

FEDERAL COURT

BETWEEN:

JANOS ROBERT GUNTHER

and

JANOSNE (MARIA) GUNTHER

and

ANITA GUNTHER

and

MELINDA GUNTHER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

and

THE ATTORNEY GENERAL OF CANADA

Respondents

MEMORANDUM OF ARGUMENT

PART ONE: INTRODUCTION

A. Scope of Intervention

1. The proposed intervention by the Charter Committee on Poverty Issues (CCPI) will be confined to the issues arising out of the requirement of fees to process humanitarian and compassionate applications for permanent residence pursuant to the *Immigration and Refugee Protection Act* (IRPA) and the impact of such fees on persons living in poverty.

2. In particular, the proposed intervention will focus on the impact of the failure of the federal government to waive fees for Humanitarian and Compassionate (H & C) applications for people living in poverty and unable to afford the fees without being deprived of basic necessities of life. Such refusal results in the denial to poor people of access to a critical legal process and a benefit of law that would allow them to apply for H & C consideration of applications for permanent residence - the consequence of which is deportation from Canada.

3. The proposed intervener will rely on the affidavit of the Chairperson of the Charter Committee on Poverty Issues Bonnie Morton, sworn February 18, 2009.

B. The Applicants

4. This case involves applicants who live in poverty, and as a result of their poverty, have been unable to pay the fees required in order to have H & C applications for permanent residence processed.

5. The Applicants Janos Gunther, his wife Jasone Gunther (a Roma), and minor Applicants Anita and Melinda Gunther were all born in Hungary. All made unsuccessful refugee claims in Canada. Janos Gunther became disabled as a result of a workplace accident that occurred in Ontario in June of 2003, after which the family's primary source of income was through the Ontario Disability Support Program. Although the Gunthers wanted to file H & C applications, their poverty precluded them from doing so,

as they could not afford the \$1400.00 processing fees. All were removed from Canada in March 2006. The family, despite no longer residing in Canada, still wish to file applications for permanent residence.

Applicant's Memorandum of Argument (Gunther), paras. 4, 12

6. The Applicant Chantal Krena and her minor children Ketsia and Jodick currently reside in Hamilton, Ontario. Ms. Krena was born in the Democratic Republic of Congo. In 1997, she came to Canada with her daughter Ketsia and filed a refugee claim, Ms. Krena's source of income is social assistance through the Ontario Works Program. In 2007, Ms Krena borrowed money in order to be able to pay the processing fee for an H & C application for herself and her children. Up to that time, she had been unable to have an application considered because of her inability to pay these fees. To date, she has been unable to repay the loan.

Applicant's Memorandum of Argument (Krena), paras. 4, 16

7. Ms. Nell Toussaint is a racialized woman who was born in Grenada. She has significant health problems. She has lived in Canada since she arrived as a visitor in 1999. She has worked at various jobs in that time, but lives in dire poverty. She relies on food banks for food and resides with a friend who does not charge her rent. Ms. Toussaint has been unable to have an H & C application processed because she is unable to afford the \$550.00 processing fee.

Applicant's Memorandum of Argument (Toussaint), paras. 1, 2

C. The Intervener – The Charter Committee on Poverty Issues (CCPI)

8. CCPI is a national committee founded in 1989 that brings together low-income representatives and experts in human rights, constitutional law and poverty for the purpose of assisting poor people in Canada to secure and assert their rights under international human rights law, the *Canadian Charter of Rights and Freedoms* (“*Charter*”), human rights legislation and other laws in Canada.

Affidavit of Bonnie Morton, para. 2

9. The membership of CCPI includes people who live in or have lived in poverty as well as experts in relevant human rights and constitutional law. CCPI consults with poor people as well as experts and researchers across Canada and internationally in developing its positions in particular cases and on particular issues related to poverty.

Affidavit of Bonnie Morton, para. 3

10. CCPI has on numerous occasions, received funding from the Court Challenges Program of Canada to research and to consult with experts and affected constituencies on many issues dealing with the application of section 15 of the *Charter* to poor people. In this regard, its work has been seen by a panel of equality rights experts in Canada to be of significant import to people living in poverty as well as to other equality seeking groups and to the broader public interest. CCPI received funding from Court Challenges for this intervention application, including funding to conduct both research and consultation with affected constituencies.

Affidavit of Bonnie Morton, para. 3

PART TWO: ISSUES

11. The issue for consideration by this Honourable Court is whether the proposed intervener, CCPI, should be granted Intervener status to file a factum and make oral argument.

PART THREE: LAW AND ARGUMENT

12. Section 25(1) of the IRPA states with respect to H & C applications:

25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

13. Section 10(1)(d) of the *Regulations* promulgated under the IRPA specify that applications (for H & C consideration) “*shall...be accompanied by evidence of payment of the applicable fee*” (emphasis added).

Immigration and Refugee Protection Regulations, SOR/2002-227

14. Section 89 of the IRPA states that “regulations may govern fees for services provided in the administration of this Act, and cases in which fees may be waived by the Minister or otherwise”.

15. The Applicants submit, *inter alia*, that for compliance with sections 7 and 15 of the *Charter*, the fees should be waived where an individual is unable to pay them and access the legal process in question because of poverty. The Applicants submit that poverty and receipt of public assistance are analogous grounds of discrimination under section 15 of the *Charter* and that the failure to waive fees for H & C Review violate section 15 by discriminating on these grounds. The Applicants further submit that the failure to waive fees discriminates against race and ethnic minorities, people with disabilities and single parents because members of these groups are disproportionately poor and more likely to rely on social assistance. The Applicants submit further that a failure to waive the fees for H & C applications violates section 7 of the *Charter* and is not in accordance with principles of fundamental justice. The Applicants further submit that these violations of sections 7 and 15 of the *Charter* are not justifiable under section 1 of the *Charter*.

Applicants Memorandum of Argument (Gunther)
Applicants Memorandum of Argument (Krena)
Applicants Memorandum of Argument (Toussaint)

16. The position of the Respondent is, *inter alia*, that it has no obligation emanating from the *Charter* to waive the fees for H & C applications in situations where applicants are unable to pay them because of poverty.

Respondents Memorandum of Argument (Gunther), paras. 14-22
Respondents Memorandum of Argument (Krena), paras. 14-22

A. Rule 109: CCPI's Intervention will Assist in the Determination of Legal Issues Before the Court

17. Rule 109 (1) of the *Federal Court Rules* (The "Rules") provide that:

The Court, may, on motion, grant leave to any person to intervene in a proceeding

18. Rule 109(2)(b) states that the proposed intervener shall

...describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

19. Rule 109(2) was expounded upon in *Ferroequus Railway Co. v. Canadian National Railway Co.*, [2002] F.C.J. No. 1621, which states:

The assistance must not merely be a re-iteration of the position taken by a party, but rather must provide a different perspective. What is required is a "relevant and useful point of view which the initial parties cannot or will not present"

20. It is submitted that CCPI will provide a different perspective on the *Charter* analysis that is both relevant and useful to the Court, that cannot otherwise be made available to the Court and that is critical to resolving the important issues of *Charter* interpretation that have been placed before it in this case. CCPI proposes to focus its intervention on a number of the legal issues that must be determined in this case on which it has conducted extensive research and consultation over years and indeed, has been granted intervener status to address before the Supreme Court of Canada in the context of other cases.

21. The following are the central legal issues which the Court must determine in relation to the *Charter* claims advanced by the Applicants and which the unique perspective and expertise of CCPI is both relevant and useful in determining:

a) That poverty should be found to be an analogous ground under section 15 of the *Charter*,

22. The determination of whether a ground qualifies as analogous under s. 15(1) is to be undertaken in a contextual manner. It is “a determination which is not to be made only in the context of the law which is subject to challenge but rather in the context of the place of the group in the entire social, political and legal fabric of our society.”

This determination is made on the basis of a complete analysis of the purpose of s. 15(1), the nature and situation of the individual or group at issue, and the social, political and legal history of Canadian society's treatment of the group. A ground or grounds will not be considered analogous under s. 15(1) unless it can be shown that differential treatment premised on the ground or grounds has the potential to bring into play human dignity

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497 at para. 93.

23. CCPI is uniquely situated to provide the perspective and expertise necessary for this type of purposive and contextual analysis of the legal and historical situation of poor people in Canadian society and of the dignity issues involve in society's treatment of the group. The issue of whether poverty an analogous ground worthy of

Charter protection is a principal area of research for CCPI. Moreover, CCPI has intervened before the Supreme Court in a number of cases to raise this issue.

Affidavit of Bonie Morton, para. 5

24. Relying on its long history of research and consultation on this issue, CCPI will argue, on the basis of this and other evidence adduced by the Applicants, that poverty is a widespread, often invidious form of discrimination and that that it should be recognized as analogous to the grounds enumerated in section 15

Affidavit of Bonnie Morton, paras. 7, 11

25. CCPI will provide insight into the way that people living in poverty suffer from prejudice, stereotypes and negative treatment in the same way as groups enumerated or previously recognized as analogous under section 15. CCPI will place the Applicants' experience within the context of broader patterns of discrimination against poor people linked with denial of dignity and social citizenship.

b) Whether the Failure to Address the Unique Circumstances of Poor People and other Groups in this Case Constitutes Discrimination Contrary to Section 15

26. In addition to determining whether poverty is an analogous ground of discrimination, this case further requires the Court to determine if the failure to waive fees to accommodate needs related to poverty constitutes differential treatment and whether it constitutes discrimination under section 15 on a number of grounds, including poverty and receipt of public assistance. These determinations, like the analogous grounds consideration, must be contextual and purposive and informed by the broader

analysis of the nature of the disadvantage facing the group, the relationship between the ground and the circumstances of the claimants and the broader purpose of the provision.

27. Here again, the unique perspective and expertise of CCPI will be essential to Court in understanding the unique disadvantage and circumstances of poor people and factors that perpetuate that disadvantage. CCPI will assist the court in applying a substantive equality analysis to the issues of fee waiver and the effect of failing to ensure that the unique needs of poor people in relation to access to justice are addressed. CCPI's broader perspective will be necessary to prevent discrimination, but to alleviate the burdens and assault on dignity caused by discrimination and social disadvantage.

28. CCPI has also developed and advanced arguments in relation to the denial of justice to poor people associated with an inability to pay a fine (or other type of fee related to being able to access the justice system). In *R. v. Wu*, CCPI intervened to show that section 15 must inform the application of the *Criminal Code* in order to prevent a discriminatory outcome for poor people. While this case was in the context of criminal law, the underlying issues - a denial of equal access to justice resulting in a denial of human dignity - are critical to the determination of the specific issues arising out of the case at bar.

Affidavit of Bonnie Morton, para. 7

c) How poverty intersects with other enumerated and analogous grounds

The Applicants do not confine their section 15 claims to the ground of poverty, but also refer to grounds of receipt of public assistance, disability, racial and ethnic origin and marital status. The Supreme Court has directed that the analysis of intersecting and converging grounds must also be contextual and purposive, and situated in broad patterns of historical disadvantage rather than in the narrow context of a particular provision. The other identified groups are particularly vulnerable to poverty and discrimination, and thus to the social exclusion, including the exclusion created by the administrative fees at issue here. CCPI's unique perspective will assist the Court to examine the convergence and intersecting nature of the various grounds at issue in this case, and the dignity issues involved.

Affidavit of Bonnie Morton, para. 15

Applicants Memorandum of Argument (Gunther), para. 22

d) The interests at stake and whether section 7 of the of the *Charter* imposes positive obligations on government to address the needs of poor people in relation to access to justice

29. Another issue to be determined in this case is whether the interest at stake in the case is one that is protected under section 7 of the *Charter*. The Supreme Court has protected interests fundamentally related to human life, liberty, personal security, physical and psychological integrity, dignity and autonomy. It has held that these interests are protected because they are "intrinsically concerned with the well-being of the living person ... based upon respect for the intrinsic value of human life and on the inherent dignity of every human being." A related issue is whether section 7 may

place positive obligations on governments to take measures to ensure access to justice in order to protect these interests.

Rodriguez v. B.C. (A.G.), [1993] 3 S.C.R. 519 at 585, *per* Sopinka J.
Affidavit of Bonnie Morton, para. 16

30. Here again, CCPI's unique history and perspective will be relevant and useful. CCPI has intervened before the Supreme Court of Canada in a number of cases, including in *In J.G. v. Minister of Health And Community Services (New Brunswick) et al*, [1999] 3 S.C.R. 46 (*JG*) to consider the application of section 7 to governmental failures to address the needs of poor people and to ensure access to justice. In the *JG* case, the issue was access to legal aid in child custody hearings. CCPI will provide similar assistance to the Court in the present case in understanding the nature of the interest at stake in fees barring access to H & C applications and the connection between this type of policy and fundamental dignity.

e) Section 1 analysis and the appropriate framework within which courts may review executive decisions relate to resource allocation;

31. Under a section 1 analysis, the Court must consider whether, if the failure to waive fees for H & C applications for poor people violates either section 7 or section 15 of the *Charter*, it is nevertheless justified in a free and democratic society. This analysis involves considering the specific policy at issue in the broader context of the values of the *Charter*, including values of international human rights, CCPI will be able to provide a unique and useful perspective on this analysis as well.

Affidavit of Bonnie Morton, para. 8

32. A particular issue which will come up in the section 1 analysis in the present case is the extent to which the Respondent ought to be accorded judicial deference because of the budgetary implications of a requirement of fee waiver. This is an issue that CCPI has done research and consultation on and raised in numerous interventions before the Supreme Court of Canada. CCPI's expertise on this issue comes from its long history of assisting poor people navigate their relationship with government, which is more often than not defined by relationships that adjust or waive costs applied to others to ensure access for poor people, such as subsidized housing and social assistance. In this regard, CCPI's interventions before courts have focused on the appropriate framework within which the courts ought to review decisions made by the executive branch of governments that have fiscal implications. CCPI will argue in this case that, similar to the *Eldridge* case in which CCPI intervened before the Supreme Court of Canada, that an unreasonable decision that is fundamentally at odds with *Charter* values is not worthy of deference. Dickson J. explained in *Oakes* that the ultimate standard against which a limit on a *Charter* right must be shown to be reasonable and demonstrably justified are the values and principles essential to a free and democratic society. Those values include respect for the inherent dignity of the person, a commitment to social justice and equality, and faith in social and political institutions, which enhance the participation of individuals and groups in society.

Gosselin, paragraph 352-353
R. v. Oakes, [1986] 1 S.C.R. 103, paragraph 64
M. v. H., [1999] 2 S.C.R. 3, at paragraph 77

The Application of the CUPE Factors to the Present Intervention Application

33. In *CUPE v. Canadian Airlines Ltd.* [2000] F.C.J. No. 220, the Federal Court of Appeal set out the a number of additional factors to be considered in the determination of whether leave to intervene should be granted. It is submitted that CCPI meets all of these factors. The six factors identified by the Court were:

- (i) Is the proposed intervener directly affected by the outcome?
- (ii) Does there exist a justiciable issue and a veritable public interest?
- (iii) Is there an apparent lack of any other reasonable or efficient means to bring the matter before the Court?
- (iv) Is the position of the proposed intervener adequately defended by one of the parties to the case?
- (v) Are the interests of justice better served by the intervention of the proposed third party?
- (vi) Can the Court hear and decide the case on its merits without the proposed intervener?

(i) The Intervener is directly affected

34. In the context of the present application, the question of whether the proposed intervener is directly affected should not be approached in a restrictive matter as applying only to the interest of private parties defending financial or property interests. Rather, it should be interpreted so as to include the interests of a public interest organization such as CCPI in the broader public interest aspects of the case. In this regard, the Supreme Court held that an interest is satisfied by a public interest organization, either through the people it represents or the mandate it seeks to uphold.

Accordingly, where a public interest organization such as CCPI has an interest in ensuring that the interpretation of a legislative provision is consistent with the interests of those whom it represents or with the advancement of the organization's goals and mandate, it will satisfy the first component of the factors for consideration in *CUPE*.

Norcan v. Lebrock, [1969] S.C.R. 665.

R. v. Finta, [1993] 1 S.C.R. 1138.

35. CCPI is directly affected by the outcome of the case both in relation to those whom it represents and in relation to its mandate. CCPI represents the interests of people living in poverty and is governed by and accountable to low income people. This constituency is directly affected by the requirement of processing fees for H & C applications, which deny poor people access to the procedure. Further, CCPI's mandate is to ensure that the rights of people living in poverty are fully and properly considered by courts and administrative bodies. This mandate is clearly directly affected if poor people are barred from accessing certain legal procedures because of fees.

36. The specific legal issues raised in this case directly affect CCPI's mandate. For example:

(a) The extent to which poor people enjoy the protection from discrimination under section 15 of the *Charter* will have a significant effect on the protection poor people may enjoy from discrimination both under the *Charter* and in the interpretation and application of other law. For this reason, the issue has been a central focus of CCPI's work since its inception..

Affidavit of Bonnie Morton, paras. 5-8, 11.

(b) Whether or not those living in poverty may be denied a benefit of law through the imposition of fees without any exemption has a direct effect on access to justice by poor people and has been the subject of previous research and interventions.

Affidavit of Bonnie Morton, paras. 5-8, 12.

(c) Whether the interest at stake in this case, access to H & C consideration, is found to be an interest protected by the *Charter* has a direct effect on the scope of *Charter* protections for poor people under sections 7 and 15, which have been the focus of CCPI's research and interventions over the years.

Affidavit of Bonnie Morton, paras. 5 – 8.

(d) The approach taken under section 1 of the *Charter* is of critical importance to low income members of CCPI, because excessive judicial deference to governments with respect to these kinds of benefits may render *Charter* rights largely illusory for people living in poverty. This has also been a focus of CCPI's past work and central to many of its interventions before the Supreme Court of Canada.

Affidavit of Bonnie Morton, paras. 8, 20

(ii) These matters raise an issue of public importance

37. The Court in *CUPE* held that an additional factor to consider is whether there is a veritable and justiciable public interest at stake in the case. In the case at bar, there are clear public interest issues before the Court that are of significant import not only to poor people across Canada, but are recognized as matters of public importance in Canadian society generally.

CUPE at para. 8

38. The issue of whether poverty is an analogous ground of discrimination under section 15 of the *Charter* is an issue of significant public interest. When the Canadian Human Rights Review Panel held public consultations across Canada the Panel reported: “it heard more about poverty than about any other issue.” The panel’s report entitled *Promoting Equality* stated that:

Our research papers and the submissions we received provided us with ample evidence of widespread discrimination based on characteristics related to social conditions, such as poverty, low education, homelessness and illiteracy. We believe there is a need to protect people who are poor from discrimination. ...

Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000), online: Department of Justice Canada <<http://canada.justice.gc.ca/chra/en/>> at 106.

39. The issue in this case as to whether an administrative fee that denies poor people access to a legal process is also an issue that raises significant issues of broad public interest relating to access to justice. There has been widespread concern within

the legal profession, among judges and within the public at large at the increasing barriers facing poor people in relation to access to justice as well as whether such barriers constitute violations of the *Charter*.

40. Lastly, the case raises the question of when courts ought to defer to Parliament of the Executive in matters related to resources and the conferring of benefits. These are issues of broad public importance, which extend beyond the particular facts of the present case.

(iii) The positions of the Intervener are not adequately defended by the other parties

41. CCPI submits that the appropriate manner for the Court to consider the issues raised in this case is by considering both the particular fact situations placed before it and also the broader public policy issues at stake which CCPI is able to provide assist the Court in addressing. CCPI is uniquely placed to address all of the public interest and broader issues of interpretation of law in the most efficient manner possible, having had 20 years of experience in intervening before courts, administrative bodies and international fora to provide assistance in addressing these issues. CCPI has intervened in numerous important cases before the Supreme Court of Canada and at lower courts and tribunals, raising relevant issues of legal interpretation of concern to people living in poverty that are not raised by other parties.

Affidavit of Bonnie Morton, paras. 2, 8,9.

42. CCPI has particular expertise in international human rights law and its application to the interpretation of the rights of poor people under the *Charter* and other law in Canada. The Supreme Court of Canada has affirmed that Canadian courts are obliged to take into account international law norms when interpreting the *Charter* and further decided, in *Baker*, that any conferred statutory discretion must be informed not only by the *Charter* but also by the values of international human rights law, referring in particular to the discretion conferred by way of H & C review. CCPI has been involved in reviews of Canada by expert international human rights bodies, which have raised concerns about access to justice by poor people. It will show that access to justice is viewed, internationally, as in Canadian society more broadly, as a basic element of equality and social citizenship. This perspective is not available by way of the parties.

Baker v. Canada (Minister of Citizenship and Immigration) [1999] 2 S.C.R. 817
Affidavit of Bonnie Morton, para. 19

43. The issue before the Supreme Court of Canada in the *Baker* case involved the way in which *Charter* rights and international human rights must inform the standards applicable to the adjudication of humanitarian and compassionate applications by immigration officials in particular, and the exercise of conferred discretion in general. The rights and standards of reasonable decision-making defended in CCPI's intervention before the Supreme Court of Canada and affirmed by the Court in its decision in that case would be rendered meaningless to those whom CCPI represents if those living in poverty they cannot even make an application because of administrative fees.

Affidavit of Bonnie Morton, para. 19

(iv) There is an apparent lack of any other reasonable or efficient means to bring the matter before the court.

44. The applicants in these cases are all individuals with no particular experience or expertise in the broad issues of public policy, the scope of the *Charter* or the application of international human rights law that are at stake in their cases. They are poor and are in no position to direct research or co-ordinate consultations with others about the broader public policy dimensions of their cases. Neither party to these proceedings has addressed the discrete issues identified above by CCPI that are critical to a fair determination of the matter before this Honourable Court.

45. CCPI submits that these broader public interest issues that are critical to the determination of the questions before the Court could not be addressed in the manner that CCPI is able to address them.

(v) The proposed intervener will assist the Court in its determination of the merits of the case

46. The Supreme Court of Canada has, on twelve occasions, granted CCPI standing to intervene in matters that directly impact those living in poverty. In each case, CCPI has intervened on discrete issues, such as those identified by the current cases. CCPI's interventions have included: *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 79; *R. v. Wu*, [2003] 3 S.C.R. 530; *Gosselin v. Québec (Attorney General)*, [2002] 4 S.C.R. 429; *Lovelace et al. v. Ontario et al.*, (2000 SCC 37); *J.G. v.*

Minister of Health And Community Services (New Brunswick) et al, [1999] 3 S.C.R. 46; *Eldridge v. A.G.B.C.*, [1997] 3 S.C.R. 624; *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627; *Walker v. Prince Edward Island*, [1995] 2 S.C.R. 407; *R. v. Prosper*, [1994] 3 S.C.R. 236; and *Symes v. Canada*, [1993] 4 S.C.R. These cases included *Baker v. Canada*, in which CCPI was granted leave to intervene by the Supreme Court of Canada to address, *inter alia*, issues of equality for poor people in relation to H & C Review under the *Immigration Act*.

Affidavit of Bonnie Morton, para. 8

47. The proposed Intervener's unique expertise is crucial to contextualize the Court's consideration of issues related to poverty and receipt of social assistance in this case, to understanding the nature of discrimination and the dignity issues involved in discrimination against poor people and effects of barriers to access to justice affecting this group. To this end, CCPI has been involved in providing social context education to *Superior Court* judges in six provinces on poverty issues, as well as to domestic and international meetings of judges and advocates.

Affidavit of Bonnie Morton, para. 11, 4

48. In addition, jurisprudence of the Supreme Court of Canada has held that interventions are welcome if the intervener can provide a fresh perspective on an important constitutional or public law issue. The Court has further held that:

... public interest organizations are, as they should be, frequently granted intervener status. The views of interveners on issues of public importance frequently provide great assistance to the courts.

Reference re Workers Compensation Act, [1989] 2 S.C.R. 335

(vi) The interests of justice are better served by the intervention of the third party

49. The application of a substantive equality framework in relation to poverty and receipt of public assistance in this case; considering an appropriate framework for assessing the positive measures that are required under the *Charter* to ensure that poor people do not face insuperable obstacles to accessing justice; and assessing reasonable limitations on such obligations all require the Court to review the facts of the cases before it in light of broader patterns of discrimination and inequality, public policy concerns and competing demands on resources. Resolving these matters of law in a fair and equitable manner requires consideration of the arguments of the Proposed Intervenor.

50. If granted leave to intervene, the Proposed Intervener will confine its submissions to the legal issues that have been placed before the Court in the present cases and will present arguments which supplement those of the parties and that have not or cannot or be presented by the Applicants or Respondent. The interests of justice are thus better served by the intervention;

51. For all the reasons above, it is respectfully submitted that the test for intervention is met by the Charter Committee on Poverty issues and, as such, that leave to intervene should be granted

All of which is respectfully submitted on the 19th day of February in the year 2009.

Ruth Goba

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