Cross-Appeal)

AND:

**FRANÇOIS PARADIS, in his official capacity
MOUVEMENT LAÏQUE QUÉBÉCOIS
POUR LES DROITS FEMMES DU QUÉBEC**

RESPONDENTS

AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

APPELLANT
(Respondent on Cross-Appeal)

AND:

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(Appellants on Cross-Appeal)

AND BETWEEN:

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LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
(Respondent on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND:

QUEBEC COMMUNITY GROUPS NETWORK, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT, ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI, LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC, CANADIAN HUMAN RIGHTS COMMISSION, LORD READING LAW SOCIETY, WORLD SIKH ORGANIZATION OF CANADA, AMRIT KAUR, AMNISTIE INTERNATIONALE, SECTION CANADA FRANCOPHONE, PUBLIC SERVICE ALLIANCE OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, QUEBEC ENGLISH SCHOOL BOARDS ASSOCIATION, WOMEN'S LEGAL EDUCATION AND ACTION FUND, POUR LES DROITS DES FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS, ENGLISH MONTREAL SCHOOL BOARD, MUBEENAH MUHGAL, PIETRO MERCURI, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ALBERTA

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Court File No. 41231

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(Appellants on Cross-Appeal)

AND:

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RESPONDENTS

(Style of cause continued on next page)

**NOTICE OF MOTION FOR LEAVE TO INTERVENE
OF WEST COAST LEGAL EDUCATION AND ACTION FUND ASSOCIATION**
(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*)

(Style of cause continued)

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AMRIT KAUR**

APPELLANTS
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POUR LES DROITS FEMMES DU QUÉBEC**

RESPONDENTS

AND BETWEEN:

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INTERVENERS

TAKE NOTICE THAT the Moving Party, West Coast Legal Education and Action Fund Association (“West Coast LEAF”), hereby applies to a judge of this Honourable Court, pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, for an order granting West Coast LEAF:

1. leave to intervene in this appeal pursuant to Rule 55, on a without costs basis;
2. permission to file a factum in this appeal in accordance with Rules 37 and 42;
3. leave to make oral argument at the hearing of this appeal of such length as the Court may deem appropriate; and
4. such further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of the motion:

1. The affidavit of Rajwant Mangat, KC made May 15, 2025.
2. The Memorandum of Argument filed herewith.
3. Such further or other materials as counsel may advise and the Justice hearing this motion may permit.

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

1. West Coast LEAF is a British Columbia-based non-profit organization with a real and significant interest in the issues raised in this appeal.
2. West Coast LEAF was created as a branch of the Women’s Legal Education and Action Fund (“LEAF National”) in 1985, when the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) came into force. It has operated independently of LEAF National since 2014.
3. West Coast LEAF’s mandate is to use the law to create a just and equal society for all women and people who experience gender-based discrimination. It carries out its mandate through litigation, law reform, and public legal education activities.

4. West Coast LEAF has appeared before this Honourable Court, the British Columbia Court of Appeal, and the Supreme Court of British Columbia on numerous occasions to address a wide variety of issues affecting women and people who experience gender-based discrimination, including issues related to advancing substantive equality interpreted from an intersectional lens.

5. If permitted to intervene, West Coast LEAF will advance the line of argument set out in the Memorandum of Argument at paragraphs 3, 14-25 filed in support of this motion. West Coast LEAF will submit that the Court should:

- a. interpret section 28 of the *Charter* as providing a substantive guarantee of gender equality, rooted in the principles of substantive equality; and
- b. interpret the protection of gender equality in section 28 of the *Charter* in a manner that accounts for a modern understanding of gender diversity and gender discrimination, accounts for the intersectional experiences of gender-based discrimination, and preserves and enhances multiculturalism as required by section 27 of the *Charter*.

6. West Coast LEAF will make submissions that are relevant to the appeal, useful to the Court, and distinct from those of the parties and other interveners.

7. West Coast LEAF will not seek to supplement the record or expand the legal issues. It will not take a position on the outcome of the appeals.

Dated at Vancouver, British Columbia this 16th day of May 2025.

SIGNED BY



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NOTICE TO THE RESPONDENTS 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.

Court File No. 41231

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

**ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

**ATTORNEY GENERAL OF QUÉBEC
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity**

RESPONDENTS
(Appellants on Cross-Appeal)

AND:

**MOUVEMENT LAÏQUE QUÉBÉCOIS
FRANÇOIS PARADIS, in his official capacity**

RESPONDENTS

(Style of cause continued on next page)

AFFIDAVIT OF THE PROPOSED INTERVENER
WEST COAST LEGAL EDUCATION AND ACTION FUND ASSOCIATION
(Pursuant to Rules 47(1)(b) and 57 of the *Rules of the Supreme Court of Canada*)

(Style of cause continued)

AND BETWEEN:

**WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

**ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS,
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

APPELLANTS
(Respondents on Cross-Appeal)

AND:

**ATTORNEY GENERAL OF QUÉBEC
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity**

RESPONDENTS
(Appellants on Cross-Appeal)

AND:

**FRANÇOIS PARADIS, in his official capacity
MOUVEMENT LAÏQUE QUÉBÉCOIS
POUR LES DROITS FEMMES DU QUÉBEC**

RESPONDENTS

AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

APPELLANT
(Respondent on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

AND BETWEEN:

ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI
LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC

APPELLANTS
(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
(Respondent on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND:

QUEBEC COMMUNITY GROUPS NETWORK, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT, ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI, LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC, CANADIAN HUMAN RIGHTS COMMISSION, LORD READING LAW SOCIETY, WORLD SIKH ORGANIZATION OF CANADA, AMRIT KAUR, AMNISTIE INTERNATIONALE, SECTION CANADA FRANCOPHONE, PUBLIC SERVICE ALLIANCE OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, QUEBEC ENGLISH SCHOOL BOARDS ASSOCIATION, WOMEN'S LEGAL EDUCATION AND ACTION FUND, POUR LES DROITS DES FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS, ENGLISH MONTREAL SCHOOL BOARD, MUBEENAH MUHGAL, PIETRO MERCURI, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ALBERTA

INTERVENERS

I, Rajwant Mangat, KC, Barrister & Solicitor, of the City of Vancouver, in the Province of British Columbia, AFFIRM AS FOLLOWS:

1. I am the Executive Director of the West Coast Legal Education and Action Fund Association (“West Coast LEAF”), and as such have personal knowledge of the matters herein referred to, except where stated to be based on information and belief, in which case I verily believe them to be true.
2. West Coast LEAF seeks leave to intervene in the hearing of *English Montreal School Board, et al. v. Attorney General of Québec, et al.*, Case No. 41231, and I am authorized to provide this affidavit on West Coast LEAF’s behalf.

A. Overview

3. This appeal concerns the constitutionality of *An Act respecting the laicity of the State*, CQLR c L-0.3 (the “Act”). The Act contains provisions prohibiting certain persons from wearing religious symbols in the exercise of their functions and requiring those persons to perform

their functions with their face uncovered. The *Act* contains provisions stipulating it applies notwithstanding certain rights and freedoms through the use of legislative override powers authorized by s. 52 of the *Québec Charter of Human Rights and Freedoms* (the “*Québec Charter*”) and s. 33 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”).

4. Once the *Act* came into force, several parties challenged the constitutionality of the *Act* in whole or in part. The Superior Court of Québec dismissed the challenge except on two points. The Court of Appeal of Québec dismissed the challenge on all points.
5. In the appeal before this Court, one of the appellants, the English Montreal School Board et al., raises several legal issues concerning the interpretation and application of s. 28 of the *Charter*. Section 28 states that: “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.” The English Montreal School Board et al. asks this Court to determine: (1) whether s. 28 contains a substantive guarantee that has effect when the notwithstanding clause has been invoked, (2) whether the *Act* infringes s. 28; and (3) if so, whether such an infringement of s. 28 is justified under s. 1 of the *Charter*.
6. The English Montreal School Board et al. argues that the *Act* violates the guarantee of gender equality contained in s. 28 for Muslim women who are disproportionately impacted in the exercise of their freedom of religion and expression in the ambit of ss. 2(a) and (b) of the *Charter* and their right to be free from discrimination on the ground of religion in the ambit of s. 15 of the *Charter*, and that this violation is not justified under s. 1.
7. This appeal raises important questions about the interpretation and application of s. 28 of the *Charter* and the development of the *Charter’s* equality law jurisprudence as it relates to women and people who experience gender-based discrimination as well as other intersecting forms of marginalization.
8. West Coast LEAF has a demonstrable interest and expertise in the issues raised in this appeal, including the interpretation and application of the *Charter*, specifically the development of the *Charter’s* equality law jurisprudence and the application of an intersectional approach to the guarantee of substantive equality for women and gender

diverse people under the *Charter*. West Coast LEAF also has long-standing interest and expertise in responding to the discriminatory and disproportionate impacts of laws and government actions on people who are marginalized on the basis of gender and other intersecting protected grounds.

B. Background on West Coast LEAF

9. West Coast LEAF is a non-profit society incorporated in British Columbia and registered federally as a charity. West Coast LEAF's mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination in British Columbia. It is a member-based organization that carries out its work with the support of 342 members and 13 employees.
10. West Coast LEAF was created in April 1985 when the equality provisions of the *Charter* came into force. From its inception until 2014, West Coast LEAF operated as an affiliate of Women's Legal Education and Action Fund Inc. ("LEAF National"), and much of its work was conducted under the auspices of LEAF National. Since 2014, it has operated independently of LEAF National. West Coast LEAF has carried out litigation in its own name since 2009.
11. West Coast LEAF takes an intersectional approach to its work. In other words, it engages with the equality interests of women and gender-diverse people along multiple and intersecting axes of marginalization, including Indigeneity, race, immigration status, gender identity, sexual orientation, disability, age, and socioeconomic status. It consults and collaborates with other equality-seeking groups to ensure that its work reflects the diversity of human experience.
12. West Coast LEAF has a long history of using litigation, law reform activities, and public legal education to advance its mandate. Its areas of focus are freedom from gender-based violence, access to justice, access to healthcare, economic security, justice for those who are criminalized, and family well-being.

13. Through litigation, West Coast LEAF has contributed to the development of equality rights jurisprudence and substantive equality jurisprudence in Canada, both in specific challenges to discriminatory or unconstitutional laws or government actions, as well as in matters where statutory interpretation may compromise the realization of substantive equality through the adverse effects of such interpretations.
14. West Coast LEAF has intervened in 18 cases before this Court, before the superior courts in British Columbia, and in proceedings before administrative tribunals and boards of inquiry. It has offered submissions advancing an intersectional, feminist perspective in a range of cases, including those addressing the development of the common law, the constitutionality of laws or government actions, discrimination under human rights legislation, and questions of statutory interpretation.
15. In addition to its intervention work, West Coast LEAF litigated a constitutional challenge to BC's family law legal aid regime before the BC Supreme Court: *Single Mothers Alliance of BC v. British Columbia*, BC Supreme Court Action No. S1733843, in which s. 28 of the *Charter* was plead in conjunction with s. 7. The litigation was resolved in February 2024, resulting in improvements to BC's family law legal aid regime.
16. West Coast LEAF's law reform program includes community-based research and report-writing, consultations with and submissions to governments at all levels, and advocacy campaigns. Its public legal education program engages with lay audiences throughout BC, with the aim of helping people understand and access their equality rights.

West Coast LEAF's Interventions

17. West Coast LEAF has intervened in the following cases before this Court:
 - (a) *Ahluwalia v. Ahluwalia* (SCC File No. 41061) (jointly with Rise Women's Legal Centre);
 - (b) *R. v. Tsang*, indexed as *R v. Kruk*, 2024 SCC 7 (jointly with LEAF National);
 - (c) *Hansman v. Neufeld*, 2023 SCC 14;

- (d) *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 (jointly with the David Asper Centre for Constitutional Rights and LEAF National);
- (e) *R. v. Kirkpatrick*, 2022 SCC 33;
- (f) *R. v. J.J. and A.S. v. Her Majesty the Queen and Shane Reddick*, 2022 SCC 28 (jointly with Women Against Violence Against Women Rape Crisis Centre (“WAVAW”));
- (g) *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27;
- (h) *Barendregt v. Grebliunas*, 2022 SCC 22 (jointly with Rise Women’s Legal Centre);
- (i) *Colucci v. Colucci*, 2021 SCC 24 (jointly with LEAF National);
- (j) *Michel v. Graydon*, 2020 SCC 24;
- (k) *Bent v. Platnick*, 2020 SCC 23, and *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 (jointly with Atira Women’s Resource Society, B.W.S.S. Battered Women’s Support Services Association, and WAVAW);
- (l) *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32;
- (m) *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62;
- (n) *R. v. Lloyd*, 2016 SCC 13;
- (o) *British Columbia Teachers’ Federation v. British Columbia Public School Employers’ Association*, 2014 SCC 59;
- (p) *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59;
- (q) *Moore v. British Columbia (Education)*, 2012 SCC 61; and

(r) *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 (jointly with Justice for Children and Youth and ARCH Disability Law Centre).

17. Prior to engaging in litigation under its own name, while as an affiliate of LEAF National, West Coast LEAF supported LEAF National's interventions in the following cases before this Court:

(a) *Rick v. Brandsema*, 2009 SCC 10;

(b) *Blackwater v. Plint*, 2005 SCC 58 (jointly with the Native Women's Association of Canada and the DisAbled Women's Network of Canada);

(c) *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78 (jointly with the DisAbled Women's Network of Canada);

(d) *R. v. Shearing*, 2002 SCC 58;

(e) *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69;

(f) *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44;

(g) *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)*, [1999] 3 S.C.R. 3 (S.C.C.) (jointly with the DisAbled Women's Network of Canada and the Canadian Labour Congress);

(h) *Eldridge v. British Columbia*, [1997] 3 S.C.R. 624 (S.C.C.) (jointly with the DisAbled Women's Network of Canada);

(i) *R. v. O'Connor*, [1995] 4 S.C.R. 411 (S.C.C.) (jointly with the Aboriginal Women's Council, the Canadian Association of Sexual Assault Centres, and the DisAbled Women's Network of Canada);

(j) *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 (S.C.C.);

(k) *R. v. Sullivan*, [1991] 1 S.C.R. 489 (S.C.C.); and

(l) *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (S.C.C.).

18. West Coast LEAF has intervened before the BC Court of Appeal and the BC Supreme Court in the following cases:

(a) *R.R. v. Vancouver Aboriginal Child and Family Services Society*, 2025 BCCA 151;

(b) *Vancouver Aboriginal child and Family Services Society v R.R.*, 2024 BCSC 97;

(c) *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167;

(d) *R. v. Ellis*, 2022 BCCA 278;

(e) *T.L. v. British Columbia (Attorney General)*, 2021 BCSC 2203;

(f) *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241;

(g) *A.B. v. C.D.*, 2020 BCCA 11;

(h) *British Columbia Civil Liberties Association and John Howard Society of Canada v. Canada (Attorney General)*, 2019 BCCA 228 (jointly with the Native Women's Association of Canada);

(i) *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 (jointly with the Community Legal Assistance Society);

(j) *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62;

(k) *Denton v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2017 BCCA 403 (jointly with the Community Legal Assistance Society);

(l) *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423;

- (m) *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180;
- (n) *Trinity Western University v. The Law Society of British Columbia*, 2015 BCSC 2326;
- (o) *Vancouver Area Network of Drug Users v. British Columbia Human Rights Tribunal*, 2015 BCSC 534 (jointly with the Community Legal Assistance Society);
- (p) *Vilardell v. Dunham*, 2013 BCCA 65;
- (q) *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309;
- (r) *Friedmann v. MacGarvie*, 2012 BCCA 445;
- (s) *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588 (the “Polygamy Reference”); and
- (t) *Downtown Eastside Sex Workers United Against Violence v. Canada (Attorney General)*, 2010 BCCA 439.

19. West Coast LEAF is or has been an intervener or interested party in the following cases before an administrative tribunal or inquiry:

- (a) *Lepine & Lepine v. Correctional Service of Canada* (Canadian Human Rights Tribunal Files: HR-DP-2899-22 & HR-DP-2900-22);
- (b) *Nicholas Dinardo v. Correctional Service Canada* (Canadian Human Rights Tribunal File: T2747/12321) (jointly with the Canadian Association of Elizabeth Fry Societies);
- (c) *R.R. v. Vancouver Aboriginal Child and Family Services Society (No. 6)*, 2022 BCHRT 116;
- (d) *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58;
- (e) *National Inquiry into Missing and Murdered Indigenous Women and Girls* (Order dated August 17, 2017 granting participant status in Part II and Part III hearings) (final report released June 2019);

(f) *In the Matter of an Inquiry Pursuant to Section 63(1) of the Judges Act Regarding the Hon. Justice Robin Camp* (Canadian Judicial Council) (report released November 29, 2016) (as part of a national coalition of six organizations); and

(g) *BC Missing Women Commission of Inquiry* headed by Hon. Wally Oppal, K.C. (report released November 2012).

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

20. West Coast LEAF's litigation, law reform, and public legal education work is grounded in the importance of substantive equality, which includes articulating legal positions that account for the lived experience of women and people who experience gender-based discrimination. This includes intersectional forms of gender oppression experienced on the basis of race, religion, Indigeneity, disability, gender and sexual identity, and other grounds.

21. For 40 years, West Coast LEAF has worked to advance substantive gender equality through the law. West Coast LEAF has intervened in cases concerning the interpretation and application of equality rights, as well as cases engaging equality as a *Charter* value or as a core principle in constitutional or statutory interpretation, offering a unique and intersectional analysis. Intervening in cases that advance the *Charter's* equality protections is one of the primary ways in which West Coast LEAF fulfills its mandate to protect and promote equality rights. This work includes:

(a) In *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, West Coast LEAF argued that it was necessary for this Court to address s. 15 claims where they have been properly advanced before triers of fact, and that a failure to do so would diminish the significance of equality rights protected by the *Charter*.

(b) In *Hansman v. Neufeld*, 2023 SCC 14, the Court considered the proper interpretation and application of BC's *Protection of Public Participation Act* (the "*PPPA*"). Section 4 of the *PPPA* allows a court to dismiss a claim when the public interest in safeguarding the expression at issue outweighs the public interest in pursuing legal action. West Coast LEAF argued that the principle of substantive equality must guide the interpretation and application of the *PPPA*.

- (c) In *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58, Mr. Whatcott produced and distributed flyers attacking Ms. Oger on the grounds of her gender identity and expression. The case concerned the impact of hateful expressions on the safety and dignity of trans people. West Coast LEAF intervened to address how freedom of expression and religion must be understood with regard to substantive equality and expressive rights.
- (d) In *Trinity Western University and Volkenant v. Law Society of British Columbia*, 2018 SCC 32, West Coast LEAF's intervention considered how equality rights should be balanced against religious freedom. Trinity Western University required all its students and staff to sign a Community Covenant that included a promise not to engage in "sexual intimacy that violated the sacredness of marriage between a man and a woman." West Coast LEAF argued that the Covenant violated the *Charter's* equality provisions against LGBTQ students and women who access constitutionally protected abortion care.
- (e) In *British Columbia Civil Liberties Association and John Howard Society v. Canada (Attorney General)*, 2018 BCSC 62, West Coast LEAF intervened to address the constitutionality of solitary confinement under s. 15 of the *Charter* in light of its adverse impacts on federally incarcerated women, especially Indigenous women and women with disabling mental health impairments.
- (f) In *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association*, 2014 SCC 59, West Coast LEAF argued that when an employer provides a benefit program for pregnant individuals and new parents, it must acknowledge the importance of childbirth and child-rearing in the broader context of social reproduction which places a disproportionate burden on birth mothers.
- (g) In *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309, West Coast LEAF argued that a substantive equality analysis required a deeper and more nuanced consideration of the relationship between s. 15 claimants and others than that provided by a comparator group analysis. West Coast LEAF also argued that equality is a principle of fundamental justice, and the s. 1 analysis must take account of the particular characteristics of claimants, including the disadvantages they face.

- (h) In *Moore v British Columbia (Education)*, 2012 SCC 61, this Court considered whether the denial of remedial assistance for students with severe learning disabilities by a public school was discriminatory pursuant to the BC *Human Rights Code*. West Coast LEAF argued that importing the requirements of s. 15 *Charter* jurisprudence into the *prima facie* test for discrimination in the BC *Human Rights Code* would increase the burden on equality claimants, contrary to the purposes of human rights law.
- (i) In *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588, the BC Supreme Court considered the constitutionality of s. 293 of the *Criminal Code*, also known as the polygamy provision. West Coast LEAF argued that the provision was intended to prevent the practice of polygamy where the practice was exploitative or abusive of women and children and, as such, the provision should be interpreted to prohibit harmful conduct.

22. Apart from intervening in cases engaging substantive equality rights and interests, West Coast LEAF works to develop and inform laws, policies, and state action to tackle systemic gender-based discrimination in areas including economic security, freedom of expression and religious belief, and gender-based violence. West Coast LEAF's submissions and recommendations are developed through active participation and consultation with women and people who experience gender-based discrimination on intersectional grounds. These include:

- (a) In April 2022, West Coast LEAF made written submissions to the BC Office of the Human Rights Commissioner's inquiry into hate during the COVID-19 pandemic. West Coast LEAF's recommended that the Commission take an intersectional approach to understanding all forms of hate including gender-based violence.
- (b) Since 2009, West Coast LEAF has published annual report cards which measure BC's progress in advancing intersectional gender equality for women and, since 2018, for other people of marginalized genders. These report cards have included sections on gender equality in employment and barriers to accessing economic security.

- (c) In January 2009, West Coast LEAF published a report on Women's Equality and Religious Freedom which developed legal strategies to protect women's equality in the context of freedom of religion. The report consulted with women of faith from various religious groups to understand the impact of religious practices on women's lives and their perspectives on equality.

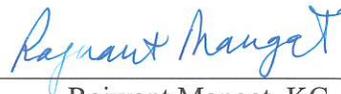
D. Conclusion

23. West Coast LEAF seeks leave to intervene to offer a distinct and helpful perspective on the issues before the Court.
24. If granted leave to intervene, West Coast LEAF will not take a position on the outcome of the claims between the parties. It will not raise new issues and will work with other interveners and the parties to avoid duplication of submissions.
25. West Coast LEAF will not seek costs and asks that no costs be awarded against it.
26. I make this affidavit in support of West Coast LEAF's application for leave to intervene and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 15th day of May, 2025.



*A Commissioner for Taking Affidavits
in British Columbia*



Rajwant Mangat, KC

Court File No. 41231

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)**

BETWEEN:

**ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI**

**APPELLANTS
(Respondents on Cross-Appeal)**

AND:

**ATTORNEY GENERAL OF QUÉBEC
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity**

**RESPONDENTS
(Appellants on Cross-Appeal)**

AND:

**MOUVEMENT LAÏQUE QUÉBÉCOIS
FRANÇOIS PARADIS, in his official capacity**

RESPONDENTS

(Style of cause continued on next page)

**MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER
WEST COAST LEGAL EDUCATION AND ACTION FUND ASSOCIATION**
(Pursuant to Rules 47(1)(a) and 55-59 of the Rules of the Supreme Court of Canada)

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(Style of cause continued)

AND BETWEEN:

**WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR**

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(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

**ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS,
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION**

APPELLANTS
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AND:

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AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

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LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC

APPELLANTS
(Respondents on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
(Respondent on Cross-Appeal)

AND:

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND:

QUEBEC COMMUNITY GROUPS NETWORK, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS, CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT, ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI, LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC, CANADIAN HUMAN RIGHTS COMMISSION, LORD READING LAW SOCIETY, WORLD SIKH ORGANIZATION OF CANADA, AMRIT KAUR, AMNISTIE INTERNATIONALE, SECTION CANADA FRANCOPHONE, PUBLIC SERVICE ALLIANCE OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, QUEBEC ENGLISH SCHOOL BOARDS ASSOCIATION, WOMEN'S LEGAL EDUCATION AND ACTION FUND, POUR LES DROITS DES FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS, ENGLISH MONTREAL SCHOOL BOARD, MUBEENAH MUHGAL, PIETRO MERCURI, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ALBERTA

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. West Coast Legal Education and Action Fund Association (“West Coast LEAF”) seeks leave to intervene in this appeal pursuant to Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*.

2. This appeal is the first occasion in which this Court is asked to make a finding of an infringement of s. 28 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). The argument before the Court is that *An Act respecting the laicity of the State*, CQLR c L-0.3 (the “*Act*”) violates the equality guarantee of s. 28 for Muslim women who are disproportionately impacted by the *Act*.¹ This appeal raises important questions about the interpretation and application of s. 28 of the *Charter*, which will impact equality law jurisprudence and *Charter* litigation for equality claimants beyond this decision and the parties in this case. These issues are central to West Coast LEAF’s mandate and engage West Coast LEAF’s interest and expertise in substantive equality for women and people who experience gender-based discrimination, including those affected by intersecting forms of marginalization.

3. West Coast LEAF seeks leave to intervene to assist the Court in developing a robust, purposive, and intersectional approach to interpreting and applying s. 28 of the *Charter*. If granted leave to intervene, West Coast LEAF will submit that s. 28 provides a substantive guarantee of gender equality, rooted in the principles of substantive equality. Further, West Coast LEAF will submit that s. 28 must be interpreted in a manner that (a) reflects a modern understanding of gender diversity and gender discrimination, (b) accounts for the intersectional experiences of gender-based discrimination, and (c) preserves and enhances multiculturalism as required by s. 27 of the *Charter*.

B. West Coast LEAF

4. West Coast LEAF is a non-profit society incorporated in British Columbia and registered federally as a charity. West Coast LEAF’s mandate is to use the law to create an equal and just

¹ SCC Court File No. 41231, [Factum of the Appellant \(English Montreal School Board\)](#) at para. 66.

society for all women and people who experience gender-based discrimination in British Columbia.

5. West Coast LEAF was created in April 1985 when the equality provisions of the *Charter* came into force. From its inception until 2014, West Coast LEAF operated as an affiliate of Women’s Legal Education and Action Fund Inc. (“LEAF National”), and much of its work was conducted under the auspices of LEAF National. Since 2014, it has operated independently of LEAF National. West Coast LEAF has carried out litigation in its own name since 2009.²

6. West Coast LEAF takes an intersectional approach in its litigation, law reform, and public legal education activities.³ In other words, it engages with the equality interests of women and gender-diverse people along multiple and intersecting axes of marginalization, including Indigeneity, race, immigration status, gender identity, sexual orientation, disability, age, and socioeconomic status. It consults and collaborates with other equality-seeking groups to ensure that its advocacy accounts for a diversity of gendered experiences which are impacted by multiple intersecting identities and forms of marginalization.⁴

7. West Coast LEAF is an experienced intervener before all levels of court, as well as before administrative tribunals and inquiries. It has brought a gendered, intersectional perspective to numerous cases of public importance, including cases which address the constitutionality of laws or government actions, discrimination, and questions of statutory

² Affidavit of Rajwant Mangat, KC made May 15, 2025 at para. 10 [Mangat Affidavit].

³ Mangat Affidavit at para. 11.

⁴ Mangat Affidavit at para. 11.

interpretation. Through its interventions, West Coast LEAF has made meaningful contributions to the development of equality law and the advancement of substantive equality in Canada.⁵

PART II – STATEMENT OF ISSUE

8. The issue raised by this motion is whether West Coast LEAF should be granted leave to intervene in this appeal.

PART III – STATEMENT OF ARGUMENT

A. The Test for Leave to Intervene

9. The Court may grant intervener status where the proposed intervener: (1) has a real and substantial interest in the subject of the appeal; and (2) can provide submissions that are useful and distinct from those of the parties. West Coast LEAF submits that it meets this test.

B. West Coast LEAF has a Real and Substantial Interest in this Appeal

10. West Coast LEAF's litigation, law reform, and public legal education work is grounded in the importance of substantive equality in achieving a more just and equitable society, which includes articulating legal positions that account for the lived and varied experiences of women and people who experience gender-based discrimination.⁶ West Coast LEAF has a real and substantial interest in this appeal as the issues raised are within West Coast LEAF's mandate to advance substantive gender equality through the law, including through the development and application of s. 28.⁷

11. This appeal presents an important opportunity for this Court to decide an alleged violation of s. 28 of the *Charter* and to affirm this provision's role in advancing the promise of substantive gender equality. This Court's decision will have a material impact on how equality rights within the *Charter's* architecture are understood and protected, to whom the guarantees in

⁵ Mangat Affidavit at para. 13.

⁶ Mangat Affidavit at para. 20.

⁷ Mangat Affidavit at paras. 20–21.

s. 28 of the *Charter* apply, and how future *Charter* claims that engage intersectional gender-based discrimination are brought before the courts.

12. In its capacity as a public interest litigant, West Coast LEAF has an interest in the evolution of s. 28 and the *Charter*'s equality jurisprudence broadly.⁸ West Coast LEAF's advocacy on behalf of women and people who experience gender-based discrimination, including discrimination based on intersecting identities, is grounded in the *Charter*'s equality values and guarantees.⁹ West Coast LEAF has intervened in cases concerning the interpretation and application of s. 15 equality rights, as well as cases engaging equality as a *Charter* value or as a core principle in constitutional or statutory interpretation.¹⁰ Indeed, intervening in cases that address the *Charter*'s equality protections is one of the primary ways in which West Coast LEAF fulfills its mandate to protect and promote equality rights.¹¹ West Coast LEAF also represented the plaintiff in *Single Mothers' Alliance of BC v. British Columbia et al.*, a constitutional challenge to BC's legal aid regime concerning survivors of family violence, which plead, *inter alia*, a breach of s. 7 in conjunction with s. 28.¹²

13. As a litigant and representative before the courts, West Coast LEAF has an interest in ensuring that s. 28 of the *Charter* is given a broad and purposive reading to ensure the provision accounts for gender diversity and the lived realities of intersectional discrimination.

C. West Coast LEAF's Submissions Would Be Useful and Distinct

14. If granted leave to intervene, West Coast LEAF will not seek to add to the record or expand the legal issues. Drawing on its varied advocacy experiences, it will offer a gendered, intersectional perspective on the interpretation and application of s. 28 of the *Charter* where an infringement of this provision is alleged. It proposes to make the arguments set out below.

⁸ Mangat Affidavit at para. 21.

⁹ Mangat Affidavit at para. 21.

¹⁰ Mangat Affidavit at para. 21.

¹¹ Mangat Affidavit at paras. 12–15.

¹² Mangat Affidavit at para. 15.

a. Substantive equality must be the ‘animating norm’ of Section 28

15. This appeal provides an opportunity for this Court to address s. 28 of the *Charter*, a provision that has been described as “significantly understudied”.¹³ The provision states, “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons”.¹⁴ In undertaking the analysis in this case, West Coast LEAF will argue that this Court should adopt a robust substantive equality approach to the interpretation and application of s. 28. In West Coast LEAF’s view, a substantive equality approach should be the foundation of the *Charter*’s gender equality guarantee.¹⁵

16. This Court has repeatedly affirmed that substantive equality is the “animating norm” of the *Charter*’s equality guarantee,¹⁶ yet what is meant by substantive equality and how such an analysis ought to be applied continues to evoke debate amongst academics, legislators and judges.¹⁷ Indeed, debate on the articulation and application of this animating norm has underscored much of this Court’s evolving s. 15 jurisprudence.¹⁸ This debate is relevant to the issues before the Court on this appeal because how courts understand substantive equality impacts the entirety of the equality analysis, including the determination of whether or not the equality guarantee has been breached. In West Coast LEAF’s submission, it is not enough for a court to say that substantive equality is the animating norm, the court must apply a substantive equality lens throughout the analysis. This is not purely an academic debate, and in the context

¹³ Fay Faraday, “[One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada](#)” (2020) 94:12 *Sup Ct L Rev* 301 at 324 [Faraday, “One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada”].

¹⁴ *Canadian Charter of Rights and Freedoms*, s 28, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

¹⁵ *R v Sharma*, 2022 SCC 39 at para. 187 (Karakatsanis J, dissenting) [*Sharma*].

¹⁶ *Fraser v Canada*, 2020 SCC 28 at para. 42 [*Fraser*], citing *Withler v Canada (Attorney General)*, 2011 SCC 12 at para. 2 [*Withler*]; *R v Kapp*, 2008 SCC 41 at paras. 15–16; *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at para. 25.

¹⁷ See e.g. *Sharma*, *supra* note 15 at paras. 37–50, 186–206 (Karakatsanis J, dissenting); Faraday, “One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada”, *supra* note 13.

¹⁸ *Sharma*, *supra* note 15 at paras. 37–50, 186–206 (Karakatsanis J, dissenting); *Fraser*, *supra* note 16 at paras. 47–48, 94 and 146, 174, 190–205 (Brown and Rowe JJ., dissenting).

of s. 28, the approach permeates key features of s. 28's equality guarantee that West Coast LEAF intends to address as set out below, including the Court of Appeal's finding that "s. 28 has no standalone normative value".¹⁹

17. It is relatively straightforward to conduct an equality analysis to address direct discrimination. A substantive equality analysis goes a step further and addresses indirect and more subtle forms of discrimination, including the disparate effect of "neutral" rules. As Canadian jurisprudence demonstrates, a substantive equality analysis is a fundamental premise needed to address gender discrimination. Whether addressing pregnancy discrimination, pay equity, or dress codes, gender discrimination often masquerades as a neutral rule. This Court should ensure that s. 28 is interpreted with a substantive equality lens so the provision accounts for the insidious experiences of gender discrimination, and thus the gender equality guarantee has meaning for those it seeks to protect.

b. Key features of s. 28's substantive gender equality guarantee

i. Section 28 provides a substantive guarantee of gender equality

18. West Coast LEAF will argue that s. 28 of the *Charter* protects gender equality broadly. Although s. 28 uses binary language of "male and female persons", West Coast LEAF will submit that the value at the core of s. 28 is gender equality. The provision should therefore be read as encompassing a modern understanding of gender that includes transgender and non-binary people, consistent with the living tree doctrine.²⁰ This is also consistent with the interpretation of gender identity in discrimination law jurisprudence. For example, prior to human rights legislation amendments adding gender identity and expression as protected

¹⁹ [Organisation mondiale sikhe du Canada c Procureur général du Québec](#), 2024 QCCA 254 at para. 451 [*Organisation mondiale sikhe du Canada*].

²⁰ The *Charter* is "engrafted onto the living tree that is the Canadian Constitution": [Reference Re Provincial Electoral Boundaries \(Sask\)](#), [1991] 2 SCR 158, 1991 CanLII 61 (SCC) at para. 41, citing [Hunter v. Southam Inc.](#), [1984] 2 SCR 145, 1984 CanLII 33 (SCC) at 155–56; [Reference Re BC Motor Vehicle Act](#), [1985] 2 SCR 486, 1985 CanLII 81 (SCC) at 509.

grounds,²¹ and gender identity being recognised as an analogous ground under s. 15,²² discrimination against transgender individuals was recognised as discrimination on the basis of sex.²³

ii. Substantive equality is necessarily intersectional

19. West Coast LEAF will argue that protection of gender equality in s. 28 must not be construed narrowly as guaranteeing equality exclusively on one axis of identity, namely sex or gender, but rather should encompass the interplay between gender and other axes of identity.²⁴ West Coast LEAF will argue that intersectionality is not a new or foreign concept, but rather firmly rooted in the lived experience of people who experience gender discrimination, the jurisprudence of this Court,²⁵ and the text of s. 28.

20. There is no singular experience of gender inequality. Rather, an individual's experience of gendered oppression varies depending on the intersection of various characteristics of advantage or disadvantage.²⁶ The varying experiences of gender discrimination, or indeed,

²¹ See *Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression)*, 2012, SO 2012, c 7, ss 1–8; *Human Rights Code Amendment Act*, 2016, SBC 2016, c 26, ss 1–6; *An Act to amend the Canadian Human Rights Act and the Criminal Code*, SC 2017, c 13, ss 1–4.

²² *Hansman v Neufeld*, 2023 SCC 14 at para. 88, citing *Centre for Gender Advocacy c Attorney General of Quebec*, 2021 QCCS 191, 481 CRR (2d) 273 at paras. 104, 106.

²³ See *Vancouver Rape Relief Society v Nixon*, 2005 BCCA 601 at paras. 1, 42; *XY v Ontario (Minister of Government and Consumer Services)*, 2012 HRTO 726 at paras. 88–89.

²⁴ *Organisation mondiale sikhé du Canada*, *supra* note 19 at para. 450.

²⁵ *Canada (Attorney General) v Mossop*, [1993] 1 SCR 554, 1993 CanLII 164 (SCC) at 645 (L'Heureux-Dubé J, dissenting) [*Mossop*]; *Egan v Canada*, [1995] 2 SCR 513, 1995 CanLII 98 (SCC) at 555 (L'Heureux-Dubé J, dissenting) [*Egan*]; *Withler*, *supra* note 16 at paras. 58, 63; *Fraser*, *supra* note 16 at paras. 34, 116; *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, 1999 CanLII 675 (SCC) at para. 94 [*Law*]; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, 1999 CanLII 687 (SCC) at para. 61 [*Corbiere*]; *R v Friesen*, 2020 SCC 9 at para. 68 [*Friesen*]; *Ontario (Attorney General) v G*, 2020 SCC 38 at para. 47; *Michel v Graydon*, 2020 SCC 24 at para. 101 [*Michel*]; *Sharma*, *supra* note 15 at para. 196 (Karakatsanis J, dissenting).

²⁶ European Commission, *Intersectional Discrimination in EU Gender Equality And Non-Discrimination Law* (Luxembourg: Publications Office of the European Union, 2016), online: <<https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>> at 27; Grace Ajele and Jena McGill, *Intersectionality in Law and Legal Contexts* (Toronto: Women's Legal Education and Action

discrimination on any ground, has been written about extensively, including in the work of Indigenous scholars.²⁷ Recognising intersectionality ensures our conception of gender equality accounts for the various ways in which different people experience gender discrimination, and thus, that the gender equality guarantee is meaningful.

21. This Court has increasingly recognized and addressed intersectionality in its jurisprudence, acknowledging that individuals may experience discrimination based on the interwoven effect of multiple identity-based grounds. This approach reflects a growing understanding of the complex interplay of various forms of inequality.²⁸ The concept of substantive equality necessitates analysis of the “real world effects” of discrimination.²⁹

22. Finally, the text of section 28 contemplates the interaction between gender equality and other *Charter* rights and freedoms. It follows that the provision must be interpreted to recognize the distinct and specific experiences of gender inequality experienced by people in exercising their *Charter* protected rights, for instance, those exercising their right to religion and expression.

iii. Section 27 should inform section 28’s guarantee of gender equality

23. Section 27 provides, “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”.³⁰ In the decision on

Fund, 2020), online: <<https://www.leaf.ca/publication/intersectionality-in-law-and-legal-contexts/>> at 12.

²⁷ Natalie Clark, “[Red Intersectionality and Violence-Informed Witnessing Praxis with Indigenous Girls](#)” (2016) 9:2 *Girlhood Studies* 46 at 49; Kimberlé Crenshaw, “[Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics](#)” (1989) 1:8 *U Chicago L Rev* 139 [Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”].

²⁸ *Mossop*, *supra* note 24 at 645 (L’Heureux-Dubé J, dissenting); *Egan*, *supra* note 24 at 555 (L’Heureux-Dubé J, dissenting); *Withler*, *supra* note 16 at paras. 58, 63; *Fraser*, *supra* note 16 at paras. 34, 116; *Law*, *supra* note 24 at para. 94; *Corbiere*, *supra* note 24 at para. 61; *Friesen*, *supra* note 24 at para. 68; *Ontario (Attorney General) v G*, *supra* note 24 at para. 47; *Michel*, *supra* note 24 at para. 101; *Sharma*, *supra* note 15 at para. 196 (Karakatsanis J, dissenting).

²⁹ *Sharma*, *supra* note 15 at para. 196 (Karakatsanis J, dissenting); *Ontario (Attorney General) v G*, *supra* note 24 at para. 47; *Michel*, *supra* note 15 at para. 101.

³⁰ *Charter*, *supra* note 14 at s 27.

appeal, the Court of Appeal held that s. 28 is not “a minor provision or one devoid of substance”³¹ and that s. 28 has primacy over other provisions, including ss. 25 and 27.³² The issues on appeal present an important opportunity for the Court to address how s. 28 interacts with s. 27 and how s. 27 guides the analysis of the rights guaranteed by s. 28 of the *Charter*.

24. West Coast LEAF will submit that s. 27 must guide the Court’s analysis of gender equality in s. 28 to avoid reinforcing exclusionary or incomplete interpretations of gender equality that have been based historically on white cis women’s experiences of discrimination.³³ West Coast LEAF will argue that the preservation of multiculturalism in s. 27 provides textual footing for gender equality in s. 28 to be informed by substantive equality and intersectionality. Section 27, properly understood, demands that the Court’s approach to s. 28 be inclusive of the distinct experiences of discrimination faced by women and gender diverse people from diverse social, cultural, and religious backgrounds.

25. West Coast LEAF will submit that the Quebec Court of Appeal did not consider how s. 27 informs s. 28 and erroneously concluded that s. 28 is an interpretive provision with primacy only over other interpretive rules set out in the *Charter*, namely s. 25 (Aboriginal rights and freedoms) and s. 27.³⁴ The Court of Appeal’s approach does not accord s. 27 its proper place within Canada’s constitutional architecture as a provision which was intended to build a national identity of multiculturalism and to recognize that the fabric of Canada is multicultural, and not bi-culturally constrained to English and French-speaking peoples.³⁵ The application of s. 27 as an

³¹ *Organisation mondiale sikhe du Canada*, *supra* note 19 at para. 456.

³² *Organisation mondiale sikhe du Canada*, *supra* note 19 at para. 456.

³³ Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, *supra* note 26 at 154–160; Vrinda Narain, “[The Place of Niqab in the Courtroom](#)” (2015) 9:1 ICL J at 45–47.

³⁴ *Organisation mondiale sikhe du Canada*, *supra* note 19 at para. 456.

³⁵ *R v Big M Drug Mart*, [1985] 1 SCR 295, 1985 CanLII 69 (SCC) at paras. 11, 99 [*Big M Drug Mart*]; *R v Edward Books and Art Ltd*, [1986] 2 SCR 713, 1986 CanLII 12 (SCC) at paras. 80, 96 [*Edward Books and Art Ltd*]; *R v Tran*, [1994] 2 SCR 951 at 976-977; Dale Gibson, “[Section 27 of the Charter: More than A ‘Rhetorical Flourish’](#)” (1990) 28:3 Alta L Rev 589 at 589-592; Varun Uberoi, “[Multiculturalism and the Canadian Charter of Rights and Freedoms](#)” (2009) 57:4 Political Studies 805 at 806-811.

interpretive principle necessitates that s. 28 account for multicultural identities, which includes the diversity of conscientiously-held beliefs and practices.³⁶

PART IV – SUBMISSIONS ON COSTS

26. West Coast LEAF seeks no costs in the proposed intervention and requests that none be awarded against it.

PART V – ORDER

27. West Coast LEAF seeks an order that it be granted:

- i. Leave to intervene in this appeal;
- ii. Leave to file a factum in accordance with Rules 37 and 42 and to make oral argument at the hearing of this appeal; and
- iii. Such further or other order as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Vancouver, in the Province of British Columbia, this this 16th day of May 2025.



Robyn Trask, Humera Jabir and Gita Keshava
Counsel for the Proposed Intervener, West
Coast LEAF Association

³⁶ *Big M Drug Mart*, *supra* note 35 at paras. 11, 99; *Edward Books and Art Ltd*, *supra* note 35 at paras. 80, 96.

PART VI – TABLE OF AUTHORITIES

Caselaw:

No.	Authority	Paragraph Reference
1.	<i>Centre for Gender Advocacy c Attorney General of Quebec</i> , 2021 QCCS 191, 481 CRR (2d) 273	18
2.	<i>Canada (Attorney General) v Mossop</i> , [1993] 1 SCR 554, 1993 CanLII 164 (SCC)	19, 21
3.	<i>Corbiere v Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 SCR 203, 1999 CanLII 687 (SCC)	19, 21
4.	<i>Egan v Canada</i> , [1995] 2 SCR 513, 1995 CanLII 98 (SCC)	19, 21
5.	<i>Fraser v Canada</i> , 2020 SCC 28	16, 19, 21
6.	<i>Hansman v Neufeld</i> , 2023 SCC 14	18
7.	<i>Hunter v. Southam Inc.</i> , [1984] 2 SCR 145, 1984 CanLII 33 (SCC)	18
8.	<i>R v Kapp</i> , 2008 SCC 41	16
9.	<i>Law v Canada (Minister of Employment and Immigration)</i> , [1999] 1 SCR 497, 1999 CanLII 675 (SCC)	19
10.	<i>Michel v Graydon</i> , 2020 SCC 24	19, 21, 22
11.	<i>Ontario (Attorney General) v G</i> , 2020 SCC 38	19, 21, 22
12.	<i>Organisation mondiale sikhé du Canada c Procureur général du Québec</i> , 2024 QCCA 254	16, 23
13.	<i>Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux</i> , 2018 SCC 17	16
14.	<i>R v Big M Drug Mart</i> , [1985] 1 SCR 295, 1985 CanLII 69 (SCC)	25
15.	<i>R v Edward Books and Art Ltd</i> , [1986] 2 SCR 713, 1986 CanLII 12 (SCC)	25
16.	<i>R v Friesen</i> , 2020 SCC 9	19, 21
17.	<i>R v Sharma</i> , 2022 SCC 39	15, 16, 19, 21

No.	Authority	Paragraph Reference
18.	<i>R v Tran</i> , [1994] 2 SCR 951	25
19.	<i>Reference Re BC Motor Vehicle Act</i> , [1985] 2 SCR 486, 1985 CanLII 81 (SCC)	18
20.	<i>Reference Re Provincial Electoral Boundaries (Sask)</i> , [1991] 2 SCR 158, 1991 CanLII 61 (SCC)	18
21.	<i>Vancouver Rape Relief Society v Nixon</i> , 2005 BCCA 601	18
22.	<i>Withler v Canada (Attorney General)</i> , 2011 SCC 12	16, 19, 21
23.	<i>XY v Ontario (Minister of Government and Consumer Services)</i> , 2012 HRTO 726	18

Secondary Sources:

No.	Secondary Source	Paragraph Reference
1.	Dale Gibson, “ Section 27 of the Charter: More than A ‘Rhetorical Flourish’ ” (1990) 28:3 Alta L Rev 589	25
2.	European Commission, <i>Intersectional Discrimination in EU Gender equality And Non-Discrimination Law</i> (Luxembourg: Publications Office of the European Union, 2016), online: < https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb >	20
3.	Fay Faraday, “ One Step Forward, Two Steps Back? Substantive Equality, Systemic Discrimination and Pay Equity at the Supreme Court of Canada ” (2020) 94:12 Sup Ct L Rev 301	13, 16
4.	Grace Ajele and Jena McGill, <i>Intersectionality in Law and Legal Contexts</i> (Toronto: Women’s Legal Education and Action Fund, 2020), online: < https://www.leaf.ca/publication/intersectionality-in-law-and-legal-contexts/ >	20
5.	Kimberlé Crenshaw, “ Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics ” (1989) 1:8 U Chicago L Rev 139	20, 24

No.	Secondary Source	Paragraph Reference
6.	Natalie Clark, “ Red Intersectionality and Violence-Informed Witnessing Praxis with Indigenous Girls ” (2016) 9:2 <i>Girlhood Studies</i> 46	20
7.	Varun Uberoi, “ Multiculturalism and the Canadian Charter of Rights and Freedoms ” (2009) 57:4 <i>Political Studies</i> 805	25
8.	Vrinda Narain, “ The Place of Niqab in the Courtroom ” (2015) 9:1 <i>ICL J</i> 41	24

Statutes, Regulations, Rules, etc.:

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 , being Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11 Loi constitutionnelle de 1982 (R-U) , constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11 (annexe B)	ss. 27, 28
2.	Toby’s Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression) , 2012, SO 2012, c 7	ss. 1–8
3.	Human Rights Code Amendment Act , 2016, SBC 2016, c 26	ss. 1–6
4.	An Act to amend the Canadian Human Rights Act and the Criminal Code , SC 2017, c 13 Loi modifiant la Loi Canadienne sur les droits de la personne et le Code criminel , LC 2017, c 13	ss. 1–4

PART VII – STATUTES, LEGISLATION, RULES, ETC.

See Part VI.