File No. 33340

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

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA (MINISTER OF ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT) and REGISTRAR, METIS SETTLEMENTS LAND REGISTRY

Appellants
(Respondents)

- and –

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Respondents
(Appellants)

- and –

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PART I - STATEMENT OF FACTS

1. LEAF, as an intervener, takes no position on the specific facts of this case.

PART II - POINTS IN ISSUE

2. LEAF's intervention is limited to the interpretation of s. 15 of the *Charter*, in respect of both subsection (2) and subsection (1). LEAF's submission is that s. 15(2), incorporating an analysis deferential to government, is not applicable to this case. Substantive equality means that treating everyone the same often produces inequality, and that equality often requires differential treatment. Accordingly, s. 15(2) protects targeted ameliorative schemes in order to produce substantive equality. That does not mean, however, that any manner of targeting is protected; s. 15(2) does not protect discriminatory ameliorative schemes. Specifically, where a challenge to a legislative scheme is limited to its being underinclusive in its targeting, the delineation of the target group is not immune from s. 15 *Charter* scrutiny, and requires careful assessment of effects.

3. To this end s. 15(1), incorporating complete scrutiny without deference to government, is fully engaged in this appeal. Furthermore, an analysis of effects under s. 15(1) is necessary to appreciate the intertwining of sex and Indian status discrimination issues (given the history of sex discrimination in Indian status determination), and to challenge the simplistic view that "choice" negates inequality. Moreover, government purposes in support of Alberta Métis must be pursued within constitutional constraints such as s. 15(1).

PART III – ARGUMENT

(A) Subsection 15(2) of the *Charter*

4. In *R. v. Kapp* this Honourable Court formulated a s. 15(2) test which protects ameliorative laws, programs and activities from s. 15(1) *Charter* scrutiny if the government can demonstrate that: (1) the scheme has an ameliorative or remedial purpose; and (2) the scheme targets a disadvantaged group identified by the enumerated or analogous grounds.[1] *Kapp* involved a classic claim of "reverse discrimination," contesting the propriety of targeted ameliorative schemes. The claimants in *Kapp* challenged the very fact of targeting in a 24-hour reserved fishery for three Aboriginal bands (the

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[1] *R. v. Kapp*, [2008] 2 S.C.R. 483 at para. 41 [Tab 5]](Tab references are to LEAF's Book of Authorities ("BofA") except where otherwise indicated).

Program). The *Kapp* claimants did not seek inclusion among the target communities encompassed by the Program, but tried to invalidate the Program as unconstitutional in its entirety, insisting that equality requires identical treatment – formal equality – for everyone. That was the context in which this Honourable Court rejected a formal equality challenge to the existence of ameliorative programs combating historic discrimination, and adopted a deferential s. 15(2) test. At the same time, the Court acknowledged the possible need for "future refinement."[2]

5. Key to s. 15(2)'s inclusion in the *Charter* was the desire to protect ameliorative schemes from "reverse discrimination" challenges by privileged groups objecting to targeting and insisting on formal equality.[3] The protection of ameliorative schemes from challenge by privileged groups is consistent with the goal of advancing the substantive equality of disadvantaged groups. Such deference recognizes the power and socio-economic status of the privileged claimant group(s), as well as the systemic and structural inequalities experienced by the group(s) targeted by the ameliorative scheme.

6. This Court in *Kapp* reaffirmed the centrality of substantive equality to the analysis and resolution of equality rights claims.[4] The Court grounded its s. 15(2) analysis in *Kapp* on the principle that a deferential approach to the ameliorative program in that case advanced the goal of substantive equality. The deference in the *Kapp* test is reflected in the focus on government purposes in step one. As long as the purpose is genuine,[5] measured by whether the "means [are] rationally related to that ameliorative purpose,"[6] effects need not be scrutinized. That is a critical difference between s. 15(2) and s. 15(1). In contrast to the deference of the s. 15(2) "rationally related" test, a searching analysis of effects is required in a s. 15(1) analysis.[7]

7. The explanation for minimally scrutinizing effects under s. 15(2) is to encourage governments to adopt targeted schemes designed to combat historic discrimination; "government should be given some leeway to adopt innovative programs, even though some may ultimately prove to be

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[2] *Ibid.*
[3] Michael Morris and Joseph Cheng, "*Lovelace* and *Law* Revisited: The Substantive Equality Promise of *Kapp*" (2009), 47 S.C.L.R. (2d) 281 at 283-85 [Tab 8].
[4] *Kapp*, *supra* note 1 at paras. 14-16 [Tab 5].
[5] *Ibid.* at para. 46.
[6] *Ibid.* at para. 48.
[7] *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 165 [Tab 2]; Jonnette Watson Hamilton and Jennifer Koshan, "Courting Confusion? Three Alberta Cases on Equality Post-*Kapp*" (2010), 47 Alta. L. R. 927 at 948 [Respondent BofA Tab 30] ("Courting Confusion").

unsuccessful"[8] where measured by effects. This deferential approach properly applies where the challenge is to the very fact of having a targeted scheme, but not in cases of challenge to underinclusion in the delineation of the targeted group. A deferential approach to underinclusiveness challenges is not consistent with "s. 15's purpose of furthering substantive equality."[9]

8. The context of the present case is very different from that in *Kapp*. In *Kapp*, since the claimants were challenging the very fact of any targeting, the impugned provisions were the Program as a whole, such that the *Kapp* "rationally related" test was applied to the Program as a whole. In contrast, in the present case, no one is challenging the setting aside of lands and resources for the Métis, nor contesting providing a sphere of Métis self-governance; i.e. no one is challenging the starting point that the *Métis Settlement Act*[10] targets Métis. Rather, the Respondents challenge only the restrictive definition of who is a Métis under the *Act*, excluding those who acquired Indian status after November 1, 1990.

9. The Alberta Court of Appeal considered whether the *Kapp* s. 15(2) "rationally related" test should be applied to the *Métis Settlement Act* as a whole, or specifically to the impugned provisions limiting the definition of Métis. The Alberta Court of Appeal followed the latter course,[11] holding that there was no rational relationship between the impugned provisions and the ameliorative purpose of the *Métis Settlement Act.*[12] It was not argued before the Court of Appeal that the *Kapp* "rationally related" test did not apply at all.

10. LEAF submits that the Court of Appeal correctly concluded that the *Kapp* s. 15(2) "rationally related" test was not properly applied to the *Act* as a whole, since (unlike in *Kapp*) no one was challenging the scheme as a whole. LEAF submits that, although the Alberta Court of Appeal correctly concluded that s. 15(2) did not bar the claim, it erred in applying the *Kapp* "rationally related" test to the impugned provisions. LEAF submits that this test does not apply in this context because it fails to scrutinize the possibly discriminatory effects of the delineation of the targeted group and is thus overly deferential to government. An ameliorative purpose of a legislative scheme as a whole does not shield from scrutiny discrimination *within* the scheme; in other words, s. 15(2) does not protect discriminatory

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[8] *Kapp*, *supra* note 1 at para. 47 [Tab 5].
[9] *Ibid.* at para. 16.
[10] R.S.A. 2000, c. M-14 [Respondent BofA Tab 22].
[11] Court of Appeal at para. 24.
[12] *Ibid.* at para. 31.

ameliorative schemes. The Appellant Crown's s. 15(2) analysis is flawed because it does not, in the result, acknowledge even the possibility of discriminatory ameliorative schemes.

11. Not all targeted schemes are "ameliorative" within the meaning of s. 15(2).[13] Without accepting the premise that the *Métis Settlement Act*, as a non-temporary and general program for Métis, properly qualifies as an ameliorative scheme within the meaning of s. 15(2) (an issue addressed by NWAC and CACL), LEAF contends for other reasons that s. 15(2) does not apply in this case. Even if, for the sake of argument only, it is assumed that the *Métis Settlement Act* counts as an ameliorative scheme, LEAF's submission is premised on the inapplicability of s. 15(2) to claims of underinclusiveness in the delineation of the targeted group.

12. Where the delineation of the targeted group is challenged as underinclusive, neither the remedial principle behind ameliorative schemes nor the fact of targeting is being questioned. Rather the challenge is coming from those claiming to properly fall within the targeted group who should thus benefit from the ameliorative scheme. Such a challenge does not engage the protective purpose of s. 15(2), which is triggered where the challenge is coming from a privileged group objecting to any targeting and insisting on identical treatment for all. Instead, an underinclusive claim seeking inclusion within the targeting demands an assessment of whether the exclusion of the claimant group violates the purpose of s. 15 (promotion of substantive equality), and requires full s. 15(1) scrutiny that comprehensively analyses effects.

13. To warrant the protection of s. 15(2), an ameliorative scheme need not address all forms of disadvantage at once; it can be specifically targeted. But it does not follow that all types of targeting are protected from scrutiny by s. 15(2). Constitutional protection for particular types of schemes does not immunize them from *Charter* scrutiny in respect of how they are implemented and the effects so produced.[14] While an ameliorative scheme can properly target disadvantage associated with a particular ground, it cannot do so in a way that is discriminatory either on the ground of the targeting[15] or on any other enumerated or analogous ground. A "rationally related" test that largely avoids

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[13] *Kapp*, *supra*, note 1 at paras. 53-55 [Tab 5].
[14] *Adler v. Ontario*, [1996] 3 S.C.R 609 at para. 49 [Tab 1].
[15] The present case can be seen as an ameliorative scheme based on Aboriginality where the challenge contends there is discrimination within Aboriginality.

scrutiny of effects is inadequate to ensure protection against discrimination.[16] Any dispute about whether the delineation of the target group is discriminatory requires full s. 15(1) scrutiny.

14. In *Kapp* this Honourable Court adopted the following approach to the interrelationship between s. 15(1) and s. 15(2) of the *Charter*.

> As discussed at the outset of this analysis, s. 15(1) and s. 15(2) should be read as working together to promote substantive equality. The focus of s. 15(1) is on *preventing* governments from making distinctions based on enumerated or analogous grounds that have the effect of perpetuating disadvantage or prejudice or imposing disadvantage on the basis of stereotyping. The focus of s. 15(2) is on *enabling* governments to pro-actively combat discrimination. Read thus, the two sections are confirmatory of each other.[17]

15. The purpose of enabling governments to proactively combat discrimination under s. 15(2) cannot be used to shield a manner of tackling discrimination that is itself otherwise discriminatory in the delineation of the targeted group. Where the fact of targeting is not challenged, the enabling feature of the s. 15(2) analysis is spent, and the preventive analysis of s. 15(1) is engaged.

16. Outside of the context of s. 15(2) of the *Charter*, it is well-established law that legislation that confers a benefit cannot exclude beneficiaries on discriminatory grounds. In *Law* this Court held that "[u]nderinclusive ameliorative legislation that excludes from its scope the members of a historically disadvantaged group will rarely escape the charge of discrimination."[18] In *Eldridge* it was noted that "this Court has repeatedly held that once the state does provide a benefit, it is obligated to do so in a non-discriminatory manner."[19] LEAF submits that this jurisprudence applies equally to challenges of underinclusion in targeted ameliorative schemes.

17. The consequence of an approach that shields from s. 15(1) *Charter* scrutiny an analysis of effects of allegedly underinclusive ameliorative schemes would be a two-tiered hierarchy of equality rights that would accord diminished constitutional protection to members of disadvantaged groups who are excluded from these schemes. For example, an ameliorative program for women that is delivered in a manner that has the effect of excluding women with particular kinds of disabilities requires full

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[16] "Courting Confusion", *supra* note 7 at 949 [Respondent BofA Tab30].
[17] *Kapp*, *supra* note 1 at para. 37 [emphasis in original] [Tab 5].
[18] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 49 at para. 72 [Tab 4].
[19] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 73 [Tab 3]. See also *Andrews*, *supra* note 7 [Tab 2]; *Vriend v. Alberta*, [1998] 1 S.C.R. 493 [Respondent BofA Tab 21]; *M v. H*, [1999] 2 S.C.R. 3 [Respondent BofA Tab 9]; *Martin v. Nova Scotia*, [2003] 2 S.C.R. 504 [Respondent BofA Tab 10].

scrutiny of those effects. The particularly vulnerable and marginalized members of disadvantaged groups – those who experience multiple and intersecting grounds of discrimination, including on the basis of sex, race, Aboriginality, disability, poverty, marital status and sexual orientation – would be most likely to suffer from such exclusion and diminished constitutional recognition if full s. 15(1) scrutiny were withheld.

18. In sum, the following framework applies to s. 15(2) in order to advance substantive equality and avoid the pitfalls of formal equality (i.e. challenges to ameliorative schemes based on claims that everyone should be treated the same). Before considering s. 15(2), there are two threshold questions:

1) Is the scheme ameliorative within the meaning of s. 15(2)?
   -If yes, go to question 2.
   -If not, s. 15(2) is not engaged – go to s. 15(1).

2) Is the challenge to the very fact of targeting (instead of delineation of the targeted group)?
   -If challenge to the very fact of targeting, s. 15(2) is engaged – apply the two step *Kapp* test.
   -If challenge to the delineation of targeted group, s. 15(2) is not engaged – go to s. 15(1).

(B) The intertwining of sex and Indian status discrimination issues

19. The gendered aspect of the present case highlights the importance of not relying on s. 15(2) to avoid scrutinizing the effects of an allegedly underinclusive scheme. The Courts below dealt with this case as a claim of Indian status discrimination. However, that only partially describes the effects of the impugned provisions. On the face of the statute, all adults who have Indian status are disentitled to membership in a Métis settlement unless a General Council Policy (covering all 8 settlements) provides otherwise.[20] However, by regulation under the *Act*,[21] those who were registered Indians prior to November 1, 1990 (the date of coming into force of the *Act*) were grandfathered in. The scheme might seem gender neutral. However, as a matter of law, it is not, given the history of the *Indian Act*[22] status provisions. In 1985, Bill C-31 partially remedied the past history of sex discrimination whereby Indian women lost status by "marrying out."[23] Thus there was a narrow window of opportunity for those covered by Bill C-31 to be grandfathered under the *Métis Settlement Act*.[24] Seven of the eight

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[20] *Métis Settlement Act*, R.S.A. 2000, c. M-14, ss. 75 and 90, as am. by S.A. 2004, c. 25 [Respondent BofA Tab 22].
[21] *Transitional Membership Regulation*, Alta. Reg. 337/90 [Appellant BofA Tab 32].
[22] R.S.C. 1985, c. I-5, as am. [Appellant BofA Tab 26].
[23] *McIvor v. Canada (Registrar of Indian and Northern Affairs)* 2009 CarswellBC 483 (B.C.C.A.) [Appellant BofA Tab 13], leave to appeal to the Supreme Court of Canada denied, [2009] S.C.C.A. No. 234.
[24] The backlog in processing of Bill C-31 applications, as well as difficulties in many knowing of their right to apply for status, contributed to the fact that there were vast numbers of persons eligible for status under Bill C-31 who were not registered by November 1, 1990.

applicants, all long-standing members of Peavine Métis Settlement, only became entitled to Indian status in 1985 as a result of Bill C-31.[25] Similarly, representatives of Elizabeth Métis settlement stated that up to one third of their existing members may be entitled to *Indian Act* status under Bill C-31.[26] Moreover, given the *McIvor*[27] ruling that Bill C-31 still incorporates residual sex discrimination, there will be persons newly eligible for Indian status who are incapable of being grandfathered under the *Métis Settlement Act.* The Appellant Crown acknowledges this situation.[28]

20. The burden of the legal changes to eligibility for Indian status falls on Indian women and descendents of Indian women who had lost status under prior versions of the *Indian Act.*[29] Accordingly, the impugned provisions of the *Métis Settlement* Act involve an intertwining of sex discrimination and Indian status discrimination issues. The Indian status discrimination issue is apparent on the face of the *Act* and regulation. The sex discrimination element, in contrast, requires an assessment of effects in order to be noticed.

21. A deferential s. 15(2) test that avoids scrutiny of effects will miss this sex discrimination element. In order not to miss this crucial aspect of the case, a full s. 15(1) analysis is required. Section 15(2) of the *Charter* was never intended to hide the possibly discriminatory effects of legislative distinctions on those who experience multiple layers of disadvantage, particularly where those affected are a subset of the group intended to benefit from an ameliorative scheme. Absent a full s. 15(1) analysis, no analytic priority would be given to the social, political and legal context[30] of the exclusion from the perspective of the claimants. Nor would the Court be required to consider whether the bar to membership under ss. 75 and 90 further prejudices and disadvantages those suffering the ongoing effects of sex discrimination under the status provisions of the *Indian Act.* LEAF contends that a substantive equality approach requires full consideration, from the claimants' perspective, of the context and effects of their exclusion from the *Métis Settlement Act.* The severe impact[31] of the exclusion from the *Métis Settlement Act* must weigh heavily in that consideration.

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[25] Affidavit of Barbara Joyce Cunningham at paras. 4-5 Appellant's Record ("A.R.") Vol.II, pp.12; Affidavit of Lynn Tracy Noskey at para. 6 A.R. Vol II, p.53.
[26] Appellant's factum at para. 21.
[27] *McIvor, supra* note 23 [Appellant BofA Tab 13].
[28] Appellant's factum at para. 53.
[29] *McIvor, supra* note 23 [Appellant BofA Tab 13].
[30] *Ermineskin Indian Band and Nation v. Canada*, [2009] 1 S.C.R. 222 at para. 193 [Appellant BofA Tab 9].
[31] Decision of Shelley J. at para. 205; Alberta Court of Appeal at para. 39.

(C) The analysis of choice in an equality analysis

22. The chambers judge's conclusion that there was no s. 15 breach in the present case was based on the assumption that the acquisition of Indian status by the Applicants was a matter of voluntary choice.[32] The Appellant Crown also relies substantially on choice as precluding a finding of discrimination.[33] LEAF submits that the concept of choice must not be used to mask constraints on choice that are the product of the kinds of inequality that s. 15 is meant to remedy. In order to recognize the constraints on choice faced by claimants, the effects of putting claimants to particular choices must be assessed. A s. 15(2) deferential approach that avoids scrutinizing effects will fail to appreciate the existence of constrained choice. A full s. 15(1) analysis that takes the constraints on choice into account is required.

23. It is a mark of oppression that disadvantaged groups are often very circumscribed in the life choices that are realistically open to them. Substantive equality requires that an expansive and decontextualized conception of "choice" not be used to defeat equality claims. As noted by Professor Diana Majury:

> The choice insulation is used under section 15 as the basis for the determination that there has been no discrimination, thus precluding exploration of the context and impact of that choice, including any systemic inequalities that may have affected or circumscribed the alleged choice that was made. ... You can't have a meaningful exercise of individualism, liberty, or autonomy – that is, you can't have meaningful choice – in a situation of inequality. Equality has to provide the foundation and the context.[34]

24. In this case there is good reason to be concerned that "choice" is being used to disguise the unequal conditions of choice. The claimants did not "choose" the circumstances that dictated that only by acquiring Indian status would they be eligible for particular health benefits. The claimants' mothers did not "choose" to lose their Indian status, nor did they "choose" to be barred from passing status to their children. The context in which Indian women and their descendents now reclaim Indian status is one of discrimination and inequality. A proper s. 15 analysis needs to question vigorously whether, in reclaiming their Indian status, these individuals are exercising a "choice" to accept exclusion from Métis membership, as contended by the Appellant. Moreover, a claimant's knowledge that she will be

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[32] Decision of Shelley J. at paras. 203-06.
[33] Appellant's factum at paras. 59, 76, 125.
[34] Diana Majury, "Women Are Themselves to Blame" in Faraday, Denike and Stephenson eds, *Making Equality Rights Real* (Toronto: Irwin Law, 2009) at 219, 224-25 [Tab 7].

discriminated against if she takes a particular action does not negate the discrimination or render it constitutional.

25. In the present case the chambers judge relied on the choice of the Applicants to conclude there was no violation of human dignity so as to amount to discrimination.[35] This decision was issued prior to the judgment of this Honourable Court in *Kapp* which recognized problems with identifying discrimination as measured through the demeaning of human dignity.[36] The overemphasis on human dignity, often understood as respecting individuals' "choices," distorts the s. 15 analysis and wrongly conflates the apparent exercise of "choice" with conditions of equality. It is counterintuitive to conclude that claimants demeaned their human dignity by their own choice unless one looks beyond the superficially voluntary nature of the choice. The move away from reliance on human dignity[37] facilitates an appreciation of how the constraints on choice impact an equality analysis.[38]

(D) The Section 15(1) Analysis

26. The Appellant cites this Honourable Court's direction in *Kapp* that the "factors cited in *Law* should not be read literally as if they were legislative dispositions."[39] Nevertheless, the Appellant proceeds to a s. 15(1) analysis through the *Law* contextual factors.[40]

27. Substantive equality requires an assessment of the context and effects of the impugned legislation from the perspective of the claimant. Stereotyping and prejudice or disadvantage, as referred to in *Kapp*,[41] should not be seen as the only indicators of discrimination. This Honourable Court has used a variety of indicia to describe substantive discrimination, including: "devalued", "stigmatization", "political and social prejudice", "stereotyping", "lacking political power", "exclusion", "exclusion from the mainstream", "marginalized", "social, political and legal disadvantage", "vulnerability", "oppression" and "powerlessness."[42]

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[35] Decision of Shelley J. at paras. 205-06.
[36] *Kapp*, *supra* note 1 at paras 21, 22 [Tab 5].
[37] It should be noted that human dignity was not referred to by this Honourable Court in *Ermineskin*, *supra* note 30 [Appellant BofA Tab 9].
[38] "Courting Confusion", *supra* note 7 at 950[Respondent BofA Tab 30]; Majury, *supra* note 34 at 219-20 [Tab 7].
[39] *Kapp*, *supra* note 1 at para. 24 [Tab 5].
[40] Appellant's factum at paras. 67-78.
[41] *Kapp*, *supra*, note 1 at paras. 18, 23, 24 [Tab 5].
[42] *Law*, *supra* note 18 at paras. 29, 42, 43, 44, 46, 47, 53, 63, 64 [Tab 4], citing *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, *R. v. Turpin*, [1989] 1 S.C.R. 1296, *R. v. Swain*, [1991] 1 S.C.R. 933, *Eaton v. Brant*

28. The Appellant Crown contends that the impugned provisions should survive s. 15 scrutiny because they support Métis culture, identity and self-governance, including preservation of Métis lands and resources.[43] While the significance of these objectives is acknowledged, they nonetheless must be achieved within constitutional constraints such as s. 15 of the *Charter*.

29. The issue in this case is whether Indian status can act as a disqualifier that trumps other factors establishing identification with, and connection to, Métis communities. A mere assertion that Indian status *per se*, with nothing more, undermines Métis culture, identity and self-governance, including preservation of Métis lands and resources, is inadequate.[44] The chambers judge's conclusion of law that the claimants self-identified as Indian when they "voluntarily" acquired Indian status[45] needs to be fully scrutinized under s. 15(1). Rather than deference to government, substantive equality demands heightened scrutiny where discrimination may play a role, directly or indirectly, in limiting access to benefits, resources and membership.

PART IV – COSTS

30. LEAF seeks no costs and asks that no order of costs be made against it.

PART V – RELIEF SOUGHT

31. LEAF requests the opportunity to make oral argument. LEAF takes no position on the ultimate disposition of this appeal, but submits that s. 15(1) of the *Charter* is fully engaged.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this day of November, 2010.

Dianne Pothier **Joanna Birenbaum**

Counsel for the Intervener, Women's Legal Education and Action Fund

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County Board of Education, [1997] 1 S.C.R. 241, *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; See also "Courting Confusion", *supra* note 7 at 949 [Respondent BofA Tab 30] and at 954 (p.28 online version)[Tab 6].

[43] Appellant's factum at paras. 45-64.

[44] *R. v. Powley*, [2003] 2 S.C.R. 207 at paras. 29-35 [Appellant BofA Tab 33].

[45] Decision of Shelley J. at para. 203.

PART VI – AUTHORITIES

Cases	Paragraph Nos.
Adler v. Ontario, [1996] 3 S.C.R 609	13
Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143	6, 16, 27
Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241	27
Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624	16, 27
Ermineskin Indian Band and Nation v. Canada, [2009] 1 S.C.R. 222	21, 25
R. v. Kapp, [2008] 2 S.C.R. 483	4, 6, 7, 11, 14, 25, 26, 27
Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 49	16, 27
M v. H, [1999] 2 S.C.R. 3	16
Martin v. Nova Scotia, [2003] 2 S.C.R. 504	16
McIvor v. Canada (Registrar of Indian and Northern Affairs) 2009 CarswellBC 483 (B.C.C.A), leave to appeal to the Supreme Court of Canada denied, [2009] S.C.C.A. No. 234	19, 20
R. v. Powley, [2003] 2 S.C.R. 207	29
R. v. Swain, [1991] 1 S.C.R. 933	27
R. v. Turpin, [1989] 1 S.C.R. 1296	27
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Secondary Sources

Statutes