



This is the 1st affidavit  
of Amber Prince in this case  
and it was made on December 5, 2016

No. S-150415  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and  
THE JOHN HOWARD SOCIETY OF CANADA

PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

DEFENDANT

**AFFIDAVIT**

I, AMBER PRINCE, lawyer, of 101 East Cordova Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM AS FOLLOWS:

1. I am the Vice President of the West Coast Women's Legal Education and Action Fund Association ("West Coast LEAF"), and as such have personal 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.
2. I was called to the bar of British Columbia in 2015. I have been on the Board of Directors ("Board") of West Coast LEAF since 2011. I have been on the Executive of the Board since 2015 when I became Vice President.
3. This proceeding concerns a challenge to the constitutionality and administration of provisions of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 ("CRR") authorizing the use of administrative segregation in federal penitentiaries. In their claim, the Plaintiffs allege that sections 31, 31 and 33 of the *CCRA* unjustifiably infringe ss. 7,

9, 10, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

4. West Coast LEAF seeks leave to intervene in this proceeding to make submissions concerning the constitutionality of administrative segregation under ss. 7 and 15 of the *Charter* in respect of incarcerated persons placed in administrative segregation who experience intersecting disadvantage arising from their status as Indigenous women and/or women with mental illness.

**A. Background and Expertise of West Coast LEAF**

5. West Coast LEAF is a non-profit society incorporated in British Columbia and registered federally as a charity. West Coast LEAF’s mission is to further women’s equality by changing historic patterns of systemic discrimination against women through British Columbia-based equality rights litigation, law reform activities and public legal education.
6. West Coast LEAF was created in April 1985, when the equality provisions of the *Charter* came into force. Prior to 2009, West Coast LEAF was a branch office of a national organization, Women’s Legal Education and Action Fund (“LEAF”). Both LEAF and West Coast LEAF grew out of the efforts of a group of women who, starting in the early 1980s, worked to ensure that sections 15 and 28 of the *Charter* would be effective in guaranteeing women substantive equality. Since 2009, West Coast LEAF has increasingly involved itself in litigation in its own name while continuing to work closely with LEAF.
7. During the last fiscal year, West Coast LEAF had approximately 350 individual and organizational members. As of October 31, 2016, West Coast LEAF employed seven full-time staff and two part-time staff. West Coast LEAF relies on the support of approximately 200 volunteers to carry out its work.
8. West Coast LEAF acts to promote the equality interests of all women in British Columbia, 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. West Coast LEAF is committed to working in consultation and collaboration with other equality-seeking groups to ensure that its legal positions, law reform activities and educational programming 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 caliber of its work.

9. Litigation is one of West Coast LEAF's three program areas. Through litigation, West Coast LEAF has contributed to the development of equality rights jurisprudence and the meaning of substantive equality in Canada.
10. West Coast LEAF has intervened, or is intervening, in its own name in the following cases before the Court of Appeal for British Columbia and the Supreme Court of Canada:
  - (a) *Trinity Western University and Volkenant v. Law Society of British Columbia*, 2016 BCCA 423;
  - (b) *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180;
  - (c) *R. v. Lloyd*, 2016 SCC 13;
  - (d) *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, Court of Appeal File No. CA042770 (heard October 5-6, 2016) (ongoing);
  - (e) *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2014 SCC 59;
  - (f) *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59;
  - (g) *Vilardell v. Dunham*, 2013 BCCA 65;
  - (h) *British Columbia (Ministry of Education) v. Moore*, 2012 SCC 61;

- (i) *Friedmann v. MacGarvie*, 2012 BCCA 445;
  - (j) *SWUAV v. Canada*, 2012 SCC 45 and 2010 BCCA 439;
  - (k) *Shewchuk v. Ricard*, [1986] B.C.J. No. 335, 28 D.L.R. (4th) 429 (BCCA);
11. West Coast LEAF has been granted leave to intervene or to participate as an interested person at the trial level before judges of this Court on four occasions: *Reference re Criminal Code of Canada (BC)*, 2011 BCSC 1588 (the *Polygamy Reference*); *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2015 BCSC 534; and *Trinity Western University and Volkenant v. Law Society of British Columbia*, 2015 BCSC 2326.
  12. West Coast LEAF also intervened as part of a coalition of six organizations in an inquiry before the Canadian Judicial Council: In the Matter of an Inquiry Pursuant to Section 63(1) of the *Judges Act* Regarding the Honourable Justice Robin Camp (Report and Recommendation of the Inquiry Committee to the Canadian Judicial Council, dated November 29, 2016).
  13. West Coast LEAF has also worked with LEAF on a number of interventions, either by taking a leading role in cases or by providing background information and support to LEAF.
  14. West Coast LEAF took a leading role in the interventions carried out under LEAF's name in the following cases: *Rick v. Brandsema*, 2009 SCC 10; *R. v. Watson*, 2008 BCCA 340; *Smith (Guardian ad litem) v. Funk*, 2003 BCCA 449; *R. v. Demers*, 2003 BCCA 28; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44; and *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.
  15. West Coast LEAF provided background information and support to LEAF's intervention in the following cases: *Blackwater v. Plint*, 2005 SCC 58; *Newfoundland (Treasury*

*Board*) v. *N.A.P.E.*, 2004 SCC 66; *Canada (Attorney General) v. Lesiuk*, 2003 FCA 3; *Miller v. Canada (Attorney General)*, 2002 FCA 370; *R. v. Shearling*, 2002 SCC 58; *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)*, [2002] O.J. No. 1771, 59 O.R. (3d) 481 (C.A.); *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69; and *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219.

16. West Coast LEAF's second program area is law reform. West Coast LEAF's law reform initiatives seek to ensure that all legislation and policies in BC comply with guarantees of equality for women pursuant to the *Charter*, human rights legislation and the United Nations *Convention on the Elimination of all forms of Discrimination Against Women*, to which Canada is a signatory. West Coast LEAF's law reform work consists of conducting comprehensive community-based research and analysis, drafting best practices and policy recommendations, and making submissions to governmental and other decision-makers on a range of issues impact women's equality.
17. Public legal education rounds out West Coast LEAF's major program areas. West Coast LEAF's educational programming aims to help British Columbians understand and access their equality rights, and to think critically about the law as it affects 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 complement its litigation and law reform activities, based on the premise that the first step toward asserting rights is understanding them.
18. West Coast LEAF has significant expertise in applying principles of substantive equality to constitutional and legislative interpretation, the development of the common law, and state action that impacts women's lives. This expertise extends to articulating the equality rights at issue in contexts where sex inequality is compounded by other markers of stigma and disadvantage, including race, Indigeneity, disability and socio-economic status.

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

19. West Coast LEAF has developed expertise on the concept of substantive gender equality and, in particular, on the use of *Charter* equality rights in the interpretation and assessment of legislation, common law, and state action from a substantive equality perspective.
20. This case concerns the rights of persons incarcerated in federal penitentiaries, particularly those who have been separated from the general prison population through administrative segregation. West Coast LEAF's interest in the case relates to the equality interests of Indigenous women and women with mental illness confined in administrative segregation. Over the years, West Coast LEAF has developed considerable experience in the areas of corrections and sentencing, including how sex inequality and other intersecting forms of discrimination arise in the context of the criminal justice system.
21. West Coast LEAF's work in this area cuts across our litigation, law reform and educational programming. West Coast LEAF has experience and expertise concerning the rights of incarcerated women, including the following:
  - (a) Since 2009, West Coast LEAF has published annual reports on, among other things, the treatment of provincially-incarcerated women in BC, assessed in light of international standards (in particular, the UN *Convention on the Elimination of all forms of Discrimination Against Women*). West Coast LEAF's 2016 CEDAW Report Card published in October 2016 emphasized governmental inaction concerning the over-representation of Indigenous women and girls in British Columbia's correctional facilities, and on how the conditions of incarceration of women and girls continue to fall short of minimum international standards;
  - (b) West Coast LEAF intervened at the Supreme Court of Canada in *R. v. Lloyd*, 2016 SCC 13 to argue that the imposition of the mandatory minimum sentence at issue in the case would have disproportionately negative consequences for women;

- (c) In 2016, West Coast LEAF prepared an op-ed published in the Vancouver Sun highlighting the differential, adverse impacts of prolonged imprisonment on women;
- (d) In 2014, West Coast LEAF wrote to British Columbia's Minister of Children and Family Development objecting to the closure of the Victoria Youth Custody Centre and recommending the use of the facility to house women being held on remand on Vancouver Island;
- (e) In 2013, West Coast LEAF intervened in *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309, a case challenging the cancellation of the mother-baby program at the Alouette Correctional Centre for Women, to argue that the government's action engaged the equality and security of the person interests of incarcerated mothers and their babies;
- (f) In 2012, West Coast LEAF wrote to British Columbia's Representative for Children and Youth (in coalition with two other organizations), sharing concerns regarding the centralization of the incarceration of girls in BC and calling on the Representative to intervene;
- (g) In 2012, West Coast LEAF and LEAF jointly prepared submissions on Bill C-10: *The Safe Streets and Communities Act*, calling on the federal government to delay passage of the omnibus crime bill pending consideration of the impacts of the proposed legislation on women and Indigenous persons and with a view to its consistency with the government's obligations under the *Charter*;
- (h) In 2007, West Coast LEAF wrote to British Columbia's Minister of Children and Family Development regarding reports of inappropriate, invasive medical procedures being undertaken on girls in correctional facilities. As a result of specific allegations made by a prisoner (on which our letter was based), the Ministry conducted an investigation into the reports; and

- (i) From approximately 2003 to 2007, West Coast LEAF conducted “No Means No” workshops on the law of consent to sexual activity for at-risk youth held at the Burnaby Correctional Facility.

- 22. West Coast LEAF seeks leave to intervene because the claims advanced in this case require interpretation and application of constitutional rights to persons with multiple and intersecting disadvantaging characteristics, including Indigeneity, disability and gender. West Coast LEAF has particular interest and expertise in ensuring that constitutional rights are interpreted meaningfully for all women, particularly in circumstances where their multiple and intersecting personal characteristics may obscure the extent to which laws perpetuate disadvantage and harm.
- 23. West Coast LEAF’s experience in the interpretation and application of s. 15 of the *Charter* and the interpretation of ss. 7 and 12 of the *Charter* in a manner consistent with s. 15 will assist the Court in resolving the constitutional issues in this case.

**C. West Coast LEAF’s Proposed Submissions**

- 24. West Coast LEAF seeks leave to intervene so that it may make submissions regarding the constitutionality of administrative segregation under sections 7 and 15 of the *Charter*.
- 25. If granted leave, West Coast LEAF will make the following submissions:
  - (a) The Plaintiff’s claims regarding the constitutionality of administrative segregation must be viewed through an intersectional lens which addresses the “constellation of characteristics” related to the grounds of race, disability and sex as accepted by the court in *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at paras 544-571. In the view of West Coast LEAF, arguments concerning the constitutional rights of prisoners cannot ignore the intersection of race, disability and gender;
  - (b) Section 7 of the *Charter* must be approached through the interpretive lens of the *Charter*’s equality guarantee such that the scope and content of section 7



recognizes the multiple and intersecting grounds of disadvantage at issue for segregated Indigenous and mentally ill female prisoners, and that the interpretation of the *Charter* responds to the needs and circumstances of disadvantaged members of society; and

(c) The Court's assessment of the constitutionality of administrative segregation must be approached with regard to:

(i) The ways in which segregated prisoners who are Indigenous women and/or women with mental illness experience the effects of segregation arising not only from their experience as Indigenous or mentally ill persons, but from the intersection of their experiences as Indigenous *women* and/or mentally ill *women*, including, for example, the exacerbation of trauma arising from violence experienced outside the prison system and the greater incidence among these populations of self-harming behaviours that result in their placement into solitary confinement;

(ii) The disproportionate harms arising from the use of correctional security classification and risk assessment tools that fail to appropriately account for the race and mental health of female incarcerated persons; and

(iii) The increased stigmatization and harm that the use of administrative segregation has on female populations who have suffered historical oppression arising from the intersection of race and mental health status.

26. West Coast LEAF does not seek to argue sex-based discrimination under section 15; rather, if granted leave to intervene, West Coast LEAF will assist the Court in understanding how the alleged discrimination on grounds of race and disability impact female inmates in unique ways.

27. West Coast LEAF seeks leave to intervene in this case because of the importance of the issues it raises to West Coast LEAF's constituents, and because its expertise in

