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VIA E-MAIL

Roger Bilodeau, Q.C.
Registrar
Supreme Court of Canada
301 Wellington St.
Ottawa, ON K1A 0J1

Dear Maître Bilodeau, Q.C.:

Re: Chief Sheldon Taypotat, et al. v. Louis Taypotat
Supreme Court of Canada File No: 35518
Our Matter No. 0125825 SRP

Please consider this letter as the Reply of the Proposed Interveners, the Charter Committee on Poverty Issues ("CCPI") and Canada Without Poverty ("CWP") to the Response of the Appellant to the Motion for Intervention filed May 13th, 2014.

The Appellants state in their submission that, based on the decisions of the courts below, the issue on this appeal is "whether the *Election Act* discriminates on an enumerated s.15 *Charter* ground (i.e. age) or an analogous ground (i.e. Aboriginality-residence)." On this basis they argue that CCPI/CWP's submissions as to whether level of education may be considered analogous as a component of social condition would introduce a new set of issues. In fact, the issue of level of education as an analogous ground under s. 15 of the *Charter* was directly raised before both the Federal Court and the Federal Court of Appeal and was central to both decisions.¹

The Appellants themselves argue in their Factum that the Federal Court of Appeal erred by not focusing on whether level of education is an analogous ground. They argue that "rather than address the real ground in issue – education requirements – the Court called upon statistical information not entered in evidence to shift the analysis to grounds of age and Aboriginality-residence."² They therefore urge this Court to focus on whether the actual ground of distinction -- level of education -- qualifies as an analogous ground.³ That is precisely the issue on which CWP-CCPI proposes to assist the Court.

¹ See the Federal Court Decision at paras. 58-61, and the Federal Court of Appeal Decision at paras. 45-46.

² Appellants' Factum at para. 62.

³ For example, see Appellants' Factum at paras. 63-64.



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In CCPI/CWP's view, this Court ought to avoid a precipitous exclusion of level of education as an analogous ground, based on the restrictive reading of the immutability requirement proposed by the Appellants. Such an exclusion would leave the scope of protections under s. 15 wanting in comparison to domestic and international human rights law. CCPI/CWP will bring to the Court's attention relevant domestic and international human rights law and jurisprudence in which level of education, as an aspect of social condition or social and economic status, is recognized as a prohibited ground, is defined in a manner that satisfies this Court's criteria for analogous grounds, and furthers the broader purposes of s. 15.

CCPI/CWP's proposed distinction between "level of education" *per se* and level of education as a component of social condition does not expand the scope of the issues before the Court but rather refines the analysis of the ground pleaded, just as the distinction between "residence, in the generalized abstract" and "aboriginality-residence" accepted by this Court in *Corbiere* refined the consideration of residency status in that case. As was acknowledged in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para 58, "a court may, within the scope of the ground or grounds pleaded, refine the comparison presented by the claimant where warranted."

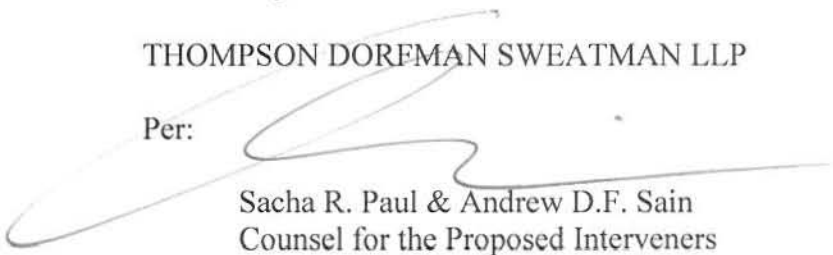
The benefits of the refined approach proposed by CCPI/CWP can be considered by the Court without any additional evidence. As was affirmed in *R. v. Ipeelee* [2012] 1 S.C.R. 433 at para 60, "Courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into *lower educational attainment*, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples" (emphasis added). CCPI/CWP will advance their argument on the basis of the record and the jurisprudence of this Court.

In summary, the proposed intervention by CCPI/CWP does not raise a new set of issues on this appeal. Rather, it will provide this Court with the necessary framework to decide the key question that the Appellants themselves have put to the Court: whether level of education meets the criteria for an analogous ground under s.15 of the *Charter*. CWP and CCPI therefore respectfully repeat their request that their Motion for Leave to Intervene be granted, without costs.

Yours truly,

THOMPSON DOREMAN SWEATMAN LLP

Per:



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Counsel for the Proposed Interveners
CWP and CCPI

SRP/adfs