

Court of Appeal File No. CA39971
Registry: Vancouver

COURT OF APPEAL

ON APPEAL FROM the Order of the Honourable Mr. Justice McEwan, of the
British Columbia Supreme Court, Pronounced May 22, 2012

BETWEEN:

MONTSERRAT VILARDELL

Respondent (Plaintiff)

AND:

BRUCE DUNHAM

Respondent (Defendant)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

Appellant (Intervener)

AND:

CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH
TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA

Respondents (Intervenors)

AND:

WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervenor

COVER MEMORANDUM

To: Attorney General of British Columbia, George H. Copley, Q.C.

And To: Access Pro Bono Society of British Columbia, Jamie Maclaren

And To: Canadian Bar Association – BC Branch, Sharon Matthews

And To: Trial Lawyers Association of British Columbia, Darrell Roberts, Q.C.

From: West Coast LEAF, Francesca Marzari, Young Anderson, 1616 –
808 Nelson Street, Vancouver, BC V6Z 2H2, Tel: 604-689-7400;
Fax: 604-689-3444

Date: September 10, 2012 – approximately 3:00 p.m.

Re: Vilardell v. Attorney General of British Columbia et al, Court of
Appeal File No. CA39971, Vancouver Registry


Message: We enclose for service the following:

- (a) Letter from Francesca Marzari, counsel for West Coast LEAF
- (b) Notice of Motion (in support of the Application for Leave to Intervene;
- (c) Affidavit of Catalina Rodriguez, sworn September 7, 2012 and filed September 10, 2012; and
- (d) Memorandum of Argument

If you have difficulty with this transmission, please contact Susan Sample at 604-689-7400.

Number of pages (including cover pages) ~~26~~ 29

Date: September 10, 2012



Signature of Francesca Marzari
 filing party lawyer for filing party

Young Anderson
Barristers and Solicitors
1616-808 Nelson Street
Vancouver BC

Telephone: 604-689-7400

REPLY TO: VANCOUVER OFFICE

VIA EMAIL

September 10, 2012

George H. Copley Q.C.
Ministry of Justice, Legal Services Branch
6th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7

Jamie Maclaren
Access Pro Bono Society of British
Columbia
106 – 873 Beatty Street
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Sharon Matthews
Camp Fiorante Matthews
400 – 865 Homer Street
Vancouver, BC V6B 2W5

Darrell Roberts, Q.C.
Miller Thomson
1000 – 840 Howe Street
Vancouver, BC V6Z 2M1

Dear Sirs and Mesdames:

Re: Application for Intervenor Status
West Coast Women's Legal Education Action Fund
Vilardell v. Attorney General of British Columbia et al
British Columbia Court of Appeal File No. CA39971
Our File No. 14141-0000

We enclose for service upon you the following documents filed September 10, 2012 in the British Columbia Court of Appeal:

- (a) Notice of Motion in support of the Application for Leave to Intervene returnable at 9:30 a.m. on October 12, 2012;
- (b) Affidavit #1 of Catalina Rodriguez, sworn September 7, 2012;
- (c) Memorandum of Argument.

WWW.YOUNGANDERSON.CA

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201 - 1456 St. Paul Street, Kelowna, BC V1Y 2E6 | tel: 250.712.1130 | fax: 250.712.1180

Please acknowledge service by signing the stamped copy of this letter and returning it to the undersigned at your convenience.

Yours sincerely,

YOUNG ANDERSON



Francesca Marzari
marzari@younganderson.ca

FM/ss

copy to: Kasari Govender, co-counsel and Executive Director, West Coast LEAF
Enc(s)

REPLY TO: VANCOUVER OFFICE

VIA EMAIL

September 10, 2012

George H. Copley Q.C.
Ministry of Justice, Legal Services Branch
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Re: Application for Intervenor Status
West Coast Women's Legal Education Action Fund
Villardell v. Attorney General of British Columbia et al
British Columbia Court of Appeal File No. CA39971
Our File No. 14141-0000

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- (c) Memorandum of Argument.

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Please acknowledge service by signing the stamped copy of this letter and returning it to the undersigned at your convenience.

Yours sincerely,

YOUNG ANDERSON

COPY

Francesca Marzari
marzari@younganderson.ca

FM/ss

copy to: Kasari Govender, co-counsel and Executive Director, West Coast LEAF
Enc(s)

Service of a true copy hereof admitted this _____ day of _____, 2012. _____ Solicitor for _____

VANCOUVER

SEP 10 2012

COURT OF APPEAL
REGISTRY

Court of Appeal File No. CA39971
Registry: Vancouver

COURT OF APPEAL

ON APPEAL FROM the Order of the Honourable Mr. Justice McEwan, of the
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BETWEEN:

MONTSERRAT VILARDELL

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AND:

BRUCE DUNHAM

Respondent (Defendant)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

Appellant (Intervener)

AND:

CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH
TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA

Respondents (Interveners)

AND:

WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervenor

NOTICE OF MOTION

(In support of the Application for Leave to Intervene)

(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

TO:

COUNSEL FOR THE APPELLANT
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INTERVENOR
West Coast Women’s Legal Education
and Action Fund

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Fax. 604.643.1200

droberts@millertthomson.com


TAKE NOTICE THAT AN APPLICATION will be made by West Coast Women's Legal Education and Action Fund (West Coast LEAF) to the presiding justice at 800 Smithe Street, Vancouver, British Columbia, at 9:30a.m. on October 15, 2012, for an Order pursuant to Rule 36(1) of the *Court of Appeal Rules*, B.C. Reg. 297/2001, granting West Coast LEAF:

- a) Leave to intervene in the appeal to the Court of Appeal of British Columbia from the order of Mr. Justice McEwan of the Supreme Court of British Columbia pronounced the 22th day of May 2012 at Vancouver, British Columbia;
- b) Leave to file a factum of twenty pages in length;
- c) Leave to present oral argument not to exceed 30 minutes in length; and
- d) Such further and other relief as this Honourable Court deems just, and providing that there shall be no costs of this application or costs of the appeal for or against the proposed intervenor.

AND TAKE NOTICE THAT in support of the application will be read the affidavit of Catalina Rodriguez affirmed on September 7, 2012.

The applicant anticipates that this application will be contested.

Dated: September 7, 2012



Francesca Marzari
Counsel for the Intervenor

Young Anderson
1616 – 808 Nelson Street.
Vancouver, BC
V6Z 2H2
604-689-7400

This application will take no more than 30 minutes to be heard.

VANCOUVER
SEP 10 2012
COURT OF APPEAL
REGISTRY

Court of Appeal File No. CA39971
Registry: Vancouver

COURT OF APPEAL
ON APPEAL FROM the Order of the Honourable Mr. Justice McEwan, of the
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BETWEEN:

MONTSERRAT VILARDELL

AND: Respondent (Plaintiff)

BRUCE DUNHAM

AND: Respondent (Defendant)

ATTORNEY GENERAL OF BRITISH COLUMBIA

AND: Appellant (Intervener)

CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH
TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA

AND: Respondents (Interveners)

WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervenor

AFFIDAVIT OF CATALINA RODRIGUEZ
(In support of the Application for Leave to Intervene)
(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

1. I, Catalina Rodriguez, of the City of Vancouver, in the Province of British Columbia, AFFIRM AS FOLLOWS:



2. I am the President of the West Coast Women's Legal Education and Action Fund Association ("West Coast LEAF"), and as such have knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief in which case I verily believe them to be true.
3. I was called to the bar in British Columbia in 2006. I have been on the Board of Directors of West Coast LEAF since 2008, and have been on the Executive of the Board since 2009.
4. This appeal involves the determination of the constitutionality of hearing fees in a custody and access case. West Coast LEAF has a demonstrable historical and current interest in access to justice, particularly for women involved in family law disputes. The issues raised in this appeal fall squarely within West Coast LEAF's area of expertise.

A. Background and Expertise of West Coast LEAF

5. West Coast LEAF is an incorporated non-profit society in British Columbia and a federally-registered charity. West Coast LEAF's mission is to achieve equality by changing historic patterns of systemic discrimination against women through BC-based equality rights litigation, law reform and public legal education.
6. West Coast LEAF was created in April 1985, when the equality provisions of the *Canadian Charter of Rights and Freedoms* ("*Charter*") came into force. West Coast LEAF is an affiliate of a national organization, the women's Legal Education and Action Fund (LEAF). Both LEAF and West Coast LEAF grew out of the efforts of a group of women who, starting in the early 1980s, worked to ensure that ss.15 and 28 of the *Charter* would be effective in guaranteeing women substantive equality.
7. West Coast LEAF currently has approximately 250 members, approximately 130 volunteers, seven full-time staff persons and two part-time staff persons.

8. 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.
9. 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.
10. 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.
11. A second program is law reform. West Coast LEAF's law reform initiatives seek to ensure that all legislation in British Columbia complies with guarantees of equality for woman pursuant to both s.15 of the *Canadian Charter of Rights and Freedoms*, and the United Nations *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), to which Canada is a signatory.

CLW

12. Litigation is the third program area. Together with LEAF, West Coast LEAF has intervened in 17 cases, including cases at the BC Court of Appeal, the Ontario Court of Appeal, and the Supreme Court of Canada.
13. In the following cases, West Coast LEAF provided support to LEAF, which had primary conduct of the intervention: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120; *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, [2002] O.J. No. 1771 (C.A.); *Miller v. Canada (Attorney General)*, 2002 FCA 370; *R. v. Shearing*, [2002] 3 S.C.R. 33; *Canada (Attorney General) v. Lesiuk (C.A.)*, [2003] 2 F.C. 697 (C.A.); *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E.)*, [2004] 3 S.C.R. 381; and *Blackwater v. Plint*, [2005] 3 S.C.R. 3.
14. In the following cases, West Coast LEAF had primary conduct of 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.
15. West Coast LEAF has intervened (or is currently intervening) in its own name in five legal proceedings: *SWUAV v. Canada*, 2010 BCCA 439; *Reference re: Criminal Code of Canada (B.C.)*, 2011 BCSC 1588 (the Polygamy Reference); *British Columbia (Ministry of Education) v. Moore*, at the Supreme Court of Canada (decision pending), on appeal from 2010 BCCA 478; *Friedmann v. MacGarvie*, at the BC Court of Appeal (hearing pending), on appeal from 2011 BCSC 1147; and *Block v. Minister of Public Safety and Solicitor General*, at the BC Supreme Court (hearing pending). West Coast LEAF also intervened in coalition with two other organizations at the Supreme Court of Canada in the appeal of *SWUAV* (decision pending).

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

B. West Coast LEAF's Expertise and Interest in Family Law

17. West Coast LEAF has significant expertise in the area of substantive equality for women, with particular regard to s. 15(1) of the *Charter*, and in applying these principles to legislation, common law, and state action impacting upon women's equality. In particular, West Coast LEAF has focussed much of its work on ensuring women's equality rights are respected within the context of family law.
18. West Coast LEAF's Family Law Project is an ongoing program area, and the organization has a full time Manager of Community Outreach for this program. The organization has completed a number of projects in the last 10 years on the impact of family law on women, including publishing the following reports:
- (a) "Civil Legal Rights of Abused Women: A Transformative Public Legal Education Project" 2002;
 - (b) "Legal Aid Denied: Women and the Cuts to Legal Services in BC", 2004;
 - (c) "Family Law Project: Court Watch Report 2005-2006";
 - (d) "Not with a ten-foot pole: Law Students' Perceptions of Family Law Practice", 2009;
 - (e) "Rights Based Legal Aid: Rebuilding BC's Broken System", 2010;
 - (f) "Mapping the Gap: A Summary of Legal Resources for Women in British Columbia", 2010;
 - (g) "Mapping the Gap: Linking Aboriginal Women with Legal Resources and Services", 2011;
 - (h) "Separation Agreements: Your Right to Fairness", 2012;

(i) "Troubling Assessments: Custody and Access Reports and their Equality Implications for BC Women", 2012.

19. West Coast LEAF is currently engaged in a three year project funded by Status of Women Canada, which includes: the development of a workshop for family law advocates on helping women navigate separation agreements; the development of a workshop for lawyers on the intersections between equality issues and family law; and a province-wide consultation with women serving organizations, lawyers, judges and others on how to meet legal needs through community based legal service delivery.

C. West Coast LEAF's Expertise and Interest in Access to Justice

20. West Coast LEAF also has significant expertise and interest in applying a substantive equality lens to access to justice issues.
21. As described above, West Coast LEAF wrote and co-published (with Canadian Centre for Policy Alternatives) two papers on the legal aid system: *Legal Aid Denied: Women and the Cuts to Legal Services in BC* in 2004, and *Rights Based Legal Aid: Rebuilding BC's Broken System* in 2010. The first paper documented the disproportionate impact of an inadequately funded legal aid system on women, and the second proposed a rights based system of legal aid that would increase access to justice and promote substantive equality. West Coast LEAF also wrote and published two reports that "mapped the gap" in resources available to women seeking family law assistance in BC, the second one particularly focussing on resources used by and targeted to Aboriginal women.
22. West Coast LEAF intervened in *SWUAV v. Canada*, at both the Court of Appeal and Supreme Court of Canada levels, the latter in coalition with ARCH Disability Law Centre and Justice for Children and Youth, on the issue of access to the courts for marginalized women. The case concerned the definition and application of the test for public interest standing. West Coast LEAF's argument at both levels focussed on the application of substantive equality principles to the

test for public interest standing, and argued that s.15 of the *Charter* mandates that the test be interpreted broadly and purposively to provide access to the courts for the most marginalized women.

23. West Coast LEAF was one of the founding members of the Coalition for Public Legal Services, a coalition of direct service organizations, legal organizations, legal advocates and lawyers and unions who are working together to advocate for an adequately funded legal aid system in BC. West Coast LEAF Executive Director Kasari Govender co-chairs this Coalition, and West Coast LEAF has been instrumental in designing a background factsheet on legal aid, a list of commonly asked questions and answers and submissions to the Legal Services Society in preparation for the overhaul to the justice system currently being considered by the provincial government.
24. West Coast LEAF has met with numerous government officials to push for greater access to civil legal aid for women, including the Attorney General for the province, the women's caucus for the official opposition, ministerial officials and LSS management. The organization has also made submissions to federal and provincial Finance Committees on the subject. West Coast LEAF also participated in the BC CEDAW Group's 2008 shadow report to the UN CEDAW Committee, which noted the impact of cuts to civil legal aid on women's equality in BC.

D. West Coast LEAF's Proposed Intervention


25. West Coast LEAF has a demonstrable and historical interest in ensuring equal and fair access to justice in family law matters. West Coast LEAF has strong expertise in equality analysis and applying ss.7, 15 and 28 of the *Charter* to matters of law and public policy.
26. If granted leave to intervene, West Coast LEAF will argue that the BC Supreme Court hearing fees are unconstitutional as an infringement of women's right to equal access to the courts. West Coast LEAF will focus its argument on the

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family law context, and will take the position that hearing fees are, at the very least, unconstitutional in family law proceedings because of their adverse effect on women in this context.

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

AFFIRMED BEFORE ME at the City of Vancouver in the Province of British Columbia, on the 7th day of September, 2012.


A Commissioner for taking Affidavits for British Columbia

Christopher Gouglas
Barrister and Solicitor,
Notary Public in and for
the Province
of British Columbia


CATALINA RODRIGUEZ

VANCOUVER

SEP 10 2012

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REGISTRY

Court of Appeal File No. CA39971
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BETWEEN:

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AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

Appellant (Intervener)

AND:

CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH
TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA

Respondents (Intervenors)

AND:

WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND

Proposed Intervenor
}

MEMORANDUM OF ARGUMENT
(In support of the Application for Leave to Intervene)
(Pursuant to Rule 36 of the Court of Appeal Rules, B.C. Reg. 297/2001)

**COUNSEL FOR THE APPELLANT
Attorney General of British Columbia**

George H. Copley Q.C.

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**COUNSEL FOR THE PROPOSED
INTERVENOR
West Coast Women's Legal
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1. In this application, West Coast Women's Legal Education and Action Fund ("West Coast LEAF") requests that it be granted leave to intervene in the present appeal and that it be granted leave to make oral submissions at the hearing of the appeal.
2. West Coast LEAF respectfully submits that it should be granted leave to intervene because it has an indirect but substantial interest in the outcome of the appeal, it is able to make a unique contribution to the issues on appeal without taking the litigation away from the parties, and the appeal concerns constitutional issues of public interest to which the applicant can bring a useful perspective.

Intervenor Applications

3. In determining whether to grant leave to intervene to an applicant, the court will generally consider the following factors:

(a) Does the applicant have a direct interest in the litigation?

or,

(b) Can the applicant make a valuable contribution or bring a fresh perspective to a consideration of the issues?

Freidman v. MacGarvie, 2012 BCCA 109 at 12-19

R. v. Kapp, 2005 BCCA 247 at para.11

4. Where the case raises issues of public interest or constitutional law, the court is more likely to grant intervener status where that applicant can make a useful contribution to the case at bar, even where there is no direct interest.

MacMillan Bloedel Ltd. V. Mullin (1985), 66 B.C.L.R. 207 (C.A.) as cited in *R. v. Kapp* at para.11.

5. The factors considered by the court include the following:

(a) The intervenor and its interest in the appeal;

(b) The issue under appeal;

- (c) The intervenor's proposed contribution to the appeal;
- (d) Whether the proposed contribution will be useful and different, without taking the litigation away from the parties.

Freidman v. MacGarvie, 2012 BCCA 109

A. West Coast LEAF and its Interest in this Appeal

- 6. West Coast LEAF has been an incorporated non-profit society in British Columbia and a federally registered charity since 1985. The mission of West Coast LEAF is to achieve equality by changing historic patterns of systemic discrimination against women through British Columbia based equality rights litigation, law reform and public legal education. It has a broad representative base.

Freidman v. MacGarvie, 2012 BCCA 109 at 21

- 7. Together with its national affiliate LEAF, West Coast LEAF has intervened in 17 cases, including cases at the BC Supreme Court, the BC Court of Appeal, the Ontario Court of Appeal, and the Supreme Court of Canada. In all of its interventions, West Coast LEAF's arguments have focused on the application of principles of substantive equality to the development and application of the law.
- 8. West Coast LEAF submits that its interest in the litigation is substantial, although not direct. Its interest is in relation to the public law nature of this appeal and its implications for women's access to justice and equality rights, matters which directly engage its mandate.
- 9. In recent years, one of the primary focuses of West Coast LEAF's program work has been on access to justice issues. West Coast LEAF is committed to ensuring that women have access to the courts and judicial remedies to ensure that their constitutionally guaranteed rights to equality are respected and fulfilled.
- 10. West Coast LEAF has particular experience in matters of public policy in family law, and working towards equal access to justice in British Columbia, particularly

for women in family law matters. This case falls squarely within West Coast LEAF's mandate and expertise.

11. West Coast LEAF also has strong experience as an intervener before this court and others, and will not take the litigation away from the parties or raise new evidence or issues.

B. The Issues on Appeal

12. This appeal is somewhat unique in that the primary appellants and respondents are intervenors on the constitutional issues raised by the court in relation to hearing fees. In that sense, West Coast LEAF submits that the specific matter on appeal is squarely a matter of public interest.
13. The plaintiff, appellant and existing intervenors have put the constitutional validity of hearing fees before this court, including their validity in relation to s. 7, 15, and 28 of the *Charter of Rights and Freedoms*, as well as pursuant to s. 92(14), and 96 of the *Constitution Act* and the rule of law. West Coast LEAF would not add to these grounds, but would provide a useful and unique perspective to their application in this case and in the context of family law generally.

C. West Coast LEAF's Proposed Contribution on Appeal

14. If granted leave to intervene, West Coast LEAF will argue that the BC Supreme Court hearing fees are unconstitutional as an infringement of women's right to equal access to the courts. West Coast LEAF will focus its argument on the hearing fees applicable to family law matters, and will take the position that hearing fees are unconstitutional, at the very least, in family law proceedings.
15. Briefly, if granted leave to intervene, West Coast LEAF will argue that hearing fees violate the *Charter*, particularly ss.7, and the equality guarantees in ss. 15 and 28, in the context of family law proceedings. In addition, hearing fees are contrary to the constitutional principle of the rule of law and access to justice, and

the principles of international human rights law, particularly in the family law context.

(i) Women's Equality Rights

16. West Coast LEAF will argue that women are disproportionately low income, and that they disproportionately rely on family law legal aid. The feminization of poverty means that women and their children often lack the financial resources to conduct litigation, and this is particularly so in the family law context after marriage breakdown. These barriers are further exacerbated by the inadequate legal aid system in British Columbia for family law matters.

Moge v. Moge, [1992] 3 S.C.R. 813 at para.56.

Christie v. British Columbia (Attorney General), 2005 BCSC 122 at para. 74; aff'd in 2005 BCCA 631 at paras. 38-40; rev'd on other grounds 2007 SCC 21.

17. Equal and effective access to justice is an integral aspect of equal protection and benefit of the law encompassed by s.15 (1) of the *Charter*. In *Andrews*, Justice McIntyre stated that "[t]he section 15(1) guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*." The *Charter* value of equality is a guiding principle in the application of the common law and must be applied to improve access to justice.

Andrews v. Law Society of B.C., [1989] 1 S.C.R. 143 at para. 52.

18. West Coast LEAF will argue that hearing fees in family law matters have a disproportionate and adverse impact on women and single mothers, and are not consistent with the equality guarantees in the Charter.

(ii) Security of the Person and Fundamental Justice

19. In addition to equality rights, West Coast LEAF will argue that hearing fees deprive women of their security of the person in a manner that is not in

accordance with fundamental justice contrary to s.7 of the *Charter*. Access to the courts is a matter of security of the person, and many of the matters raised in family law proceedings go to the heart of that right, including custody of one's children, protection from abuse, and shelter. Fundamental justice requires access to the courts, and equality of access.

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46

(iii) *International Human Rights Instruments and Rule of Law*

20. West Coast LEAF will argue that the imposition of court fees, which creates a financial and unequal barrier to accessing justice, is contrary to the rule of law. The Court has inherent jurisdiction to uphold the constitutional principle of the rule of law, which protects (although not without limitation) both equality and the ability of citizens to access legal protections. West Coast LEAF will make these arguments in the context of access to the courts in family law proceedings.

British Columbia Government Employees' Union v. British Columbia (Attorney General), [1988] 2 S.C.R. 214 at paras.24-26.

British Columbia (Attorney General) v. Christie, [2007] 1 S.C.R. 873 at paras.16-17

21. Finally, West Coast LEAF will argue that hearing fees that limit and discourage access to the courts, have the effect of preventing individuals from effectively exercising their rights contrary to numerous international human rights conventions of which Canada is a signatory.

D. West Coast LEAF's Intervention would be Useful and Different

22. West Coast LEAF has extensive experience in working towards equal access to justice in British Columbia, particularly for women in family law matters. This case falls squarely within West Coast LEAF's special expertise and ability to assist the court.

Affidavit of Catalina Rodriguez para 17-24

23. While other intervenors may address access to justice and equality of access, West Coast LEAF will bring a unique expertise and perspective in relation to how the hearing fees affect women's access to justice, equality and security of the person, with a focus on the special circumstances of family law proceedings.
24. In West Coast LEAF's submission the family law context, from which the present case arises, merits specific consideration in relation to the impact and constitutionality of hearing fees imposed in those proceedings. West Coast LEAF is uniquely positioned to provide insight and analysis of these issues.

E. Conclusion


25. This appeal concerns constitutional issues of broad public and common interest. West Coast LEAF submits that its interest in the litigation directly engages its mandate and its program work over the last decade.
26. West Coast LEAF has extensive experience in matters of public policy in family law, and working towards equal access to justice in British Columbia, particularly for women in family law matters. This case falls squarely within West Coast LEAF's mandate and expertise.
27. West Coast LEAF also has strong experience as an intervener before this court and others, and will not take the litigation away from the parties or raise new evidence or issues

F. Order Requested

28. West Coast LEAF respectfully requests that it be granted leave to intervene in this appeal on the following terms:
- (a) that it file a factum of not more than 20 pages on or before a date to be specified by this Honourable Court;
 - (b) that it may present oral argument at the hearing of the appeal not to exceed thirty minutes in length;
 - (c) that it not be awarded costs nor have costs awarded against it.
29. West Coast LEAF asks that there be no costs of this application.


All of which is respectfully submitted,

Dated: September 7, 2012



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SCHEDULE A – CASES REFERRED TO

Andrews v. Law Society of B.C., [1989] 1 S.C.R. 143.

British Columbia Government Employees' Union v. British Columbia (Attorney General), [1988] 2 S.C.R. 214.

British Columbia (Attorney General) v. Christie, [2007] 1 S.C.R. 873.

Christie v. British Columbia (Attorney General), 2005 BCSC 122; aff'd in 2005 BCCA 631; rev'd on other grounds 2007 SCC 21.

Freidman v. MacGarvie, 2012 BCCA 109.

MacMillan Bloedel Ltd. V. Mullin (1985), 66 B.C.L.R. 207 (C.A.) as cited in *R. v. Kapp* at para.11.

Moge v. Moge, [1992] 3 S.C.R. 813.

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46

R. v. Kapp, 2005 BCCA 247.

SCHEDULE B – STATUTES REFERRED TO

Court of Appeal Rules, B.C. Reg. 297/2001

- 36 (1) Any person interested in an appeal may apply to a justice for leave to intervene on any terms and conditions that the justice may determine.
- (2) A party seeking leave under subrule (1) to intervene in an appeal must, within 14 days after the filing of the appellant's factum,
- (a) prepare
 - (i) a notice of motion in Form 6, and
 - (ii) a memorandum of argument in Form 18,
 - (b) file 2 copies of that notice of motion and memorandum of argument for use by the court plus such additional copies of those documents as are required for the purposes of paragraph (c), and
 - (c) serve one filed copy of the notice of motion and memorandum of argument on each of the other parties.
- (3) In any order granting leave to intervene, the justice
- (a) is to specify the date by which the factum of the intervenor must be filed, and
 - (b) may make provisions as to additional disbursements incurred by the appellant or any respondent as a result of the intervention.
- (4) An intervenor must file a factum in Form 10 on or before the date referred to in subrule (3) (a).
- (5) Unless a justice otherwise orders, an intervenor
- (a) must not file a factum that exceeds 20 pages,
 - (b) must include in the factum only those submissions that pertain to the facts and issues included in the factums of the parties, and
 - (c) is not to present oral argument.

Canadian Charter of Rights and Freedoms, Schedule B to the Canada Act 1982, (U.K.) 1982, c.11

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

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.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.